Temple and state

How the seeds of secularism were sown in India, and why the state came to play a part in religious institutions

ABHINAV CHANDRACHUD

During colonial rule in India, England was not a secular country with a Jeffersonian wall of separation between church and state. Instead, the Church of England was the established church. The "Act of Supremacy" enacted in 1534 declared that the monarch was the "Supreme Head of the Church of England". The Archbishop of Canterbury and other high-level church officials were appointed by the government. New monarchs were crowned by a senior member of the clergy, and senior bishops were represented in the House of Lords. Much of this remains true today. How, then, did the idea of secularism take root in India, which derives many of its institutions and practices from England?

Initially, the East India Company (EIC) got itself intricately entangled with the administration of religious institutions. Temple employees were appointed by government officials. Royal salutes were fired from the batteries of Fort St. George in Madras, at the celebration of Pongal, and at Ramzan. Under the orders of the public officer of the district, a religious offering was made at temples for a good monsoon. Laws were enacted which said that the "general superintendence of all lands granted for the support of mosques [and] Hindoo temples" was vested in the colonial government.

A change of policy

All this annoyed Christian missionaries and members of the clergy in England and India who put pressure on the government. Consequently, in 1833, the Court of Directors of the EIC sent instructions to the colonial government outlining its policy towards India's religions. The Directors wrote that all "religious rites" that were "harmless... ought to be tolerated, however false the creed by which they are sanctioned." However, they wrote: "The interference of British Functionaries in the interior management of native temples, in the customs, habits and religious proceedings of their priests and attendants, in the arrangement of their ceremonies, rites and festivals, and generally in the conduct of their interior economy, shall cease."

It was in this manner that the seeds of secularism were sown in India. The colonial government was directed to disentangle itself from "superstitious" Indian religious institutions, because Indian religions were considered heathen and false. However, the Church of England in India was still established for a long time.

The wall of separation between temple and colonial state in India was achieved in 1863, when a law was enacted which said that it would no longer be "lawful" for

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"any Government in India, or for any Officer of any Government" in his official capacity, to take over the "superintendence of any land or other property" belonging to a "Mosque, Temple, or other religious establishment", to take part in the "management or appropriation of any [religious] endowment", to nominate or appoint any trustee in a religious institution, "or to be in any way concerned therewith". Referring to this law in the legislative council, the Lieutenant Governor of Bengal said that it would "rid" the government of a "burden".

The missing clause

However, this colonial vision of secularism was rejected by India's founding fathers. After the Government of India Act, 1919, Indian legislators came to power at the provinces. Indian political leaders enacted the far-reaching Madras Hindu Religious Endowments Act, 1926, which virtually took over the management and administration of Hindu temples in the province. It established "boards" appointed by the government. Temple trustees had to furnish accounts to and obey the instructions of the boards. Temples' surplus funds could be spent by the boards themselves, on any "religious, educational or charitable purposes not inconsistent with [their] objects".

The entanglement of the government with religious institutions in India would be impermissible in the U.S. The first amendment to the Constitution there prohibits Congress from making any law "respecting an establishment of religion". In the Constituent Assembly, B.R. Ambedkar drafted an establishment clause which said that "[t]he State shall not recognize any religion as State religion." K.T. Shah's draft said that the government would be "entirely a secular institution", which would "maintain no official religion [or] established church". If these clauses found their way into the Constitution, the Madras Hindu Religious Endowments Act, 1926, could possibly have been found unconstitutional.

Then, something odd happened. In April 1947, the sub-committee on fundamental rights in the assembly discussed the establishment clause, and K.M. Munshi and K.M. Panikkar promised that they would re-draft it, "so as to provide for those cases where religion is already accepted as a State religion." A few days later, when the sub-committee presented its report on fundamental rights, the establishment clause unceremoniously vanished. Later, H.V. Kamath tried to move an amendment in the Constituent Assembly to introduce an establishment clause into the draft constitution to the following effect: "The State shall not establish, endow, or patronize any particular religion." However, his amendment was put to vote and rejected.

The Supreme Court has allowed governments to heavily regulate Hindu temples on the theory that the freedom of religion does not include secular matters of administration which are not essential to the religion. Sometimes, the court has perhaps gone a little too far since the line between integral religious practice and non-essential secular activity is often hard to draw. For instance, though the government cannot interfere with rituals and prayers at temples, it can regulate the amount that temples spend on such things. Even the appointment of priests in Hindu temples has been held to be a secular activity, which the government can regulate.

In a letter written in 1802, President Thomas Jefferson advanced the idea of a "wall of eternal separation between church & state" in the U.S. The wall of separation between temple and state in India was first constructed by a colonial government which wanted to distance itself from religions that it considered heathen and false. That wall was then pulled down by Indian leaders who felt that government entanglement in religious institutions, especially Hindu temples, was essential, even in a secular state.

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LETTERS TO THE EDITOR

Sweet nothing

The bailout package for sugarcane farmers does little to fix structural flaws in the sector

A little over a month after the Centre proposed a special cess under the GST to help alleviate distress among sugarcane farmers, the Cabinet Committee on Economic Affairs approved a ₹7,000-crore package for the sugar sector last week. This package, with a mix of assured minimum pricing and special incentives for increasing molasses and ethanol production to gainfully mop up the glut of sugar in the country, is independent of the cess proposal that was expected to raise ₹6,700 crore. To put this in perspective, sugar mills' dues to farmers stand at ₹22,000 crore. Under the proposed bailout scheme, the government will procure sugar from mills at a fixed minimum price to help them clear dues to farmers, and also offer them other financial assistance. Only about ₹1,175 crore, however, will be used towards procurement of refined sugar from mills to create a buffer stock of 30 lakh tonnes. This is a fraction of the 63.5 million tonnes output expected in the two sugar seasons from October 2017 to September 2019. With the record output, sugar prices have dropped from an average of ₹37 a kg in the previous season to ₹26 in the current season. The bailout plan promises to pay ₹29 a kg. Sugar mills say this is below their production cost of ₹35 a kg, though it may dissipate their immediate liquidity problems to an extent.

Rating agency Crisil reckons that the fixed price for sugar at mill gates and the buffer stock will at best help mitigate about 40% of the outstanding arrears to sugarcane farmers. And as production will rise again in the coming season, so will the extent of arrears. The rest of the package will take time to materialise, with ₹4,440 crore of loans and ₹1,332 crore of interest subsidies for greenfield and brownfield distillery capacities. Over time, this could help to use excess sugar for the manufacture of alcohol or ethanol, but it will not be soon enough to address the present crisis. All said and done, the Centre's sweetener for the sector does little to address structural problems and sticks to old-style pricing and stock-holding interventions instead of signalling a shift to market-driven cropping decisions. The political compulsions driving the bailout are obvious, given that the sugarcane crisis was a rallying cry in the by-election in Kairana in Uttar Pradesh, which the BJP lost. But that is no excuse for not thinking the package through. Perpetuating the complex web of state controls in a politically-sensitive sector is no solution. The best way to address the problem of excess supply in the long run is to ensure some linkage between the price paid for sugarcane and the end-products it is used for; and encouraging the feedback from market prices to inform farmers' future cropping decisions. The current sops-driven solution could distort the agriculture sector further.

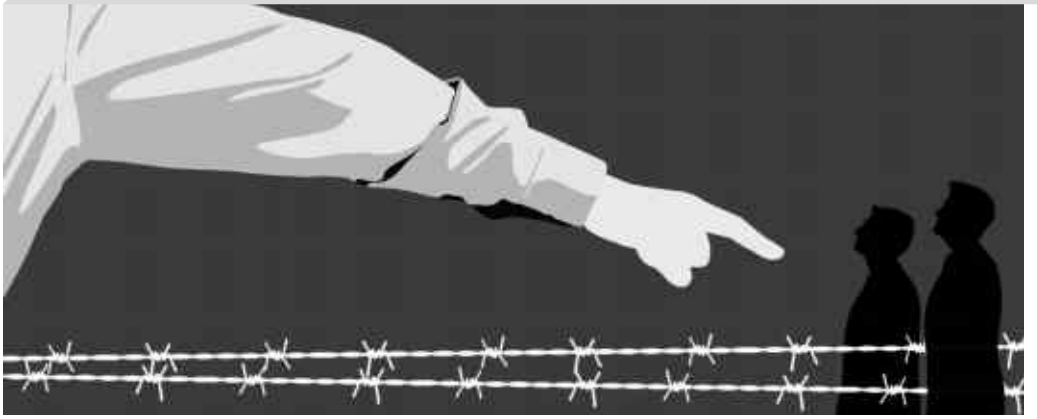


ILLUSTRATION BY BINAY SINHA

The flawed UN report will take lives

It will not shame either India or Pakistan. It will merely give them another reason to fight their blood feud to the last Kashmiri

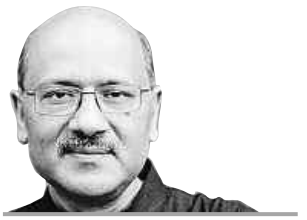
The United Nations Human Rights Council's report on Kashmir is so fatally flawed that it was dead on arrival. Debating its accuracy, fairness, methodology or motive is a waste of time.

Its fatal flaw is political. It is one thing to let NGO-type activists take over the world's premier human rights body, but quite another to exercise no political oversight. At one level, it tells you how incompetently the UN is being run. On another, it shows the damage you can do to those you have set out to defend.

Does this report embarrass or shame India or Pakistan? Not in the least. Both treat Kashmir as a blood feud. India will not be shamed by its human rights record: It believes it is only fighting a nasty, cross-border terrorist assault.

Pakistan won't be embarrassed by just another report stating that it is funding, feeding and arming this mega terror operation. It believes it's engaged in a moral campaign for justice. It also wears much nastier descriptions such as 'International Migraine' and 'University of Jihad' like badges of honour.

Both will fight to the last Kashmiri if that is what it takes. Will they bother about this idiotic UN report where the "researchers" haven't even been on the ground in Kashmir once, any side of the LoC? They won't. But that is not the biggest problem.



NATIONAL INTEREST

SHEKHAR GUPTA

We call it idiotic not because of the quality of its research, but for its expectation that it will help the people of Kashmir. On the contrary, it will harden India's approach. It will also encourage Pakistan to shove more Kashmiris and its own expendable youth into a *jihad* (holy war) in the renewed hope that one day, someday, it will drive India away in shame, fear or pain. We can exchange notes on it a decade from now when the current High Commissioner for Human Rights has retired to play golf on his generous UN pension.

The quality of successive secretary-generals over three decades tells us that the UN doesn't necessarily hire its bureaucrats for intellect or ability. It is no surprise if the current lot doesn't even bother to look at the history of its own interventions.

In so many unfortunate ways the Kashmir situation is back to the perilous 1990s. That is also when UN and Western human rights pressures were the greatest on a much weaker India. How did it respond then? It passed a unanimous resolution in Parliament, resolving to recover all of the territory in Pakistan-occupied Kashmir. A bipartisan delegation led by opposition leader Atal Bihari Vajpayee, with Minister of State for External Affairs Salman Khurshid as his deputy, won a historic vote at Geneva. Never mind that they had to make common cause with human rights rogues like China and Iran.

This UN report will achieve a similar closing of ranks. Remember, even before the ministry of external affairs' official condemnation was out, Congress spokesmen were on TV, backing the government.

Shujaat Bukhari's assassination took our minds away from the most toxic parts of this report. On both sides, maybe it is deliberate. India cannot take notice of a provocation as grave as a UN body formally asking for self-determination in Kashmir and not declare war over it. It should break the Pakistani hearts too because self-determination enlarges the choice to independence. Pakistan has never accepted that. Nor did the UN resolution of 1948.

In any case, the UN has not talked of self-determination or plebiscite since the 1972 Simla Agreement, which redefined Kashmir as a purely bilateral issue. Pakistan may have invoked the resolutions occasionally, but never insisted on it in any bilateral agreements and other joint declarations since then — in Lahore, Islamabad or Sharm El Sheikh. These have only talked of resolving the dispute bilaterally.

Since we treat 1989-94 period as the worst five years in the Kashmiri insurgency, we need to debate if we are back to that square. There is bitter alienation, politics has lost credibility, human rights pressures have built up, the Pakistanis are emboldened, the LoC is alight and our national politics is broken.

Remember the two things that brought India together in anger then: Pressure from Western human rights organisations and that disastrous statement from US Assistant Secretary of State Robin Raphel questioning the validity of the instrument of Kashmir's accession to India.

Now this irresponsible UN report has brought in both these provocations.

Having vented at the stupidity of the UN repeating its own and the Western powers' blunders (as personified by Robin Raphel in 1993), we should also reflect on how we got here. Simple answer: By making blunders very similar to those of the past.

The trouble began in 1989, when India was in political transition and an ideological curiosity came to power under V P Singh. Curiosity because it was the government of a minority coalition kept in power by the Left and BJP support from outside.

The BJP wanted a "muscular" approach to Kashmir. So Jagmohan on the BJP's say-so was sent as governor to crush the militants. But the government also had an aggressively pro-Muslim core and depended on the Left as well. Further, it had Mufti Mohammad Sayeed as Union home minister. Therefore, it also appointed bleeding heart George Fernandes as minister for Kashmir affairs.

We had one centre of power causing injury and another applying balm. As to where the home minister's heart was, we don't need to guess. The result was disaster. Kashmiri Pandits suffered the cruellest ethnic cleansing and militancy morphed into full-scale Pakistan-based insurgency. Later, as a wiser, ruthless and more clear-headed Narasimha Rao took over, the armed forces were given unlimited resources, a free hand, and the mandate to crush it.

This was the worst phase yet in the state's human rights history. Notorious interrogation centres were set up, large numbers died in firing on civilian mobs, and the Bijbehara firing massacre and the Kunan Poshpora mass rape allegations all came up in that period as did the Charar-e-Sharief crisis.

This is what today's generations might identify better as the *Haider* (Vishal Bhardwaj's film) phase in Kashmir's history. By the end of Rao's term, however, militancy had been crushed at great cost to public sentiment. Essentially, it was the price India paid for the V P Singh government's woolly-headedness.

We've seen some of the same confusion lately. The difference is, unlike V P Singh's minority coalition on daily wages, this is a strong nationalist government with a sweeping majority. But what has it done? It aligned with the PDP, ostensibly to bring opposite ideologies and the Valley and Jammu together. It was never able to mould its own instincts accordingly. So, you again played with the gun and the bandage at the same time. It's again been like having Jagmohan and George Fernandes in the same establishment.

The missing elements — human rights pressure and Robin Raphel questioning Kashmir's accession — have now been brought in by this unthinking UN report. The clock in Kashmir has been re-set, to 1993.

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UN report right off the mark

Grilling India on violations in J&K, but ignoring Pakistan's role smacks of 'propaganda'

Lt Gen D S Hooda (retd)

ONE-SIDED: The report also gives the dos and don'ts, integral to AFSPA, a miss.

THE Office of the UN High Commissioner for Human Rights, on June 14, published the *Report on the Situation of Human Rights in Kashmir* for the period of June 2016 to April 2018. While the report covers both sides of the Line of Control, its main focus is on the incidents of alleged excesses committed by the Indian security forces following the killing of Burhan Wani in July 2016.

The report was swiftly and categorically rejected by India. The Ministry of External Affairs (MEA) called it "fallacious, tendentious and motivated" and "a selective compilation of largely unverified information. It is overtly prejudiced and seeks to build a false narrative". The MEA also said the "report violates India's sovereignty and territorial integrity. The entire state of Jammu and Kashmir is an integral part of India…The incorrect description of Indian territory in the report is mischievous, misleading and unacceptable. There are no entities such as 'Azad Jammu and Kashmir' and 'Gilgit-Baltistan'".

There have been a number of accounts dealing with human rights in Jammu and Kashmir, but the first reaction on reading the report is a sense of disbelief that a respected international organisation like the United Nations would bring out what could more accurately be described as a "propaganda manual". Perhaps after being denied "unconditional access to Kashmir", the UN High Commissioner for Human Rights is showing his ire by a compilation that is completely prejudiced, and, in many ways, impinges on the sovereignty of the Indian state.

The report claims to base its methodology using the "reasonable grounds" standard of proof based on a "reliable body of information", but it selectively uses data to build a completely biased picture, questioning Indian lawmakers, judiciary and security forces. Its main source of information is the Jammu Kashmir Coalition of Civil Society, whose data of persons killed in the 2016 protests appears to take precedence over the figures announced by the Chief Minister in the Legislative Assembly.

In completely ignoring the role of Pakistan in exporting terror into Kashmir, and describing the Hizbul Mujahideen (which has been designated as a terrorist group by India, the European Union and the United States) as an armed group, the bias and motivations are clearly visible.

There is a lengthy section on the Armed Forces Special Powers Act (AFSPA), 1990, which has given the "security forces virtual immunity against prosecution for any human rights violation". The report also claims that Section 4 of AFSPA that allows any person operating under the law to use lethal force "contravenes several international standards on the use of force and related principles of proportionality and necessity". It completely ignores the dos and don'ts which form an integral part of AFSPA and which state that minimum force will be used, and that a clear need will be established for opening fire. This is just one example of how the report has used facts selectively.

The report also comes down heavily on the military courts and the Armed Forces Tribunal, accusing them of "impeding access to justice". While there is a lively debate in India on AFSPA and military courts, these are sovereign functions of Indian lawmakers. By questioning these functions, the UN High Commissioner is clearly overstepping his authority.

When the report commences the discussion on the events from 2016 to 2018, it clearly demonstrates a complete lack of understanding of the situation that existed, particularly following the killing of Burhan Wani. The security forces are accused of using excessive force while no mention is made of the violent mobs that attacked police stations, army convoys and patrols. Figures are extensively quoted for civilian casualties, but there is no mention of the more than 3,300 security personnel who were injured in the very first month of the protests.

The report has bold headings on "Torture", "Enforced disappearances" and "Sexual violence". While stating that there have "long been persistent claims of torture by security forces in Kashmir", the report has listed three cases of "torture" in the 2016-18 period — one of whom is Farooq Ahmad Dar, who was tied to a jeep. There is one incident of "enforced disappearance" and no reported case of sexual violence. These are again examples of an attempt to embellish and sensationalise the report.

It is illuminating to compare the tone and tenor of this report with the *Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2017*, published in February 2018 by the same Office of the UN High Commissioner for Human Rights and the United Nation Assistance in Afghanistan (UNAMA). Between January 1 and December 31, UNAMA documented 10,453 civilian casualties in which there were 3,438 deaths. Of these deaths, 745 were attributed to pro-government forces, with aerial operations alone causing 295 deaths.

Despite these casualty figures, the report says, "UNAMA observed that the number of airstrikes conducted by international military forces and Afghan air forces has increased significantly compared to 2016, while the number of civilian casualties has increased by 7 per cent. While emphasizing that no civilian casualties are acceptable, the reduced harm ratio suggests improvements in targeting and civilian protection procedures." There is no strident criticism.

The timing of the release of the report is also intriguing. It was released during the period of the Ramzan ceasefire, at a time when the government was making its most sincere effort to create a period of calm in Kashmir. Such a malicious piece of work can only serve to vitiate the environment in Jammu and Kashmir, and the Office of the UN High Commissioner for Human Rights could not have been unaware of this. If this was done with a deliberate intent, the matter is extremely serious.

Today, Kashmir is mourning the killing of Shujaat Bukhari, one of its most respected journalists. Terror attacks have intensified and the ceasefire is unlikely to be extended. In this highly volatile environment, this clearly motivated and prejudiced piece of work deserves to be thoroughly condemned.

> The rights watchdog selectively uses facts to build a biased picture, questioning Indian lawmakers, judiciary and the security forces. Strangely, its report on Afghanistan lacks strident criticism of abuses, pointing towards a deliberate attempt to embarrass India.

The writer is a former GOC, Northern Command

Don't ignore RCEP

India must re-examine markets to the east

As United States President Donald Trump ensured that the G-7 meeting in Quebec descended into schism, and deep divides over trade and tariffs split the Western alliance, India must re-examine its position on global and regional trade architecture swiftly. Relying on the World Trade Organisation or on existing trade connections is clearly a strategy whose time has passed. In this reconsideration, the Regional Comprehensive Economic Partnership, or RCEP, must play a major role. After all, the RCEP is unquestionably the next major frontier in economic integration. It connects the states of southeast Asia that are members of the Association of South East Asian Nations, or Asean, with countries that have signed free trade agreements (FTAs) with Asean, including India and China. The RCEP countries are the nexus of the world trading system. Well-trafficked trade routes pass through southeast Asia, and the region's economies are growing and vibrant. The RCEP includes both commodity exporters such as Australia and Indonesia and services hubs such as Singapore. Yet Indian officials at the highest levels have expressed very public doubts whether the RCEP will actually be in India's interest. While recognising the validity of these fears, it is nevertheless now clear that if New Delhi abandons the RCEP, or allows it to go forward without India's participation, then this country will be left on the sidelines of world trade.

Much of the concern repeatedly expressed about the RCEP surrounds the fact that China will be a participant in the bloc. After all, China accounts for 60 per cent of India's $83 billion trade deficit. Fear of Chinese imports and Chinese overcapacity should not be allowed to cripple trade negotiations, however. India must certainly reserve the right to put in place emergency anti-dumping measures, but it cannot afford to ignore the opportunities inherent in integrating further with the global trading system. Overall, New Delhi's recent attitude to trade agreements has been worryingly short-sighted. Much attention has been focused on producers who have found it difficult to compete. Yet the benefits for consumers are largely ignored. In addition, research has shown that FTAs, such as the one India has with Asean, are not being taken full advantage of by India's exporters — and so the government might be more fruitfully employed educating exporters and aiding them to access the new markets open to them, than in cutting off trade negotiations.

If India is to succeed in reviving its exports and creating jobs at home, it must transform its domestic productive base, and render it more competitive and export-oriented. A combination of structural reform and openness to trade is thus the only formulation for success. India's exports as a proportion of its gross domestic product have stagnated. The rise of protectionist sentiment in Washington reveals that even the US — one of the few countries with which India has a trade surplus — cannot be relied on as an export destination. Other markets must be found — which means that the RCEP is no longer optional for India. The government must re-invigorate its participation in the RCEP negotiation process. The worst possible outcome would be if the trade agreement goes forward without India.

EASING BANKRUPTCY RESOLUTION

THE AMENDMENTS ALLOW DELISTING OF COMPANIES IF THE MINORITY SHAREHOLDERS ARE GIVEN AN EXIT AND NO SHAREHOLDER/PROMOTER HAS A PREFERENCE IN THE EXIT PRICING

SEBI's new regulations **sync with the IBC**

MEHUL BHEDA
Partner, Dhruva Advisors, LLP

A LOT HAS been said and written on the Indian insolvency law—the Insolvency and Bankruptcy Code, 2016 (IBC). It is one of the big-bang reforms of the Modi government that seems to have started yielding tangible results. All the action and media attention has been focused on the 12 large stressed companies, which were referred to under the IBC to the National Company Law Tribunal (NCLT) by the financial creditors, and which are in various stages of completion, although some of them are stuck in some litigation. Various corporate groups and investors have shown a keen interest in acquiring these stressed companies. It has also been a continuous learning process for all the stakeholders, whether it be the government, the banks, the insolvency resolution professionals, the prospective bidders, other regulators, as well as for the community of lawyers and advisors. The government has been very proactive in bringing about changes to the code as well as the regulations, in most cases through the ordinance route.

Of course, the insolvency process, as a whole, has its implications under various allied laws and regulations. Taxation is one of the key areas and some key amendments were made in the Finance Act, 2018. The other key area was the securities law, as most of the large cases are listed on the stock exchanges.

Few pivotal issues that have been bothering potential bidders are:

- Whether acquiring a listed company undergoing the resolution process will trigger the provisions of the takeover regulations?
- Whether any special concession is available for the companies undergoing the resolution process to either remain listed or get delisted?
- Whether pricing for capital infusion needs to adhere to market price guidelines or is it flexible, given the underlying economic realities of the stressed companies?
- Any acquisition, especially of a stressed company, may involve steps such as a merger, demerger, capital reduction, sale of subsidiaries, among others. Does this require separate stock exchanges'/ SEBI approval as well as shareholder's approval?

As several IBC cases went to the NCLT, bidders and their advisors made several representations to SEBI to address these issues in a manner which ultimately helps in achieving the objectives of the code. In this connection, SEBI came up with a discussion paper during the month of March, 2018, and has now issued four separate notifications amending its relevant regulations, effective from June 1, 2018.

As per the takeover regulations, the acquirers of the stressed companies were treated at par and no person could acquire shares or voting rights beyond the maximum non-public shareholding, i.e. beyond 75% (unless the acquisition is under a delisting offer). This was a problem as the acquirers are providing all the funds to the stressed company to revive it and, hence, are uncomfortable where they do not control more than 90% of the equity shares/ voting rights. The acquirer has an option to seek relaxation from the strict compliance of the takeover regulations under the resolution plan but it remained within the powers of SEBI, whether or not to accept such relaxations.

Considering the above, an amendment has been made in regulation 3(2), by inserting a proviso enabling the acquirer holding 25% or more shares or voting rights in a listed company, to acquire shares or voting rights beyond 75% of the share capital of the listed stressed company subject to, and in accordance with, the resolution plan approved by the NCLT. However, no relaxation has been granted in complying with the minimum public shareholding norms and such an acquirer would need to comply with the requirement of bringing the public shareholding to 25% within one year from the date it acquires the company, or it would need to apply for delisting of the securities from stock exchanges.

The current delisting regulations require adherence to onerous compliances such as the reverse book building process, fixation of the floor price, minimum number of equity shares to be acquired for delisting, appointment of a merchant banker, issuance of an offer letter, seeking approval of the shareholders, among others, for delisting of its securities. Most acquirers, given the reasons cited above, would like to acquire full control and delist the company, but the above regulations make that a virtual impossibility. Sensibly, SEBI has now significantly relaxed the delisting regulations so that the acquirers can choose to delist securities of such an acquired stressed company without following the intricate delisting procedure, where such a delisting process (in compliance with certain conditions), is a part of the resolution plan approved by the NCLT (which means the delisting plan need not be in compliance with existing delisting guidelines).

Most acquirers would like full control and delisting the firm, but previous regulations made that a virtual impossibility

The amendments now provide that even if no process of delisting is mentioned in the resolution plan, the company can be delisted if the minority shareholders are given an exit and no class of shareholders or promoters have a preference in the exit pricing. However, it is worth noting that the exit price to the public shareholders should not be less than the liquidation value (after paying off dues) as per the code. This is a significant liberalisation and a bold step from SEBI. How the minority shareholders of these companies react, remains to be seen.

Further, in a very prudent move, and to ensure the timely implementation of the resolution plan approved by the NCLT, SEBI has done away with requirements of pricing, shareholder approval, disclosure, tenure, among others. for preferential issue of equity shares and convertible instruments under the SEBI ICDR Regulations. Further, SEBI has also clarified that where the preferential issue is made in terms of the resolution plan approved by the NCLT, no shareholders' approval is required under SEBI LODR Regulations with respect to material-related party transactions, disposal of shares in material subsidiary, dealing with assets of material subsidiary and re-classification of shareholding of erstwhile promoters as public holdings. All such approvals are deemed to be granted as long as they are a part of the resolution plan. Additionally, any restructuring undertaken by way of a scheme of arrangement/ amalgamation approved under a resolution plan shall not be subject to an approval of SEBI and the stock exchanges where such securities are listed.

Other requirements for such restructuring such as seeking majority approval of the minority shareholders, obtaining a valuation report and a fairness opinion, will also not apply. Limited disclosures with respect to such plans are to be made to the stock exchanges within one day of the resolution plan being approved by the NCLT. The lock-in provisions under the SEBI ICDR Regulations shall continue to apply in order to prohibit the short-term profiteering by the incoming shareholder/acquirer. These are welcome changes made by SEBI and will go a long way in making India's bankruptcy regime a more robust one.

Towards a robust administrative database

It's time to make digitisation work

RAJNESH JAIN

Deputy Director General, Ministry of Health and Family Welfare. Views are personal

ADMINISTRATIVE DATA ARE collected primarily for non-statistical purposes and adopted for producing statistics, whereas statistical data are collected for generating statistics. The concept of administrative statistics was appreciated when the important micro objects of the society as interrelated and interacting elements of a system was reflected on the macro level by the System of National Accounts in the 1950s and 1960s.

In India, administrative statistics have grown along with the federal structure of the government. Administrative records contain a wide variety of data on demographic and social including health, economic, cultural and environmental subjects. Administrative authority of the data are vested with statutory authority to canvass the requisite information to ensure public compliance and response. In instances where such legislative provisions support data collection, the coverage and completeness of records is usually good. Collected data is relevant and direct, and handled by agencies that have special knowledge of the subject. The set-up where this data is collected has good knowledge of the subject and is well-versed with local language, conditions.

Advantages and challenges: The data through administrative sources eliminates survey errors, removes (or significantly reduces) non-response, and provides more accurate and detailed estimates for sub-populations. Although data collection costs are not incurred, but uses of administrative data will require transforming it to the required statistical outputs and, therefore, involve data management costs.

Confidentiality to the wider community, in using administrative data by the statistics office, is important and it may be ensured that administrative data collecting organisations are complying with the law and information privacy requirements. Administrators responsible for collecting data may not be properly trained on methodology for recording. Administrative data is aggregated at a broader level, and some information content is lost due to individual variation or equity concerns. Private service providers may be less inclined or not required to contribute data to the aggregated dataset, thereby sometimes leaving out a significant population that utilises these services. The concepts and definitions used as required in terms of laws and regulations may not be as required for the statistical purpose and also not conform to international standards.

To use administratively sourced data in statistical system, the statistician needs to:

- Clearly understand the rules and processes that define administrative data;
- These rules and processes will influence the coverage, timing, quality and completeness of the administrative data;
- Understand the differences between the model defining the statistical data requirements and the administrative data that is available; and
- Develop appropriate methodology and processes for the statistics office to transform, model or adapt the administrative data to the statistical model.

Statistical analysis is a critical component in needs assessment

Digitisation and the future of administrative statistics: There is enough research on Digital India. One is Iyer et al, who, in their book, focused on the need of Digital India and the role played by e-governance in our country. Two, Jaini & Tere, who accepted that Digital India is the need of our economy and a tool for development. They also concluded that Digital India reduces the paperwork and digitisation increases GDP of the economy.

Through digitisation, India is far more data-rich than it has ever been, with biometric data of its citizens available through Aadhaar. It will soon have detailed records of company-level transactions through GSTN. Other examples are MGNREGA and Jan-Dhan Yojana, which collect and disseminate detailed disaggregated data.

According to Frederick J Gravetter and Larry B Wallnau, statistics "creates order out of chaos" by summarising and simplifying complex human populations. Statistical analysis is a critical component in a needs assessment. The use of this kind of administrative data in the production of statistics can be categorised by purpose as controlling the processing of statistical data and quality evaluation of final products, producing new statistical products either separately or in combination with data from multiple sources, and preparing improved collection frames for sample surveys and censuses. It's time to take advantage of digitisation to rediscover the administrative database.

WHERE

In **Telangana**, finetuning a scheme for farmers

Rythu Bandhu, a farmers' investment support scheme announced with much fanfare by the Telangana government, has divided farmers. Those left out, including an estimated 14 lakh tenant farmers, have taken to the streets.

What is the scheme?

The scheme, conceived as an investment support for farmers to buy seeds, fertilizer and other inputs, allows distribution of ₹4,000 per acre each for two crops (kharif and rabi). This is considered an important link to a series of pro-farmer measures initiated by the government, including land records update and extending health insurance cover to every beneficiary for ₹5 lakh. Chief Minister K. Chandrasekhar Rao announced the programme in February, and the first cheques were handed out last month. The announcement was preceded by an update of land records of 1.43 crore acres, something which the government said was done only during the Nizam's rule prior to independence.

How many farmers will benefit?

The programme is targeted to benefit 57.40 lakh farmers, who were identified on the basis of updated land records. Of them, 40.92 lakh are marginal farmers, with a holding of less than 2.5 acres, 11.02 lakh small farmers having 2.5-5 acres, 4.44 lakh semi-medium farmers having 5-10 acres, 94,500 medium farmers with 10-25 acres and 6,500 large farmers with more than 25 acres. The government allotted ₹12,000 crore in the budget presented to the Assembly within days of the announcement.

Why was such a step necessary?

The government felt input assistance was crucial to bailing out farmers from distress. It was aimed at ensuring everyone who had land, whether it was tilled or not, was given the benefit. But tenants were excluded as the government felt that it might cause legal disputes since tenancy was an informal arrangement. Apart from tenant farmers, the government omitted from the scheme a few lakh farmers tilling land distributed by the Bhoodan Yagna Board.

Where will the funds come from?

To meet the kharif requirement of ₹6,000 crore, the government has mobilised three instalments of ₹2,000 crore each from State Development Loans auctioned by the Reserve Bank of India at an interest ranging from 8.05% to 8.15%, with a repayment tenure of 25 years. About 41 lakh farmers have encashed cheques worth ₹4,400 crore since May 10. Of the 58 lakh cheques printed for distribution, officials have distributed cheques to 46 lakh farmers. The other 12 lakh cheques could not be distributed as beneficiaries were not available in villages owing to either migration to other States and countries or errors in the printing of names or multiple accounts. Aadhaar linkage issues also affected distribution. Chief Minister K. Chandrashekar Rao had said those who refused to give Aadhaar numbers should not be extended the benefit. The banks initially expressed apprehension that they might not have enough cash in their treasuries. Moreover, the disbursal coincided with a critical time when banks were starved of cash, and ATMs had run dry. The Opposition parties claimed that it was a stunt ahead of the 2019 general election. The government selected eight banks, led by the State Bank of India, which serviced a majority of farmers to implement the programme through their branches in villages.

What lies ahead?

After the distribution of cheques, the government planned to entrust registration of land transactions to tahsil offices and maintain the records through a portal titled 'Dharani' to be operated by the National Informatics Centre (NIC). As the distribution of cheques was carried out along side the 'pattadar' passbooks-cum-title deeds, the government has set a deadline of June 20 for cent per cent distribution of cheques and passbooks. At a conference of Collectors recently, Mr. Chandrasekhar Rao asked the official machinery to focus on this job till June 20. He was unhappy that nearly three lakh passbooks had to be held back to carry out corrections.

N. RAHUL

Why Modi should visit Costa Rica

The country has a plan to eliminate fossil fuels. And it's working

ON THE OTHER HAND

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Everybody knows that our Prime Minister loves to travel. In the four years that he has been in office, Prime Minister Narendra Modi has clocked an impressive number of air miles, going on 40 foreign trips from the U.S. and the U.K. to Uzbekistan, Mozambique and Mongolia. But there's one country he should plan on visiting soon, particularly if he wants to see his vision of a clean energy-driven India become a reality. And that country is Costa Rica.

Why Costa Rica, you may ask. After all, the Republic of Costa Rica is just a tiny dot on the map, sandwiched between Panama and Nicaragua, with a population of less than half of that of Bengaluru and a GDP less than half the current market value of the Indian tech giant TCS.

Small nation, big achievements

But a tiny country such as this has some remarkable achievements to its credit. In 1949, after a bloody coup in which 2,000 people died, it decided to abolish its army altogether and remains one of the few countries in the world without one. Its citizens receive free education and healthcare (it spends 6.9% of its GDP on education, more than double of India's measly 2.7%); ranks 66 in the United Nations' Human Development Index (India ranks 131); was one of the first countries in the world to implement a green tax, which helped reverse deforestation; and has actually managed to implement a ban on single-use plastics.

And it is one of the greenest countries on earth. Last year, the entire Costa Rican grid ran on renewable power for a record 300 days. Besides hydro, wind and solar, it is a world

COSTA RICAN PRESIDENT CARLOS ALVARADO. AP

leader in geothermal energy. It plans to move from a staggering 98.6% renewable power base to 100% this year. By 2020 it will become carbon neutral, matching its greenhouse emissions with the carbon emissions it saves.

But the real reason Mr. Modi should visit Costa Rica is to meet its 38-year-old President, Carlos Alvarado. One of the first things the former journalist did on assuming office was to declare that Costa Rica would become the world's first 'zero carbon' economy in two decades, starting with the initial goal of eliminating fossil fuels from the transportation sector by 2021.

Even for a very small country, that's a very ambitious goal. And like all such goals, it is unlikely to be achieved in that time frame. Costa Rica has one of the fastest-growing car markets in the world (around 25% per year), and nearly half its carbon emissions come from the transport sector. Besides, it is bang in the middle of the Pan American Highway, and banning petrol and diesel within its borders would pretty much kill most of its foreign trade.

But the important thing, says Costa Rican economist Monica Araya, who is also the founder of Costa Rica Limpia (Clean Costa Rica), an organisation which has been working with all stakeholders towards a zero carbon economy, is that if the messaging is strong enough and is backed by a proper plan, and if the right people champion it, "fairy tales can become reality."

Speaking last month in Montreal at a global summit on sustainable mobility called Movin' On, a Michelin-sponsored think-fest which has now grown over 20 years into a sort of Davos on sustainable mobility (disclosure: I was there at the invitation of Michelin), Araya outlined the necessary ingredients: a clear vision of desired outcomes, a sustainable road map to reach there and, most importantly, a "coalition of champions" to drive the idea forward among all stakeholders – people, business and the government.

Costa Rica has all three. Carbon reduction is baked into its national development plan. Earlier this year, it eliminated taxes on electric vehicles. More importantly, the government, partnering with civil society groups, has been preaching to the people the benefits of going going electric – demonstrating that it is possible to drive to the beach and back from the capital in an electric car and working with fishermen on electrifying fishing vessels. The President too used a hydrogen fuel bus to the venue to sign the proclamation on eliminating fossil fuels.

India's case

This is the kind of symbolism and social movement that Mr. Modi is actually good at. Besides, he is already a sustainability convert. He is driving the growth of solar power in India and has already declared that he wants all transport vehicles to be electric by 2030.

That is unlikely to happen without the other ingredients that Araya was talking about. India is one of the world's largest car markets and the second biggest two wheeler market. Explosive urbanisation is also driving demand for public transportation, while 7%-plus GDP growth and heavy dependence on road transport mean that our problems are likely to get worse faster.

We are the world's third biggest energy importer, spending roughly $12 billion a month on crude oil alone. We are also home to 13 of the world's 15 most polluted cities. We are running out of time.

THE NUMBERS LIE

Under-reporting of persons involved in manual scavenging reflects state apathy, societal bias. Policy must address this

THAT MANUAL SCAVENGING is banned by law in the country and state agencies are bound to act against its prevalence could be the reason why every official count of those engaged in the activity is low. Though a recent inter-ministerial task force has estimated 53,000 manual scavengers in 12 states, four times more than an official count from 2017, the real numbers could be much more than that. As this newspaper reported on Friday, the methodology used to survey the workers, the various exclusions, especially of workers in urban areas, and rampant under-reporting by state agencies could be the reason for the relatively small numbers. There is a continued reluctance on the part of state governments to admit that the practice prevails under their watch. For instance, Haryana government has reported zero manual scavengers whereas the survey counted 1,040. In UP, the state government reported 1.056 persons whereas the survey found 28,796. The data is limited to persons involved in cleaning insanitary latrines, or nightsoil carriers — no data exists for those who clear excreta from railway tracks, septic tanks and sewage and sewer systems.

The first step towards solving a problem is to admit that it exists. In the case of manual scavenging, the impulse of the state has been to deny its existence: It did so before the Supreme Court in 2014 and has since stuck to the position. Acceptance of the caste system, its hierarchy of labour and division of labourers has also influenced decision-makers with regard to this dehumanising practice. Many local governments and state agencies, unwilling to invest in technology and in the rehabilitation of workers, prefer to hide the prevalence of the practice instead of acting to end it. It is the same sentiment that influenced the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 to be drafted in a manner that allows the employment of manual labour to clean sewage and sewer lines — the Act permits the practice if the employer provides protective gear and ensures observance of safety precautions. This loophole acts as a disincentive for the local governments in terms of opting for technology-driven solutions. In practice, the provision to provide protective and safety gear is more flouted than followed — unofficial reports say that at least 90 persons died while cleaning sewage lines and sewers in 2017.

Well-intentioned schemes like Swachh Bharat Abhiyan seem to ignore the enabling social climate that nurtures manual scavenging. Any lasting solution towards ending the practice will need policy-makers to see why and how it continues to be embedded in the caste system.

Primary neglect

Primary healthcare needs greater emphasis in medical education

SOHAM D BHADURI

IN 2005, FOR every 10,000 people, India had 10 doctors in urban areas but only one in rural areas. And the situation today isn't a lot different. The *Lancet* reports that even though the number of health facilities in rural areas has shown an upward trend in the last decade, how to get enough doctors to work in villages still remains a formidable challenge for India.

The consensus today is that the sole answer to the problem at hand lies in attracting more MBBS doctors into villages, primarily with better working conditions, adequate infrastructure, and increased salaries. But the problem transcends the scope of this rather simplistic solution. Its moorings lie in the tastes our medical education system has cultivated over the years.

D Banerji mentions two fundamental shortcomings in the existing system of medical education: First, "it was evolved to serve a very small privileged section of the society", and second, "along with the natural science essentials, it carried with it the cultural accretions of the West". To serve the country's health requirements is one of the prime objectives of medical education. Keeping with this, our undergraduate medical education was to focus on creating a dedicated and competent primary-care physician, sensitised to the desirability of primary care for the country's health needs, especially those of its rural population. This, however, hardly fructified.

The past few decades have seen a number of passionate calls for medical curricular reform. The Shrivastav Committee (1975) advised the reorientation of medical education in tune with national needs and priorities, while the National Health Policy (1983) advocated training a primary-care physician capable enough of providing essential health services to the rural population. The Regulations On Graduate Medical Education promulgated in 1997 laid a strong emphasis on health and community, apart from prescribing horizontal and vertical integration and problem-based learning.

The goal has been twofold: That of creating not only a competent primary-care physician but also one that is oriented to "health and community" rather than "disease and hospital". While a debate over how much of the former has been realised makes a topic for another day, success in the latter evidently remains elusive. Despite some positive curricular changes directed at orienting medical education towards the community, we have scarcely succeeded in inculcating a "social perspective" that can allow us to sympathise and relate to the health needs of the community.

A few pertinent and timely observations need to be made here. We, through our medical curriculum, haven't actively sought to acquaint medical students with the sociocultural setting in which medicine functions in India. Topics under community medicine, such as maternal and child health and sanitation, have been inadequately integrated with clinical subjects. The current amount and rigour of community postings are grossly insufficient to lead to the desired end, and tertiary hospitals located in urban areas continue to be the temples of primary medical education, alienating it from much of the ground reality of healthcare. Certainly, it is futile to expect doctors trained under such circumstances to feel comfortable in primary health centres at the back of beyond.

Much more could have been done towards ennobling and upholding primary care as a dignified province of healthcare through medical education. While there's no denying that the way to secondary and tertiary medicine has to pass through primary medicine, it ill behooves a country like India to allow undergraduate medical education to be relegated to the status of a mere stepping stone to medical specialisation and super-specialisation. Present-day MBBS education, which provides little more than a cursory overview of medical specialties, does more to prime medical students for specialisation than shape them into well-rounded primary care physicians. With medical education failing to hold the torch for primary care, an affiliation for specialty- and super-specialty medicine has grown largely unchecked in a setting which has perennially failed to prioritise primary care over hospital care. As a result, while medical education was supposed to foster the conviction that the real indicators of development are an improvement in things as fundamental as nutrition and sanitation, it has ended up instilling a strong adoration for sophisticated tertiary care systems of relevance to only an affluent few.

Unless the motivation of our medical workforce is aligned with our healthcare needs, no measure shall succeed in effecting a solution to our problem. We need a medical curriculum that is adequately oriented to primary care and community health, and a healthcare system and policy environment that gives them their due. We can no longer continue to adhere to an "overflow principle" of sorts whereby simply manufacturing more doctors would automatically pump more of them into our villages. The kind of training imparted largely decides the kind of motivation carried into service. This has to be realised at the earliest.

The writer is a medical doctor and editor of The Indian Practitioner