



## Between word and intent

Chief Justice's remarks on legislative debates flag need for clarity in law-making

The disquiet over the absence of adequate debate or discussion in Parliament is quite widespread. Concerned citizens and sections of the Opposition bemoan the evident haste with which laws are pushed through; presiding officers fret over the low productivity due to time lost amidst unruly protests; and even government representatives may worry that their legislative agenda is not being carried out in time. The Chief Justice of India, Justice N.V. Ramana, has added a new dimension to this sense of discontent by pointing out the absence of any help from parliamentary debates when the courts are faced with ambiguities or lacunae in laws. His description, of a "sorry state of affairs", would resonate as crucial pieces of legislation are indeed passed without sufficient debate, and often with nothing more than a Minister's brief reply or a mere assurance in response to any concern raised by some members. The CJJ's concern was possibly occasioned by some specific law such as the Tribunals Reforms Bill, recently passed with a few clauses struck down by the Supreme Court. However, the import of his observation, at a celebration to mark the 75th Independence Day, was that when the courts were unable to fathom the intent behind some laws, the parliamentary record could throw some light if the debates were sufficiently enlightening. He referred to the illuminating debate on the Industrial Disputes Act as an example.

It is quite true that a fuller debate in the legislature would provide greater insight into the intent behind laws, but a situation that requires a scrutiny of such intent ought not to arise in normal circumstances. Legislation should be drafted clearly and the letter of the law should not stray much beyond its purpose and scope. A purposive interpretation of statute is normally required only when the wording of the law is unclear. Otherwise, reliance on House committee reports or parliamentary debates is only an extrinsic aid, and not fully determinative of a law's meaning. In a recent example, the Supreme Court ruled that the 102nd Amendment to the Constitution ousted the power of State governments to identify backward classes, even though it was vehemently argued by the Government that it was not Parliament's intention. It highlights the need to have the wording of the law fully reflect the legislative intent. More than the quality of debate, it is the scope for detailed discussion that imparts clarity and a much-needed proximity to the original intent and purpose to any statute. For this, it is vital that important pieces of legislation are scrutinised by standing committees, which will have the advantage not only of eliciting replies from the executive but also inputs from the wider civil society, before the statute is framed.

## Doctor at the door

Doorstep health-care delivery can mitigate the effects of disruption caused by pandemics

Long before the pandemic struck, health experts had warned of a health epidemic – one that involved non-communicable diseases (NCDs). The last two years, however, managed to expose the frailties of even robust health systems in the country that saw not one, but two debilitating waves of COVID-19. It also exposed the chinks in what was traditionally believed to be the armour of health care – institution-based treatment. When access to these institutions was severed all of a sudden, States had to introspect about how they could bolster their health-care set-up in ways that would protect it from such disruptions. For Tamil Nadu, this introspection resulted in its 'Makkalai Thedi Maruthuvam' scheme, a community-based intervention to tackle and treat NCDs and to address the crucial issues of prevention and early detection. Inaugurated by Chief Minister M.K. Stalin earlier this month, it involves a tentative budget in excess of ₹250 crore. It includes population-based screening for the 18-plus population for 10 common conditions – hypertension, diabetes, oral, cervical and breast cancers, TB, leprosy, chronic kidney disease, Chronic Obstructive Pulmonary Disease, mental health – and the delivery of hypertension/diabetes drugs to patients aged 45-plus besides to those with restricted or poor mobility. The State, which has a high burden of NCDs, also acted on data that indicated very low community control rates for hypertension (7.3%) and diabetes (10.8%) among patients.

Once the tenacious link between NCDs such as uncontrolled diabetes and hypertension, and COVID-19 outcomes was apparent, it became clear that control of these health parameters was paramount and would necessitate uninterrupted access to health-care services. According to the India: Health of the Nation's States report, in 2016, 55% of the total disease burden in India was caused by NCDs, with the burden of NCDs increasing across all States from 1990 to 2016. The disruption of access to health care during the pandemic did affect compliance to drug regimens, and led to uncontrolled disease, with implications for quality of life too. It is ideal that nations prepare themselves to face further epidemics that might occur and cause similar disruptions in society by arming themselves to overcome such drawbacks. The Tamil Nadu initiative is a well-meaning notch in trying to address this; the efficacy of its chosen method of door delivery of drugs has been proven earlier with the supervised drug regimen, or DOTS therapy used in tuberculosis control. Ultimately, the success of a well-conceived programme rests in the proper implementation of each of its components. If Tamil Nadu is able to demonstrate, with this scheme, that it is possible to maintain the continuum of care even in the most trying of circumstances, then, here is a model that could inspire other States to follow suit.

# The script of the new endgame in Afghanistan

This is a moment of tragedy for Asia as well, with the U.S. leaving the country in a worse situation than when it came in



M.K. NARAYANAN

The rapidity with which Afghanistan has unravelled has shocked and surprised everyone. The fall of Kabul, and the ignominious end of any resistance to the Taliban within six weeks of the U.S. forces vacating the Bagram airbase (near Kabul) on July 2, reveals how brittle the vaunted Afghan Security Forces were. The departure of Afghanistan President Ashraf Ghani and almost the entire top political leadership of Afghanistan to safer havens, removes the last vestige of hope that the Taliban can be checked. Like a 'house of cards', Afghanistan has fallen apart the moment foreign forces vacated the country.

### Taliban's duplicity

The enormity of the current situation is only now beginning to be evident to much of the outside world. The Taliban's duplicity in projecting, at one level the image of a mature group during the Doha talks while at another, perpetuating violence of the most ferocious kind, is clearly evident as events unfold. The worst is, perhaps, yet to come. Afghanistan today is in a condition that is far worse than what existed when the Russians withdrew in the 1990s.

At that time, there was at least a titular leader around whom those opposed to the Taliban could hope to mobilise and put up a fight. Moreover, the 'retreat' of the United States from Afghanistan in 2021 is far more humbling than the Russian withdrawal in the 1990s, for the latter at least had to contend with the actions of a superpower, like the U.S. This time the Taliban having played fast and loose with

the U.S. has left the 'superpower' with not even the fig leaf of a honourable withdrawal. U.S. President Joe Biden's decision to set a date for the withdrawal of the American forces, and treat this decision as one carved in stone irrespective of the situation within Afghanistan – without any consideration of the consequences – clearly enabled the Taliban to take over.

After the Russian withdrawal in the 1990s, Afghanistan still had a future, for in the final years of the 20th century, the world was intent on making efforts to prevent Afghanistan from becoming a 'black hole' that would create mayhem across a vast region that bordered Iran, Pakistan, Uzbekistan, Tajikistan and China. In the 1990s, moreover, the Taliban were a band of outlaws. Today, it is recognised – may be with different degrees of disdain – by powers such as the U.S., Russia and China, and is on the brink of gaining a country. For a regulated international order that most countries across the world seek, there could be no greater tragedy than the emergence of a 'rogue' state under the Taliban.

### Paving the way for terror

The Afghan Establishment seemed to give up the fight against the Taliban earlier on by ceding authority to private militias, former Afghan warlords and a rabble of disparate armed groups. To expect that this kind of armed rabble would resist the Taliban was clearly a mistake. As the Afghan state implodes, one should now expect a wider cleaving between Pashtuns, Uzbeks, Tajiks, Hazaras and the myriad other clans that populate Afghanistan. The virtual death of the Afghan nation, approximates as it were to the 'end of history'.

The collapse of organised resistance to the Taliban within Afghanistan, together with the group being courted by Russia, China



AFP

and quite a few other nations, apart from Pakistan – not excluding the U.S. – marks the saddest day in the history of a proud nation. This is also a moment of tragedy for Asia as a whole. It virtually spells the death-knell of any possible Afghan renaissance in the near future. Instead, the situation is far more likely to encourage erstwhile terror groups, such as the one led by Gulbuddin Hekmatyar – a one-time client of Pakistan and a traditional opponent of the Taliban – to return to their erstwhile hunting grounds.

### Afghanistan versus Syria

References to Afghanistan becoming another Syria are again misplaced. At the worst of times, Syria had a relatively strong President (Bashar al-Assad), while Afghan President Ghani can hardly be compared to him. The territory of Afghanistan is also very different from that of Syria. Afghanistan's borders, with Uzbekistan and Tajikistan, unlike that of Syria are extremely porous and almost impossible to guard or protect. More to the point, the end-game in Afghanistan has little in common with the power equations witnessed in Syria. In Afghanistan, the Taliban is intent on keeping absolute control and is counting on China, Russia, and Pakistan to do so. All of them are more intent on keeping out the U.S., and in effect India.

Indulging in a blame game at this time may appear inappropriate. However, the U.S. cannot shrug off a major share of the res-

possibility for Afghanistan's current plight. Apart from the decision of Mr. Biden not to alter the last date for the exit of U.S. troops in Afghanistan – which sent a clear signal to the Taliban of a collapse of U.S. resolve to safeguard the interests of Afghanistan – the stealthy exit of the U.S. from the Bagram airbase also left an indelible impression as far as the Taliban was concerned: that the U.S. had acknowledged the Taliban's supremacy in return for the safe passage of their troops. All this has diminished the image of the U.S. in Asian eyes. In light of this, U.S. claims to 'make America great again' sound extremely hollow.

### Old threats may resurface

Some political commentators seem to believe that after the initial success of the Taliban and the collapse of the Afghan state, the natural political dynamics of the region would assert itself. This seems like a pious wish. After two decades of active involvement in the affairs of Afghanistan, and spending over a trillion dollars in the process to defeat terrorism and the al Qaeda, the U.S. has left Afghanistan in a worse situation than when it entered. It is not possible to discern any reduction in terrorism or the demise of any of the better known terror groups, such as the al Qaeda and the Islamic State (IS), or for that matter, of lesser known terror outfits. As a matter of fact, there has been a resurgence in al Qaeda activities recently. The IS, after some earlier setbacks, is again regrouping and currently poses a real threat to areas abutting, and including, Afghanistan. Radicalised Islamist terrorism and the forces of 'doctrinaire theocracy' have, if anything, thus become stronger. The collapse of the Afghan state will ignite many old threats.

Compared to the situation when the U.S. left Vietnam in 1975 – which was also seen by many as

a kind of 'retreat' – the Afghan 'misadventure' has been a disaster. Under the leadership of the Communist Party, Vietnam was able to emerge as a vibrant nation with a thriving economy. Under the Taliban regime, Afghanistan cannot hope for any such outcome. It would remain the 'sick man of Asia' for generations to come, a standing folly to perils of outside intervention in the affairs of another nation.

### Stakes for India, Iran

Among Afghanistan's neighbours, India and Iran are two countries that would find accommodation with a Taliban-dominated Afghanistan very difficult. Pakistan may be an enigma of sorts, but the Taliban will need Pakistan at least in the short and medium term. Relations between Taliban Afghanistan and Uzbekistan and Tajikistan may not be easy, but will not lead to any major problems for now. India, even more than Shia-dominated Iran, may be the outlier among Afghanistan's neighbours for a variety of reasons, including its warm relations with the Karzai and the Ghani regimes in the past two decades.

If the 21st century was expected to become the century of progress, the situation in Afghanistan represents a severe setback to all such hopes and expectations. The aftershock of the takeover of Afghanistan by the Taliban can be expected to continue for long. For India, the virtual retreat of the U.S. from this part of Asia; the growing China-Russia-Pakistan nexus across the region; and an Iran under a hardliner like Ebrahim Raisi, all work to its disadvantage. A great deal of hard thinking is needed as to how to retrieve a situation that for the present seems heavily tilted against India.

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# A report that is at odds with access to knowledge

There is a profound misunderstanding of the raison d'être for granting copyright in educational content



RAHUL BAJAJ & ANUPRIYA DHONCHAK

In 2002, in light of two progressive pronouncements by the Supreme Court of India (*Miss Mohini Jain vs State of Karnataka and Ors.* and *State of Himachal Pradesh vs H.P. State Recognised and Aided Schools Managing Committees and Ors.*), the right to education found a secure constitutional home in the fundamental rights chapter of the Indian Constitution. This fundamental right, set out in Article 21A, guarantees every child between the ages of 6 and 14 access to free and compulsory education. In a series of rulings (*Anuradha Bhasin vs Union of India*, and *Avinash Mehrotra vs Union of India*), the top court has interpreted the right in a broad and expansive way, holding that it imposes an affirmative obligation on the government and civil society to secure its enjoyment.

Consistent with this spirit, the Court held in *Farzana Batoool vs Union of India* that, while access to professional education is not a fundamental right, the state must take affirmative measures to secure the right to education at all levels.

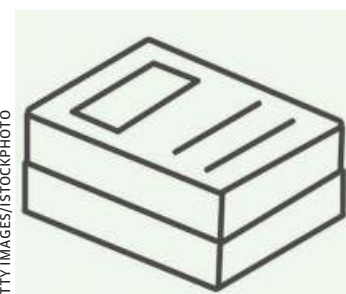
### State's failure

Against this backdrop, the cavalier dismissal of the right to education under the garb of "ensuring balance between copyright protec-

tion of the publishers and public access to affordable educational study material" by the Parliamentary Standing Committee on Commerce in a recent report (<https://bit.ly/3maSZhq>), is deeply worrying. The Committee suggests curtailing fair dealing provisions under Indian Copyright law – which enable access to the work without the copyright holder's consent – since it was informed that the provisions pose "a detrimental impact on the publishing industry and authors who are mainly dependent on royalties". To highlight this as a concern instead of the abject state failure to remedy impediments to accessing educational material, exacerbated by the novel coronavirus pandemic, betrays complete ignorance of the state's obligation to secure the right to education.

### The issue of 'purpose'

The Committee takes note of the Delhi High Court's landmark judgment in the DU photocopy case. In that case (*The Chancellor, Masters & Scholars of the University of Oxford & Ors vs Rameshwari Photocopy Services & Anr.*), the court (both the Single Judge and the Division Bench) adopted a robust understanding of the educational exception enumerated in the list of fair dealing provisions in the Copyright Act. Section 52(1)(i) allows the reproduction of any work by a teacher or a pupil in the course of instruction. The court held that 'course of instruction' therein is not confined to the time and place of instruction, and would include anything that could be justified for the purpose of instruction. This includes steps commencing at a time



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prior to lecturing and continuing till after it. It also noted that apart from Section 52(1)(a), which provides for the right to a "fair dealing" of any copyrightable work, other rights/purposes enumerated under Section 52 would not have to meet the express requirement of fair dealing.

Thus, Section 52(1)(i) was recognised as enumerating an affirmative purpose exempt from infringement. The fairness of use under these Sections can be deemed to be presumed by the legislature as long as it is justified by the purpose specified. Consistent with this, the court also noted that there are no quantitative restrictions on the extent of the reproduction permitted as long as it is justified by a specific purpose under Section 52.

In its report, the Standing Committee notes that it is distressed that the conflict between educational institutions and copyright owners does not bode well for the "overall literary culture and image of the country". In a bid to make the system fair and equitable, it calls on the government to amend Section 52 to allow for such copying only in government-owned institutions. It further states that there should be a quantitative li-

mit on how much copying is permissible and regulation of the storage of copied works in digital formats.

### A flawed view

The Committee's views are flawed for multiple reasons. First, they betray a profound misunderstanding of the *raison d'être* for granting copyright in educational content. As the single judge eloquently noted in the DU photocopy case, the purpose of copyright is to increase the "harvest of knowledge, motivate the creative activity of authors and inventors in order to benefit the public". Therefore, the rights of publishers are only a means to an end.

Relatedly, the Committee misunderstands the role of fair dealing provisions within this framework. Fair dealing provisions are user rights which are no less important than the rights of publishers. Given the fundamental character of the right to education, the importance of these rights can be traced to the Constitution. Therefore, their interpretation should reflect their salutary nature.

Second, the Committee errs in assuming that the rights of publishers were not duly accounted for in the DU photocopy judgments. Addressing arguments regarding any adverse impact of adopting a broad interpretation of the educational purpose exemption on the market of the concerned copyrighted works, the Division Bench noted with an example that access to copyrighted material for literacy and education does not curtail the market for these works. It held that students are anyway not potential

customers of 30-40 reference books in the library, and that citizens with improved literacy, education and earning potential expand the market for copyrighted materials in the long run.

Third, having quantitative restrictions on the extent of permissible copying would be inapposite, because any limit would be arbitrarily arrived at. Instead, what is needed is a test suited to Indian realities and its development needs of making access to education more equitable and fairer in a context of deepening socio-economic inequalities.

### Looking backward

The novel coronavirus pandemic has revealed the inadequacy of our fair dealing provisions to promote educational access. Specifically, these provisions were not designed to promote the free dissemination of educational content in digital form and to facilitate the sharing of resources required to effectively offer virtual education.

The Committee should have focused on suggesting amendments to Section 52 that would have made our copyright law fit for today's challenges. That it has decided to look backward instead of forward is deeply troubling. Given the Supreme Court's richly articulated constitutional obligation of the state to secure access to education, copyright law should facilitate, as opposed to attenuating its enjoyment.

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## LETTERS TO THE EDITOR

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### A Taliban Afghanistan

A great humanitarian crisis looms over Afghanistan. Chaos – stemming from the fear of an oppressive regime – has led to a mad clamour for escape. That those who should have mattered have now fled the country exemplifies the catastrophic situation. But it is the common man, especially women, who face a setback. The hard-won rights of women gained so far regarding gender equality, education, right to work, and protection against violence are again in peril.

Though the Taliban have claimed that women's rights and freedoms would be respected, going by the poor condition of girls in hitherto Taliban-controlled areas, much will be endangered. Intervention by international forces to protect the rights of the citizens is a must.

N. SADHASIVA REDDY, Bengaluru

■ The miscalculations of the United States and a lack of insightful understanding of the situation by the major world powers are what have left Afghanistan in the

situation it finds itself in. The United Nations has again shown that it is not an effective world body. Russia and China's outreach and Iran's feelers toward the Taliban are only out of dire necessity.

Between the calculations of the various powers are the lives of the ordinary people. The visuals of some of them falling off an aircraft to their end is sure to send a chill down one's spine. The situation and the desperation on the ground is grim and clear.

MADHUREE GUHA, Kolkata

■ The plight of Afghanistan today is the result of the 'Big Powers' failing miserably. It may not be an exaggeration to say that the U.S. ran away, embarrassing itself and its allies, and also letting down every one once it attained its objectives.

That China has expressed a desire to have friendship with the Taliban, in the background of Pakistan supporting the Taliban regaining control, is a development that is bound to create headaches for India.

C.A.C. MURUGAPPAN, Kothamangalam, Sivaganga, Tamil Nadu

■ We cannot expect Gandhian peace from the gun-toting Taliban. They are not going to listen to sermons. The Taliban back in the scene will only boost Pakistan's morale. If only the big powers, Russia, China and the North Atlantic Treaty Organization, had stood behind the United States, the Taliban could have been kept at bay. Meanwhile, let us pray for the country.

M.R. ANAND, Vrindavan, Uttar Pradesh

### Victory at Lord's

India played a special brand of cricket to secure an

incredible win ('Sport' page, "Indian pacers pull off famous win after Shami-Bumrah show with bat", August 17). It was a remarkable story of grit, determination and a never-say-die spirit. India's sensational win once again underscores the fact that the beauty of cricket lies in its glorious uncertainties. This famous win should be recorded as one of the greatest victories in the history of Indian cricket.

C.G. KURIAKOSE, Malappuram, Kothamangalam, Kerala