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To Seize the Moment

In August 2019, the special status accorded to the state of Jammu and Kashmir vide Article 370 was revoked by the Indian Parliament and the state was divided into two union territories—The Union Territory of Ladakh (without a legislature) and the Union Territory of Jammu and Kashmir (with a legislature). In December of the same year, Parliament of India passed the Citizen Amendment Bill (CAB). The passage of both these bills in Parliament was indeed an epoch-making moment and exhibited firm political resolve in addressing long-standing issues.

Article 370 gave the erstwhile state of J&K a special status, which prevented its emotional integration into the Indian Union. However, it was Article 35A that empowered the J&K state legislature to define permanent residents of the state and provide special rights and privileges to those permanent residents. Through Article 35A, a veneer of Constitutionality was given to provisions which were discriminatory to women, Valmikiis, West Pakistani refugees who had settled in the state as also to other minority groups. It was thought of by many that Article 370, though a temporary provision in the Indian Constitution, could not be abrogated. Similarly, concerning the grant of citizenship to the minority groups who fled religious persecution from Pakistan, Afghanistan and Bangladesh, there was a view that the matter was too complicated and that passing legislation to grant citizenship to these hapless people was fraught with risk. That the government of the day took these historic decisions points to the strength and resilience of India's democracy and the power of India's parliament. While the issues remain contentious and hotly debated, the very fact that they were debated in Parliament before being put to vote and the fact that the proceedings were televised live, point to transparency in the system where the will of the people prevails. Long pending issues have finally been brought to centre stage and through legislation made into law. This obviously will pose its own set of problems which would need to be addressed. But sans legislation, the problems would simply have dragged on interminably. Now we have a real possibility of resolution and closure.

In November 2019, a heinous act of rape and murder took place, which left the country in shock and rage. A young veterinary doctor, while returning from work on the night of 29 November in Hyderabad, was abducted,

raped, murdered and her body was thereafter burned. The sheer brutality of the incident enraged the country and there were calls for giving death sentence to the four accused who were apprehended by the police a day after the victim's charred body was found. This gruesome crime raised questions on women's safety and the tardy pace of justice delivery in the country. A twist to the case took place when all the four accused, when taken to the encounter site at 3 am on 6 December, attempted, as per the police, to escape with a pistol they snatched from one of the police officers. The police claimed that the accused in their escape bid, fired at the police officers and the police responded, killing all the four in the ensuing encounter.¹ There was jubilation and a sense of relief in many parts of the country at this immediate dispensation of justice, but there were many who felt troubled too.

Post the dastardly rape and murder and the arrest of the four suspects in the case, there was a sense of fatality that the case would drag on interminably. The police encounter hence came as a breath of fresh air, in that instant justice was delivered. But if that remains the only means of delivering justice in a time-bound manner, it reflects poorly on the Indian state and its criminal justice system. The slow pace of justice delivery in the country is indeed a cause of worry, as even in the much-publicised Nirbhaya rape and murder case, the death sentence granted to the convicts is yet to be executed, six years after the crime. But a police encounter is hardly the right way to go about delivering justice. If such a means is institutionalised, the certain misuse of such a provision will lead to far more dangerous outcomes.

A day after the four accused were shot dead in Hyderabad in the police encounter, the Chief Justice of India, Chief Justice Sharad Arvind Bobde, while speaking at the inauguration of the new building of Rajasthan High Court Bench in Jodhpur, said, "I don't think justice can ever be or ought to be instant. And justice must never take the form of revenge. I believe justice loses its character of justice if it becomes a revenge"². These were indeed words of wisdom which needed to be said. The CJI also alluded to the need to settle cases expeditiously, which remains the bane of India's criminal justice system. The clamour for swift justice, especially in cases where a heinous crime has been committed, is unlikely to die down unless the courts can deliver justice speedily. There is no gainsaying the fact that India's criminal procedure is long and process-driven. But vigilante justice is not the panacea that we are looking for, though such acts might seem justified to an indignant public. If this becomes the norm, there would be even further dilution of accountability and an erosion in the credibility of the criminal justice system. Justice Madan B Lokur, in an article in the Indian Express, makes the succinct point that encounters achieve little and while they "seem to raise questions of instant justice, they actually raise questions of instant injustice"³.

He goes on to say that while the problems are many, the solutions are many too and that all stakeholders need to identify all problems and demonstrate a will to resolve the issues. But there can be no getting away from the requirement of progressing cases in a time-bound manner. It is hoped that CJI Bobde will keep this as a priority item during his tenure.

India's burgeoning population growth is also a matter of concern. In his Independence Day speech on 15 August 2019, Prime Minister Modi also expressed concern over "population explosion," a trend that, if left unchecked, could go against efforts to bring millions of people out of poverty and undo the benefits of higher welfare spending for the poor. The Prime Minister said that this causes new challenges for the coming generations, and asserted that the central and state governments should launch measures to deal with the issue. He further stated that a small section of society, which keeps their families small, deserves respect and those who have small families are doing an act of patriotism.⁴

That India needs to control its population growth is a point well understood and all political parties are on the same page on this subject. Where they differ is on the means to be adopted. It would be difficult if not well-nigh impossible to give all Indians a decent life and jobs to its youth if population growth eats into the capacity of the state to provide for its citizens. A few years after Independence, as per the 1951 census, India's population was just over 31 crore. The population has increased to over 121 crores as per the 2011 census and is assessed to be over 137 crores today. An increase of over four times since a short period of 70 years has greatly strained the available infrastructure and is a drain on the finite resources of the nation, of which water is a key component. How India plans to curb its unsustainable growth in population will have to be seen, but there would be a need for legislative intervention. How this is to be brought about and implemented would remain

the defining challenge for the next decade. It is hoped that this matter is vigorously debated in the media and legislation is brought about to reward those who have small families while imposing penalties on those that choose not to do so.

Religion, as far as the Constitution is concerned, is a personal matter and the state has no role to play in the same. But in the personal lives of most Indians, religion does play a vital role and is also deeply enmeshed in the national value system. As a secular country, India's laws should have been equal for all, but the Constitution has given special preference to religious minorities through Article 30 of the Constitution.⁵ It is also discriminatory in terms of state control over religious places, which impact on Hindu places of worship and not on others. There is a need to define what constitutes a minority, both at the national level and at the level of states. These issues cannot be swept under the carpet, leaving the entire burden of secularism to be borne by the majority religion.

These are just a few of the issues which need open discussion and legislative correction. The government has shown great will in passing legislation, which earlier governments have shied away from and has also not shied away from taking bold decisions in the national interest on the specious grounds that the results could be destabilising. Vested interests will certainly attempt to muddy the discourse, but that cannot be grounds for inaction. Great will and fortitude has been shown in 2019, in passing major legislation which had been pending since ages. The momentum must be maintained in 2020, to catapult India to its destined leadership role in the coming decades. We must seize the moment. It may not come again.

References:

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- 2 *Times of India*, 8 December 2019 available at <https://timesofindia.indiatimes.com/india/justice-must-never-ever-take-form-of-revenge-says-cji/articleshow/72420770.cms>
- 3 Lokur, Madan B. "Encounters, like the One in Telangana, Call Attention to a Criminal Justice System in Need of Urgent Reform." *The Indian Express*, 11 Dec. 2019, indianexpress.com/article/opinion/columns/instant-injustice-telangana-encounter-6160560/.
- 4 "Independence Day: Full Text of PM Modi's Address to Nation." *Business Today*, 15 Aug. 2019, www.businesstoday.in/current/economy-politics/independence-day-pm-modi-address-nation-full-text-speech-15-august-red-fort/story/372903.html.-15
- 5 30. Right of minorities to establish and administer educational institutions
 - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice
 - (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause
 - (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.



