

# BHARATIYA PRAGNA

*August 2024*



# Bangladesh

Navigating Complex Challenges





# Lokmanthan

## Bhagyanagar - 2024



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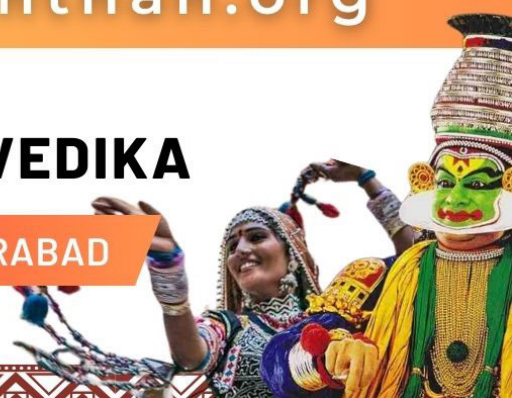
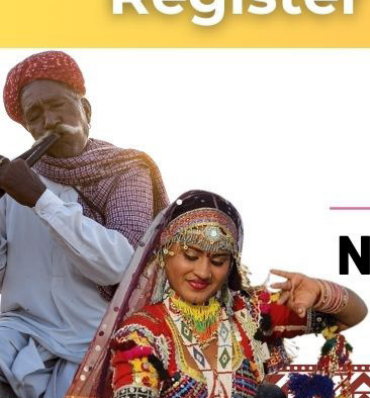
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**A NOTE TO READERS**

The views expressed in articles are the authors' and not necessarily those of Bharatiya Pragna.

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# India's quest to become leading maritime shipping hub

Esha Banerji





**M**aritime transport serves as the bedrock of international trade and, by extension, the global economy. As per the International Chamber of Shipping, the international shipping industry is accountable for transporting approximately 90 per cent of global trade. Therefore, it is not unexpected that ocean transport or shipping continues to have a significant impact on India's international trade, despite the considerable expansion of other alternative and leading modes of transportation, such as airways.

Due to its strategic geographic location, ports have been an integral part of Indian history. In contemporary times, these ports are vital to the country's economy, managing 95 per cent of India's external trade by volume and 70 per cent by value. In the fiscal year 2022, the cargo traffic at India's major ports surged to 406.98 million metric tonnes, marking an approximate 15 per cent increase from the previous year. Hence, pointing at the growing role of the maritime sector in India's national development.



**Until now, the large container ships bypassed Indian ports due to insufficient depth, opting instead for neighbouring hubs like Colombo, Dubai, Singapore, and Malaysia. But with recent efforts in enhancing shipping connectivity, India may soon join the list of the world's major hubs for trans-shipment**

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Consequently, it is unsurprising that ports have experienced substantial advancements in efficiency and capacity in recent years. India harbours ambitions of positioning itself as a manufacturing and export hub as well as a node in global supply chains. This demands that India enhance its competitiveness and connectivity on the world stage. A crucial step towards this objective is increasing the deployment of ships in the Indian market.

Specifically, India will need a greater number of larger vessels dedicatedly deployed to India-centric trade routes. This will ensure New Delhi is effectively integrated into global supply chains, facilitating smoother and more efficient international commerce.

Recent advancements in port infrastructure, like the Vadhavan Port (Maharashtra), which, on completion, is expected to make India prepared to meet the additional demand generated due to the planned India-Middle East-Europe Economic Corridor (IMEC) and the Vizhinjam port, which recently saw the berthing of the first mothership, San Fernando, point out that India is looking to up its game in the arena of international maritime trade.

Analysts are confident in India's ability to soon join a group of elite hubs like Singapore, Shanghai, Shenzhen, Busan, and Hong Kong that constitute the world's biggest transshipment ports.

Vizhinjam, equipped with state-of-the-art technology and advanced automation and IT systems, is on track to become India's first semi-automated port. When completed, this port will rank among the world's largest and will serve as India's premier transshipment hub. Here, cargo will be transferred from smaller ships to larger mother ships, streamlining the journey to their final destinations. The port will also provide large-scale automation for quick turnaround of vessels, with the ability to handle Megamax containerships.

The port is expected to attract some of the world's biggest container ships. Given its strategic location near the southernmost tip of the country, the port has the capability to tap into vital global shipping routes, thereby allowing India to grab a bigger share

of the international maritime trade, which is currently dominated by China. In this regard, the port will boost India's ambitions to become an alternative manufacturing destination to China.

Furthermore, lower logistic and shipping costs and greater cargo and container capacity will position India as the main port of call instead of the side port of call for the major shipping lines. This aligns perfectly with the Modi government's "Maritime India Vision 2030", a strategic initiative aimed at transforming India's maritime landscape, which focuses on developing world-class mega ports, establishing advanced transshipment hubs, and modernising infrastructure to enhance efficiency and global competitiveness.

While a lot has been discussed about the potential benefits of such ports in India, one aspect has been overlooked: India's ability to weather geopolitical tensions arising in the sea and disrupting sea lines of communication (SLOCs).

Ports tend to exhibit a butterfly effect when it comes to geopolitical conflicts. In recent years, geopolitical tensions are becoming more regular as global powers clash more frequently and use geo-economics as their weapon of choice to challenge the sovereignty of rival states and change the power balance at both the peripheral and global levels.

In recent years, certain geopolitical events with wider implications have taken place, for example, the situation in Ukraine, a country responsible for nearly 10 per cent of global cereal production. The blockage of Ukrainian ports impacted global trade volumes and shipping, owing to the large volume of cereal exports that Ukrainian ports accommodate.

Similar incidents were also witnessed in the Strait of Hormuz, a vital artery that carries around a fifth of the world's oil, which, over the years, has been the centre of numerous geopolitical tensions. In the past few months, global trade has been held back by disruptions at two major shipping routes. Attacks on vessels in the Red Sea have decreased traffic through the Suez Canal, the shortest maritime link between Asia and Europe, which typically accommodates around 15 per cent of global maritime trade. Meanwhile, across the

Atlantic, a severe drought at the Panama Canal has led authorities to impose restrictions that have significantly cut down daily ship crossings since last October, further hampering maritime trade through this critical chokepoint, which usually accounts for about 5 per cent of global maritime traffic.

On January 26, 2024, the United Nations Conference on Trade and Development (UNCTAD) expressed profound concerns over the escalating disruptions in global trade, particularly stemming geopolitical tensions affecting shipping in the Black Sea, recent attacks on shipping in the Red Sea affecting the Suez Canal, and the impact of climate change on the Panama Canal.

In this context, it is the need of the hour to diversify the SLOCs and establish alternate yet equally critical shipping routes.

India's maritime landscape, given its strategic location and its major ports serving as vital gateways for international commerce, can serve as a pivotal player in the global trade arena.

The country has a vast coastline of over 7,500 km, 12 major and 60+ non-major ports handling cargo, and a significant share of the world's seafarers. The current world demography is favourable to India, giving it the base for necessary skilled labour power and providing shipping services to the world.

Despite its extensive coastline and more than 200 ports, India's maritime industry still falls short on the global stage. In 2021, India accounted for just 2.4 per cent of global container traffic, a figure comparable to that of the United Arab Emirates (2.3 per cent) but considerably lower than Singapore's 4.5 per cent.

Until now, the large container ships bypassed Indian ports due to insufficient depth, opting instead for neighbouring hubs like Colombo, Dubai, Singapore, and Malaysia. But with the recent developments in India's port sector and efforts in enhancing shipping connectivity, it wouldn't be wrong to predict that India might soon join the list of the world's major hubs for trans-shipment.


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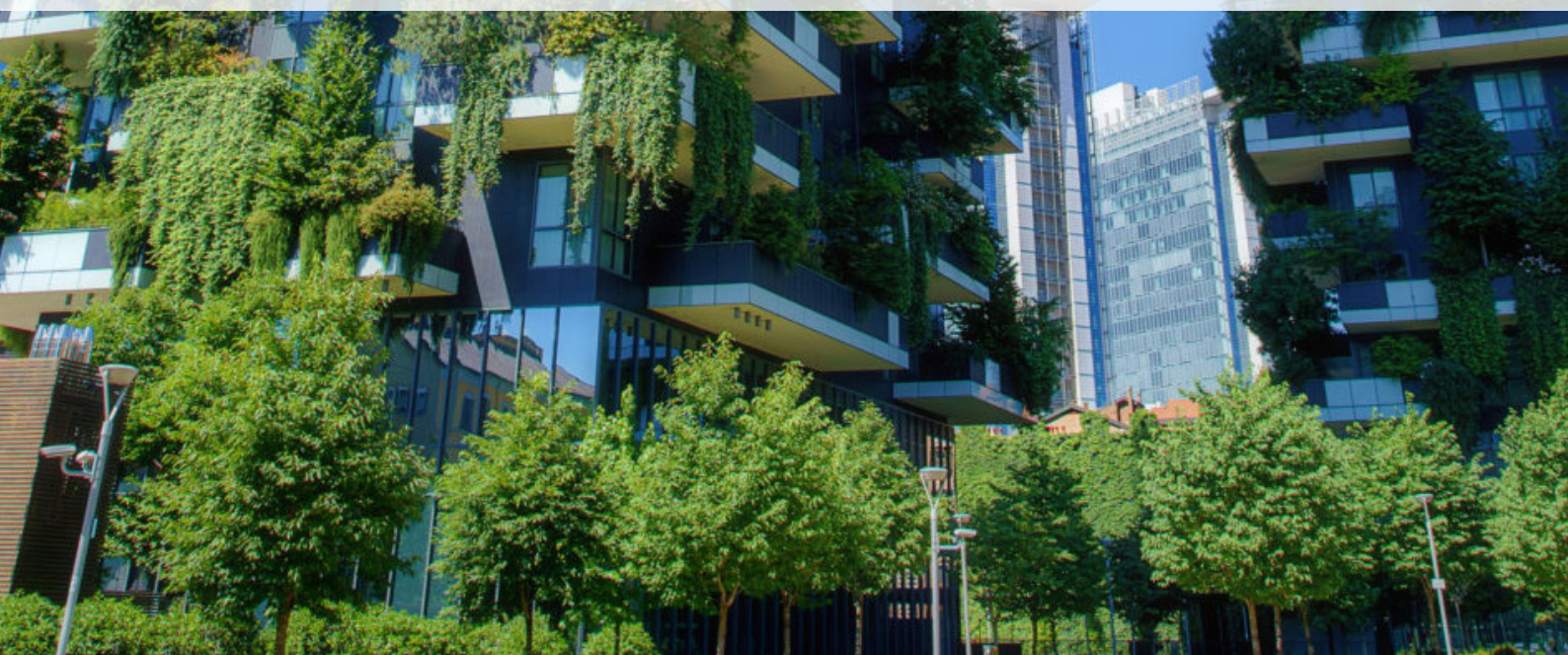
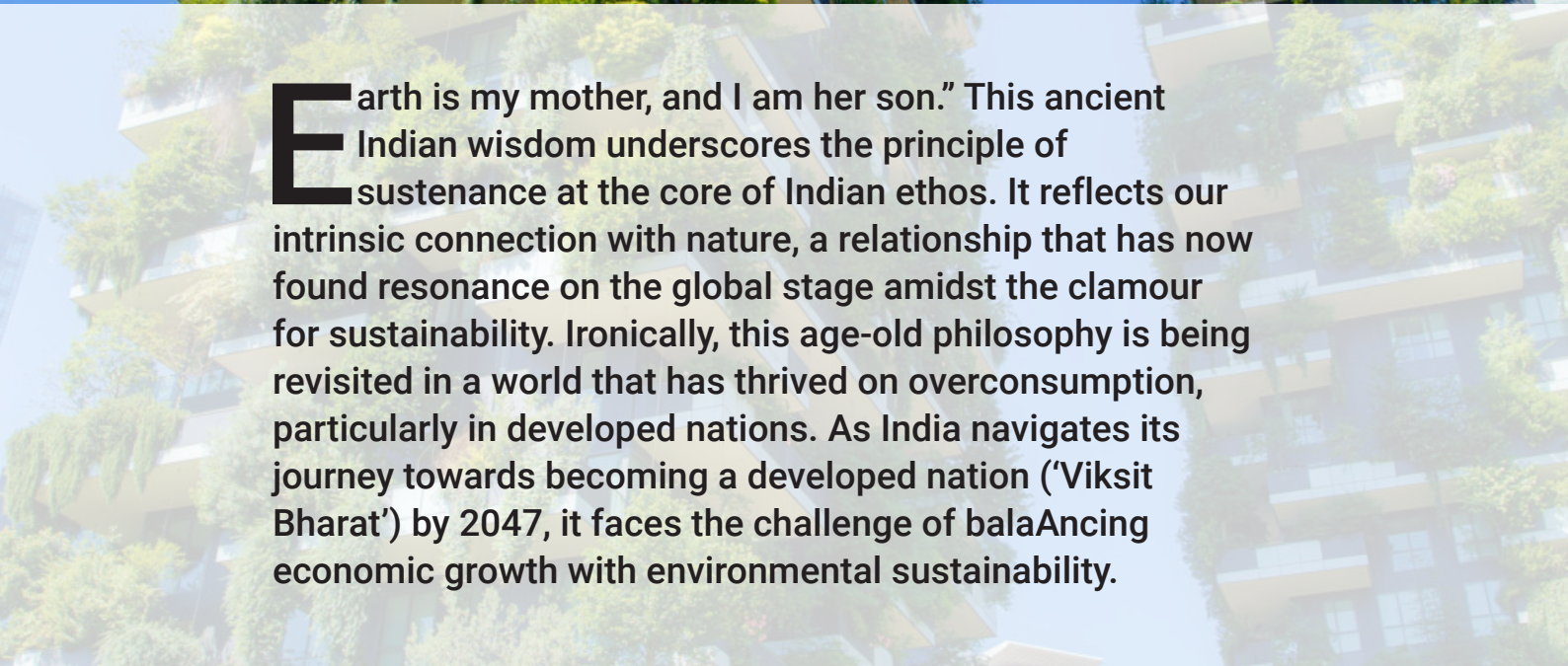


# India's climate tightrope

Kirit P Solanki and Kaviraj Singh



**E**arth is my mother, and I am her son." This ancient Indian wisdom underscores the principle of sustenance at the core of Indian ethos. It reflects our intrinsic connection with nature, a relationship that has now found resonance on the global stage amidst the clamour for sustainability. Ironically, this age-old philosophy is being revisited in a world that has thrived on overconsumption, particularly in developed nations. As India navigates its journey towards becoming a developed nation ('Viksit Bharat') by 2047, it faces the challenge of balancing economic growth with environmental sustainability.





## A new argument on climate change

In a significant departure from the global climate change narrative, India's Economic Survey 2023-24 presents a compelling case against risking economic welfare for strict adherence to global temperature thresholds. The government suggests that policies aimed at improving human welfare in the near term are the best insurance against climate change. This perspective challenges the excessive preoccupation with meeting a single global temperature target, such as the 1.5 or 2 degree Celsius thresholds set by the Paris Agreement.

The Economic Survey references Mike Hulme, a professor of geography at the University of Cambridge, who argues that global temperature is a flawed index for capturing the complex relationships between climate, human welfare, and ecological integrity. Hulme suggests that a world exceeding 2 degrees Celsius could potentially be more beneficial for human well-being and ecological stability than a world rigidly maintained at 1.5 degrees Celsius. This contrarian view calls for a shift from the current strategy of prioritising global temperature goals to a more balanced approach that also addresses overconsumption and lifestyle changes.

## India's commitment to green growth

India's commitment to balancing economic growth with environmental sustainability is evident in its annual per capita carbon emissions, which are only about one-third of the global average despite being one of the world's fastest-growing economies. The vision of a 'Viksit Bharat' by 2047 and achieving net zero carbon emissions by 2070 drives the country's policies and interventions. This commitment is reflected in India's Nationally Determined Contributions (NDCs), which outline ambitious targets for greenhouse gas emissions reductions.

However, achieving these targets requires substantial financial and technological support from developed countries. The financial requirements for a low-carbon development pathway are estimated to be between \$5.8 trillion and \$11.5 trillion by 2030. Despite the slow pace of international finance and technology transfers, India remains focused on sustainable economic growth as a cornerstone of addressing climate change.

## Challenges and opportunities in the energy sector

Transitioning to cleaner energy sources poses significant challenges for India, particularly in terms of developing viable battery storage technologies and securing critical minerals. The global push for renewable energy and electric vehicles has sparked a race to secure these essential materials, adding complexity to ensuring a stable supply. Nuclear energy, recognised as one of the cleanest and safest options, also presents a potential solution to India's energy challenges.

India's energy needs are projected to grow 2 to 2.5 times by 2047, necessitating a diversified mix of energy sources. While fossil fuels currently dominate the energy mix, significant strides have been made in integrating renewable energy. The PM-Surya Ghar Yojana and the national offshore wind energy policy are pivotal initiatives aimed at increasing renewable energy capacity and reducing carbon emissions. The Green Hydrogen Mission further exemplifies India's commitment to reducing carbon emissions in hard-to-abate sectors by targeting five MMT of green hydrogen by 2030.

## The National Action Plan on Climate Change

India's mission-mode approach to climate action is embodied in the National Action Plan on Climate Change (NAPCC), which outlines strategies for sustainable development across nine national missions, including solar energy, water, energy efficiency, and sustainable agriculture. State-specific Action Plans on Climate Change (SAPCC) further reinforce these strategies, with 34 SAPCCs operational to date.

Significant progress has been made in renewable energy, particularly solar power. In 2023-24, India added 15.03 GW of installed solar power capacity, reaching a cumulative 82.64 GW by April 2024. The National Mission on Enhanced Energy Efficiency and the Perform, Achieve, and Trade (PAT) scheme have also contributed to substantial energy savings and greenhouse gas reductions.

India's early achievement of its first NDC targets is also noteworthy. By 2021, the country had achieved 40 per cent cumulative electrical power installed capacity from non-fossil fuel sources and reduced the emission intensity of its GDP by 33 per cent from 2005 levels. These achievements, reached well ahead of the 2030 deadline, demonstrate India's proactive stance on climate action.





## Adaptation and resilience

Adaptation is critical for India, one of the most climate-vulnerable countries. Government initiatives such as the Pradhan Mantri Krishi Sinchayee Yojana (PMKSY) and the National Innovations on Climate Resilient Agriculture (NICRA) aim to enhance agricultural resilience. Urban wetlands and mangrove conservation are also prioritised to protect against climate impacts. Adaptation-related spending has grown from 3.7 per cent of GDP in 2015-16 to 5.60 per cent in 2021-2022, reflecting the government's commitment to climate resilience.

## Sustainable lifestyle: A model for the world

India's journey towards a sustainable lifestyle is deeply rooted in its ancient spiritual and philosophical traditions. This intrinsic resilience is often a subject of global surprise, especially in the face of major adversities. Prime Minister Narendra Modi's announcement of Mission LiFE at the 2021 UN Climate Change Conference (COP26) encapsulates this ethos, urging individuals to adopt sustainable practices and make pro-planet choices.

The Indian way of life, with its emphasis on harmony with nature and sustainable practices, has become a guiding light for global climate action. By leveraging domestic resources and seeking international support, India is well on its way to achieving its ambitious climate goals. The country's proactive approach to climate action, balancing economic growth with environmental sustainability, underscores its commitment to a greener future. The Indian way of sustainability, with its deep spiritual and philosophical foundations, offers valuable lessons for global climate action.

In conclusion, India's approach to climate change, rooted in its ancient ethos of harmony with nature, presents a balanced path forward. The country's commitment to green growth, despite the challenges, highlights the potential for sustainable development that respects both human welfare and ecological integrity. As the world grapples with the complexities of climate change, India's philosophy of "Mata Bhumi Putroham Prithivyah" reminds us of our collective responsibility to protect our planet, while "Aham Brahmasmi" underscores our individual duty to contribute to this cause.

*Dr Kirit P Solanki is ex-Member of Parliament, Lok Sabha. Dr. Kaviraj Singh is founder and Managing Director, Earthood.*



# Is Iraq the missing piece in India's corridor strategy?

Michael Rubin

**A**t the G20 Summit in New Delhi, Prime Minister Narendra Modi, President Joe Biden, and other world leaders unveiled the India-Middle East Economic Corridor (IMEEC), a trade highway to bring Indian goods by sea to the United Arab Emirates, overland to the Mediterranean, and then onward to Europe.

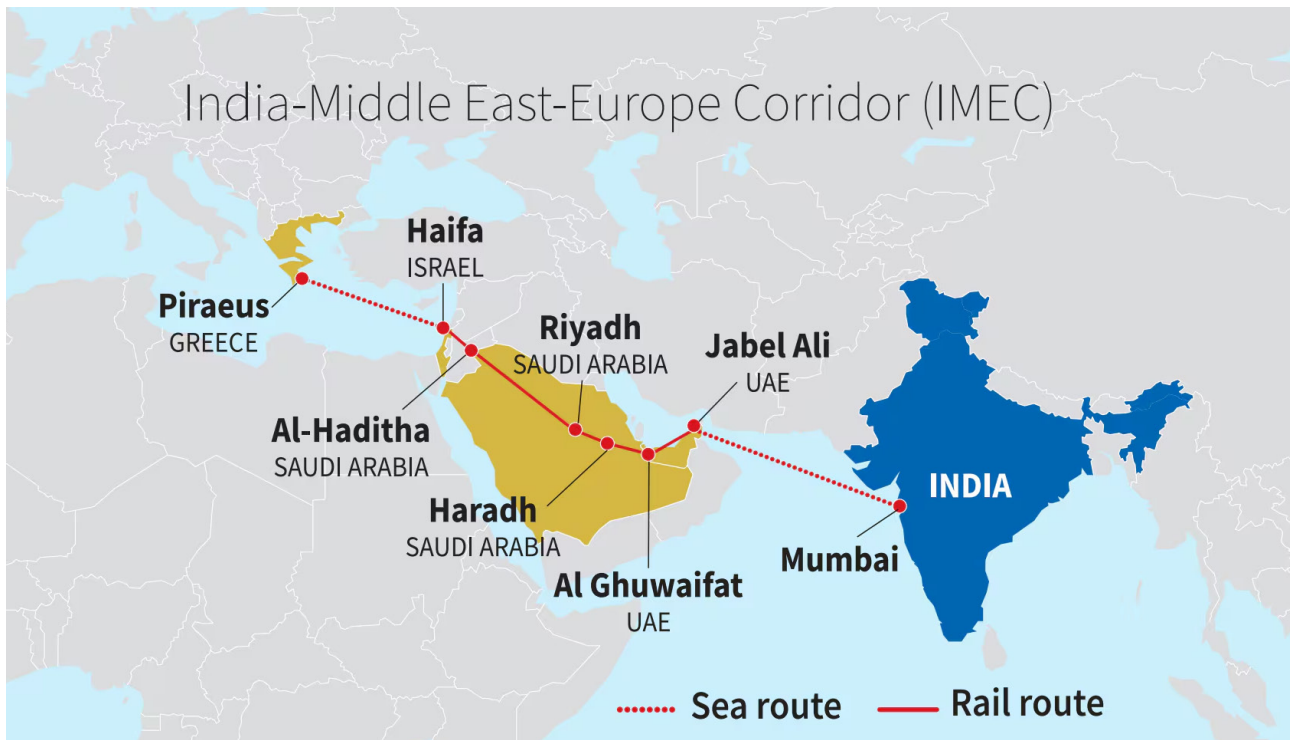
The project makes economic and diplomatic sense, but not everyone was happy with the proposed route. Iran's Islamic Revolutionary Guard Corps often views the world as a zero-sum game. They dominate industry in Iran and stood to benefit from the

proposed International North-South Transport Corridor, that would begin in India and ship goods by sea to Iran where they would transit north via truck or rail to Azerbaijan and then across Russia to Europe.

While the West tends to view the Houthi challenge to Red Sea shipping solely through the lens of Iranian animus toward Israel, leaders in Tehran favor strategies that achieve multiple aims simultaneously. By working to block shipping through the Suez Canal or transiting Israel, Iranian authorities believe they can make the trans-Iran route more attractive.

American officials take a Manichaean approach to diplomacy. Just as Ambassador Eric Garcetti chided PM Modi's





visit to Russian President Vladimir Putin because Washington wants New Delhi to fully commit to an alliance with it, so too do they oppose the North-South corridor because they fear that any transit of Iran will benefit Islamic Revolutionary Guard Corps-run ports and logistical companies. Frankly, this concern is real as the Revolutionary Guard's economic conglomerate, Khatam al-Anbiya, controls about 40 per cent of Iran's economy including all major industries and channels its profits into insurrections and terror groups across the region.

India's unwillingness to bet its diplomatic, military, or trade security on a single partner makes strategic sense. What is missing in India's approach, however, is a third way that increases India's trade security. After all, the trans-Iran North-South corridor need not be the only alternative to IMEEC. In many ways, Iraq could be a natural partner for India to

augment its trade security beyond IMEEC and Iran.

Iraq is no stranger to India. Almost three crore Indians supported the British Army in Iraq during World War I, most in non-combatant roles, but others in more direct military roles. For years, Indian laborers and expatriates helped the Iraqi railways run. The numbers of Indian officers in Iraq declined from two thousands to just a few dozen after the British mandate ended, but relations rebounded upon India's independence.

In 1952, India and Iraq signed a "Treaty of Perpetual Peace and Friendship" and, despite Iraq's neutrality in the 1965 war and its more overt support for Pakistan six years later, India and Iraq developed cordial military ties, leading to the Indian Air Force training Iraqi MiG-21 pilots, and the Indian Navy supporting a Naval Academy in Basra. Prior

to the 1991 Gulf War, the Indian presence in Iraq soared to more than 80,000. It plummeted under sanctions but, after the United States invaded Iraq in 2003, began to rebound. US contractors recruited thousands more to provide various services to military bases.

In May 2010, the number of Indian workers increased greatly in the Iraqi Kurdistan region after New Delhi lifted its travel advisory. Today, Indians are spread across the country. More than 5,000 Indians work at the Karbala Refinery Project, and another 25,000 have worked from Basra in the south to Baghdad in the centre, to the Iraqi Kurdish capital Erbil in the north. Ministry of External Affairs statistics today count only 18,000, but that is more than four times the number of Indians in Iran and more than ten times the number in Turkey, both far larger countries.

India-Iraq trade has more than doubled since 2020 to more than Rs 250,000 crore (\$30 billion), largely on the back of Iraqi oil exports but also due to other opportunities. Indian companies, for example, have taken the lead on the Basra sewage system, and on compressors to enable the Beiji refinery to operate. Following its success with Beiji, Bharat Heavy Electricals Ltd. has moved to help Sulaymani, the second-largest city in Iraqi Kurdistan, upgrade its own power generation.

Nor is business the only draw for Indians. While Shi'ite Muslims may be a tiny minority in India, they still represent the second or third largest population of Shi'ites in the world after Iran. Thousands of Indian Shiites go to pilgrimage each year to Najaf, Karbala, Kufa, and the Kadhimiya shrine in Baghdad.

Today, Iraq is again stable. A decade ago, the United Nations ceased tallying monthly statistics about terror casualties because they had fallen so low. The daily rate of traffic fatalities in New Delhi is greater than the monthly rate of terror deaths throughout the entirety of Iraq. The United Nations Assistance Mission for Iraq will cease operation and close shop in December 2025.

It is against this backdrop that India should move in force to solidify and augment its position in Iraq. While Iraqi democracy can be rough-and-tumble, a culture of debate and tolerance now predominates. More than 70 percent of Iraqis were born or came of age after the 2003 war.

They have no real memory of Saddam Hussein's dictatorship; Iraq's political culture has changed permanently. Iran, however, faces instability as rivals gear up for a scramble for power after the 85-year-old supreme leader dies. It is conceivable that, a year from now, Iran could be embroiled in its own Syria-style civil war.

Despite corruption among Iraqi politicians, business in Iraq is also easier. The lack of commercial law and an independent judiciary makes investment in Iran difficult, as efforts to invest in the Iranian port of Chabahar show. Investment in Iraq need not be exclusive but simply put Iraq is a better bet.



**India-Iraq trade has more than doubled since 2020 to more than Rs 250,000 crore (\$30 billion), largely on the back of Iraqi oil exports but also due to other opportunities. Indian companies, for example, have taken the lead on the Basra sewage system, and on compressors to enable the Beiji refinery to operate.**

To solidify a third trade route and secure India's economic and diplomatic interests, Baghdad and New Delhi should cooperate now. Indian universities might open further slots for Iraqi students, while Iraq's top universities like the University of Baghdad, Kufa University, and the American University of Iraq-Sulaymani might solicit Indian students.

Indian business should also seek a greater slice of the financial pie. When Indian laborers work on American or other Western contracts, they receive a small fraction of the contract's funds; contractor and large subcontractors siphon off most of the funding. If Indian firms sought to compete more directly, they could cut out layers of contracting bureaucracy and provide the same services for less cost to the Iraqis and at greater profit for themselves.

India is today the world's largest country and amongst its most vibrant democracies. It is a power with which to reckon in the Indian Ocean basin and the Middle East. If its influence is to grow symbiotically, it should take inspiration from its past and recognise the potential that investment in Iraq and a corollary trade route through the country could provide.

*Michael Rubin is director of policy analysis at the Middle East Forum and a senior fellow at the American Enterprise Institute.*



# China's path to Stability or Stagnation

Ninad D Sheth



China's obsession with control is backfiring. As its economy sputters, corruption plagues its military, and its global ambitions falter, the cracks in China's facade are widening.

**T**he Chinese Communist Party's third plenary session concluded amidst fervent discourse on self-reliance and national security. This quinquennial assembly underscored an unequivocal inward pivot, characterised by stringent controls on foreign investment and a preference for stability over growth. While bolstering domestic industries is a key aim, this strategy masks profound economic contradictions and systemic vulnerabilities that could jeopardise China's future stability.

## The Export Conundrum

China's export-driven economy now presents a stark paradox. Its \$900 billion trade surplus, which has long cemented China's dominance in global trade, faces mounting resistance. Meanwhile, domestic consumption remains stagnant, exposing an economic slowdown that is impoverishing an aging Chinese populace. High household savings rates, driven by economic uncertainty, underscore anxieties about social safety nets and stability. This predicament reflects deep-seated fears among ordinary Chinese citizens and poses a formidable challenge to the Communist Party.

## Hollowing of Military Muscle

Recent purges within the military and political elite, including the dismissals of over 50 generals and the abrupt removals of Foreign Minister Qin Gang and former Defence Minister Li Shangfu, expose the fragility of China's command structure. While ostensibly aimed at eradicating corruption, these purges suggest a military riddled with inefficiencies and graft. Despite significant arms buildups, the People's Liberation Army's war-fighting capabilities appear compromised. The downfall of high-ranking officers like General Fang Fenghui further illustrates how deeply corruption has eroded the PLA's operational readiness. Xi Jinping's mistrust of the PLA's ability to effectively wage global war is palpable.

## The Property Market Dilemma

China's property market, once a growth pillar, now teeters on the brink of collapse. The plenary

offered no solutions regarding interest rate reform or monetary stimuli. Property behemoths like Evergrande and Country Garden face unprecedented financial distress, with mounting debts and unfinished projects. The government's reluctance to orchestrate a full-scale bailout reflects fiscal constraints, exacerbating the sector's woes. Symbolic ghost cities like Ordos and the uninhabited skyscrapers of Zhengzhou highlight the unsustainable boom now threatening to bust.

The plenary's silence on this issue is deafening, leaving the construction sector—a significant part of Chinese GDP—in dire straits.

## Pretending Problems Away

China's leadership seems determined to project an image of unassailable strength, ignoring the slowing economy and increasing foreign confrontations—from the Taiwan Strait and the India-China border to the contentious South China Sea. The ambitious Belt and Road Initiative (BRI), once a testament to China's global influence, now faces backlash and setbacks. China increasingly appears capable of taking large bites but unable to chew on them without choking.

## A Perilous Path Forward

China's predicament is underscored by its approach to managing these multifaceted challenges. The focus on tightening domestic control and curbing foreign economic influence may provide short-term stability, but it risks alienating essential international partners crucial for long-term growth. This inward turn could amplify internal contradictions. China needs economic freedom to thrive, yet the Communist Party seeks to maintain strict control over these freedoms. This struggle between economic growth and political control, unlike during the era of Deng Xiaoping, might see political control ultimately stifle the world's greatest economic success story.

*The writer is a senior journalist with expertise in defence.*



# The Caste Conundrum for Congress

Ujjwal Deepak

For decades, this question has been asked to a large population of Bharat. “Discrimination” is the only purpose and outcome of this question. People from the advanced caste have used this to identify the people from the backward caste to provide them with ‘their’ kind of work and to treat them differently. Though the caste system has always been karma-based, but we have somehow managed to categorize it, basis birth, and recent incidents are pointing toward the return of this era.

During a recent debate in the Lok Sabha an uproar followed when Anurag Thakur asked the caste of Rahul Gandhi. Akhilesh Yadav objected that how can anyone ask someone’s caste? After all these incidents, the video of Rahul Gandhi asking the name of a journalist and the name of his owner during the Bharat Jodo Yatra and Akhilesh Yadav asking the caste of a journalist went viral on social media.

Rahul Gandhi, who has been demanding a caste census, has raised the slogan of “Jitni Abadi, Utna Haq”. Before this, former Prime Minister Manmohan Singh had said that minorities have the first right on the country’s resources. If we look at history, the ancestors of the Congress Party never supported caste and reservation. Pandit Nehru, his

daughter Indira Gandhi and his son Rajiv Gandhi have always opposed caste politics and reservation.

The changed character of the Congress Party is a matter of serious concern. From time to time, interference and rhetoric of foreign organizations in the internal affairs of India has come to the fore. Recently, Kamala Harris in America stated that if Trump is elected, he will change the Constitution of the country.

Now if we analyze the pattern, when the top leadership of Congress has stood against caste-based reservations for years, then perhaps the new demand for caste census is a new step towards making way for Muslim quota to take minority appeasement to the next level?

One June 27, 1961, Jawaharlal Nehru in a letter expressed his views on caste-based reservation. He declared that “I do not like reservation in any form. Especially reservation in jobs. I am against any such step that promotes inefficiency and takes us toward mediocrity.” Nehru misrepresented one of the greatest measures of social justice in Bharat that was the finest dream of Dr Bhimrao Ramji Ambedkar as promoting

“inefficiency” and “mediocrity” and it only exposed his inherent casteism.

Nehru’s daughter, Indira Gandhi put the report of the Mandal Commission—ordered by the Janata Party government that came to power in 1977 on the backburner. In fact, she coined a slogan to counter caste-based parties: “Na jaat par na paat par, mohar lagegi haath par (Vote for Congress and not on caste and community lines)”.

Indira’s son Rajiv Gandhi also ignored the Mandal report. When V.P. Singh implemented the OBC reservation, Rajiv termed it as an attempt to divide the country on caste lines. In an interview to Navbharat Times on March 3, 1985, Rajiv Gandhi declared that “buddhu” (morons) should not be encouraged in the name of reservation. It was a cruder and uncivil way of carrying forward the views of Nehru and Indira. In September 1990, Rajiv as the Leader of the Opposition attacked VP Singh and compared the then PM with Britishers who divided the country on caste and religion.

## Appeared ‘The Chosen One’

Rajiv’s son Rahul Gandhi has started picking up on the call of caste census only in 2022. When the Congress-led UPA Government conducted a caste census in 2011 and sat on the report without making the findings public, perhaps Rahul Gandhi was in slumber. He easily forgets that Congress ensured that SC/ST reservation, as

mandated by the Constitution, was removed from Aligarh Muslim University (1981) and Jamia Millia Islamia (2011) in favour of Muslims, even though both are government funded. This is one among multiple acts of hypocrisy and casteism that the Nehru-Gandhi dynasty has shown.

In 2011, it was Congress allies like RJD who pushed the UPA to conduct a caste census, overturning the Congress stated policy position of decades of not doing one. In 2011, too, senior Congress leaders like P Chidambaram, Anand Sharma, and Pawan Kumar Bansal objected to a caste census and a group of ministers (GoM) never reached a conclusion over it. It took five years to complete the survey at a cost of over Rs 4,000 crore but it was riddled with technical flaws and never became public. Interestingly, the Congress leaders also cited the dynasty's stand against caste census.

## Hypocrisy and Flaws

Rahul Gandhi centred his election campaign for Lok Sabha on a single tone-deaf call that BJP will scrap reservation and change the Constitution of India. The people of India gave more seats to the BJP than all the I.N.D.I Alliance combined. Rahul didn't learn his lesson.

In fact, Congress over the years despite its opposition to caste census and inherent casteism has mastered the policy of creating Muslim quota. In the past, the Congress adopted two models to

provide reservation to Muslims. The first one was in Karnataka where former CM Veerappa Moily announced 6 per cent reservation for Muslims, Buddhists, and Scheduled Castes who converted to Christianity within OBCs in 1994. The second model was implemented in Andhra Pradesh, where former Congress CM YS Rajasekhara Reddy introduced 4 per cent reservation for Muslims.

The Congress' 2009 Lok Sabha election manifesto specifically mentioned that the "Indian National Congress has pioneered reservations for minorities in Kerala, Karnataka, and Andhra Pradesh in government employment and education on the basis of their social and economic backwardness. We are committed to adopt this policy at the national level".

## Against Dalits' Empowerment

Under the UPA Government the appointment of National Commission for Religious and Linguistic Minorities, under the chairmanship of Justice Ranganath Misra in 2004 is a case in point. A close reading of the recommendations of the Ranganath Misra commission indicate that a section of the Congress party planned to end SC/ST reservation. Be it the de-scheduling of the Scheduled Castes, or its recommendation on fixing a deadline to end the SC/ST reservation, on many counts Misra commission stepped out of its mandate.

It is alarming that the misdeeds of the more than six decades of Congress rule have been forgotten by Rahul Gandhi. He has easily whitewashed the fact that on one side the party leadership remained opposed to the empowerment of underprivileged, and on the other they also kept opposing the caste census. It does not seem pertinent that the advisors of Mr Gandhi told him to disown the party policy. What seems more likely is Mr Gandhi has been told to make a pitch for caste census only to make way for Muslim quota and take the policy of minority appeasement to its next level. The accompanying ideas of redistribution of wealth, and how Congress thinks that 'Muslims should have first right to resources' is corroborative evidence that Congress is determined to take away the reservation benefits from SCs, STs, OBCs, to give it to Muslims and others for their vote bank.

The last decade of 'Sabka Saath, Sabka Vikas, Sabka Vishwas' has certainly not helped the revival of divisive Congress policies and so the caste census seems to be the only hope to divide Bharat further.





# Five Years of Article 370 Abrogation

Sanju Verma

**P** rime Minister Narendra Modi's aspirational and inclusive brand of politics is heralding the winds of change in Jammu and Kashmir, and Ladakh, so that everyone has a shot at growth and equity, with a better quality of life. August 5, 2024, marks the 5th anniversary of the abrogation of Article 370, an exemplary measure by the Modi government, which in the last 5 years has led to a 100 per cent decline in stone-pelting incidents, 69 per cent fall in terror attacks, 80 per cent fall in civilian casualties and a 44 per cent fall in casualties of armed forces, in Jammu and Kashmir.

Just last year, the Supreme Court on December 11, 2023, upheld the Modi government's historic decision to abrogate Article 370, which granted special status to the erstwhile state of Jammu and Kashmir. Chief Justice of India DY Chandrachud, writing the judgement for himself and Justices Gavai and Surya Kant, said Article 370 of the Constitution was a temporary provision and the President had the power to revoke it. The Supreme Court ruling was a massive boost for Prime Minister Narendra Modi and the BJP. CJI Chandrachud, reading out the judgment, said every decision taken by the Centre on behalf of a state under proclamation can't be subject to a legal challenge as it would lead to the administration coming to a standstill.

The Supreme Court said – “The proclamation of Maharaja stated that the Constitution of India will supersede. With this, the para of Instrument of Accession ceases to exist.... Article 370 was an interim arrangement due to war conditions in the State. Textual reading also indicates that Article 370 is a temporary provision.” The apex court also mentioned that the argument that the Union government cannot take actions of irreversible consequences in the state during Presidential rule, is not acceptable. “We have held that the State of Jammu and Kashmir did not retain an element of sovereignty when it joined the Union of India. We have arrived at this conclusion for the following reasons. First paragraph eight of the instrument of accession executed by Maharaja Hari Singh provided that nothing in the instrument would affect the

continuance of the sovereignty of the Maharaja in and over the state,” CJI Chandrachud said.

The CJI further noted that on November 25, 1949, a proclamation was issued for the state of Jammu and Kashmir by Yuvraj Karan Singh. “The declaration on this proclamation, that the Constitution of India would not only supersede all other constitutional provisions in the State, which were inconsistent with it, but also abrogate them, achieves what could have been attained by an agreement of merger. With the issuance of the proclamation, paragraphs of the Instrument of Accession cease to be of legal consequence. The proclamation reflects the full and final surrender of sovereignty by Jammu and Kashmir through its sovereign ruler to India,” the CJI added.

The Supreme Court further noted, “The declaration issued by the President exercises the power and clause 3 of Article 370 is a culmination of the process of integration. Thus, we do not find that the President's exercise of power under Clause 3 of Article 370 was mala fide. We hold the exercise of presidential power to be valid.”

Congress party, driven by rabid politics, has called August 5 “Black Day”. Last year, the apex court also noted that Article 370 was meant for the constitutional integration of Jammu and Kashmir with the Union and it was not for disintegration and the President can declare that Article 370 ceases to exist. “Concurrence of the State government was not required to apply all provisions of the Constitution using Article





370(1)(d). So, the President of India taking the concurrence of the Union government was not malafide,” the court said.

Clearly, the Supreme Court verdict of December 2023 is a huge endorsement of PM Modi and his Kashmir policy. Don't forget, the abrogation of Article 370 was not just a repeal of Article 370. It went beyond that. Post the abrogation, 800 central laws became applicable in Jammu and Kashmir, 205 erstwhile state laws were abolished and 130 modified. Some of the outdated laws that were removed are the Land Acquisition (Mines) Act, 1885, the Telegraph Wires (Unlawful Possession) Act, 1950, the Land Tenancy Act of 1980 and the notorious LAAR Act of 2013, among many others.

“In exercise of the powers conferred by clause (3) of Article 370 read with clause (1) of Article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from August 6, 2019, all clauses of the said Article 370 shall cease to be operative,” an official notification said in 2019.

On the socio-political front, the historic step of abrogating Article 370, which came into effect in 1950 and Article 35-A, which came into effect in 1954, will always figure very high on the list of achievements of Prime Minister Narendra Modi's government. The Union Territory of Jammu and Kashmir got a new status comparable with that of Delhi and Puducherry, the only two other Union Territories (UTs) to have legislatures of their own. The Governor of Jammu and Kashmir became Lieutenant Governor.

## What was Article 370?

Article 370 was a 'temporary provision' which granted special, autonomous status to Jammu & Kashmir. Under Part XXI of the Constitution of India, which deals with “Temporary, Transitional and Special provisions”, Jammu & Kashmir had been accorded special status. All the provisions of the Constitution which were applicable to other states were not applicable to J&K. According to this Article, except for defence, foreign affairs, finance and communications, the Indian Parliament needed the

J&K government's concurrence for applying all other Indian laws.

Thus J&K's residents lived under a separate set of laws, including those related to citizenship, ownership of property and fundamental rights, as compared to other Indians elsewhere in the country. As a result of this provision, Indian citizens from other states could not even purchase land or property in Jammu & Kashmir.

However, with Kashmir's special status gone, vide a Presidential order in 2019, following a historic decision on the floor of the Parliament, people from anywhere in India can now buy property and permanently settle in there. A separate Union Territory was created for Jammu & Kashmir and the Ladakh region was also given the status of a Union Territory, albeit without legislature. In a masterstroke, the Modi government, by revoking Article 370 and Article 35-A, mainstreamed Jammu and Kashmir and Ladakh with the rest of India, as Article 370 was always discriminatory in more ways than one.

The Modi government, on January 7, 2020, approved an industrial development scheme worth Rs 28,400 crore for J&K, to give a fresh thrust on job creation, skill development and attracting new investment. Its outlay is until 2037. Smaller units with an investment in plant and machinery up to Rs 50 crore are entitled to a capital incentive of up to Rs 7.5 crore and get capital interest subvention at the rate of 6 per cent, for a maximum of seven years. What makes the scheme unique is the GST-linked incentive that ensures less compliance burden without compromising on transparency. After the abrogation of Article 370, various public outreach measures were undertaken. For decades, Abdullahs and Muftis treated this region as their personal fiefdom.

In 2015, while announcing the ambitious Rs 80,000-crore development package for Jammu and Kashmir, from the Sher-e-Kashmir cricket stadium in Srinagar, PM Narendra Modi made a passionate mention of “Kashmiriyat, Jamhooriyat and Insaniyat”, as in Kashmiri culture, democracy, and humanity. “Kashmiriyat ke bina Hindustan adhura hai”, said Modi, meaning without Kashmiriyat, India is incomplete. The mega package that was to

change the face of the militancy-hit region and draw the disillusioned back into the mainstream has been a resounding success.

On the jobs front, thousands of jobs have been created for Kashmiri migrants in the last few years. Financial assistance of Rs 578 crore through Direct Benefit Transfer (DBT) has been provided to 12,588 displaced families (of the 36,384 families) from Pakistan-occupied Kashmir and Chhamb. Land was acquired for an IIT and an IIM in Jammu and for the two AIIMS in Jammu and Awantipora in Kashmir. Power projects have moved at a fast pace. The Pakal Dul 1,000 MW project and the Srinagar-Leh transmission line are on course. Of the 28 small hydropower projects estimated to cost a total of Rs 2,000 crore, a number of projects have either already kicked off the ground or will do so soon enough.

The Rs 80,000 crore package consists of 63 major development projects being implemented by 15 central ministries. The Chenani-Nashri tunnel, also known as the Patnitop or Syama Prasad Mookerjee tunnel, is not only India's longest highway tunnel but also Asia's longest bi-directional highway tunnel. Stretching 9.28 km, it was inaugurated by PM Modi in April 2017 and is set to transform connectivity between different regions of India across various terrains.

The tunnel has reduced travel time between Jammu and Srinagar by two to four hours and shortened the distance by 31 km, leading to a significant reduction in fuel consumption. The Modi government estimates a daily reduction of Rs 27 lakh in fuel costs, on average. Additionally, the tunnel is impervious to natural calamities such as landslides and avalanches, which are common in the region. Its core advantage is providing permanent connectivity to the Kashmir valley, which was previously only intermittently connected.

The fact that Jammu and Kashmir has always been high on the government's priority list is best amplified by PM Modi's launch of the Social Endeavour for Health and Telemedicine (SEHAT) scheme, on December 26, 2020. The scheme will cover the remaining one crore population which has not been covered under the Ayushman Bharat Scheme. With the launch of the SEHAT scheme, Jammu and Kashmir is among the first states in India to achieve universal health coverage. Currently, under the Ayushman Bharat PM Jan Arogya Yojana (AB-PMJAY), which provides eligible beneficiaries with free health coverage of Rs 5 lakh, over 30 lakh people in Jammu and Kashmir are already covered.

An uneasy calm that had prevailed in the valley after the revocation of Article 370 and 35-A, has now paved the way for higher business confidence





and greater stability, with terrorism and separatism taking a backseat. Abrogation of Articles 370 and 35-A has made it possible to implement the 7th Pay Commission recommendations and the Indian Penal Code (IPC), rather than the Ranbir Penal Code (RPC), which was in vogue all these years. Under Article 35-A no outsider could bag a government job. Earlier, companies were forced to hire only locals. Revocation of the Articles has levelled the playing field in Jammu and Kashmir. No investor was willing to set up an industry, hotel, private educational institution or private hospital since he or she could neither buy land nor property. Their wards could not get government jobs or admission to colleges.

For decades, there were barely any major national or international hotel chains set up in tourism-centric regions like Jammu and Kashmir, which hindered enrichment, resource generation, and job creation. However, on August 5, 2019, Prime Minister Modi's government reset the clock by undoing the misguided policies of the Nehruvian era. In an unprecedented, epoch-making decision, the government abrogated Article 370 and Article 35-A. The rest, as they say, is history.

In a Clubhouse discussion a few years back, senior Congress leader and former Chief Minister of Madhya Pradesh, Digvijay Singh, known for his loose cannon remarks, suggested that the Congress party might consider restoring Article 370 if it came to power. He overlooked that the revocation of this Article is full and final and cannot be undone.

Jammu and Kashmir's special status had previously shielded it from the applicability of Article 3 of the Constitution, which provides for redrawing state boundaries or the creation of new states/UTs. However, all that is in the past now, as Jammu and Kashmir stands on the brink of a significant economic turnaround. Articles 370 and 35-A had empowered J&K to function as a nearly autonomous state by limiting the Centre's authority to external affairs, defence, finance, and communication. This provision even allowed J&K to have a "Sadar-e-Riyasat" instead of a Governor and a Prime Minister instead of a Chief Minister until 1965, along with its own flag and Constitution. Hence, revoking Article 370—which, according to Part XXI of the Constitution, was always intended to be temporary

and transitional—was long overdue. Prior to the revocation, the Union government needed the State government's concurrence to declare a financial emergency under Article 360. But once again, all that is now history, thanks to the conviction and determination of PM Modi.

Article 35-A, also referred to as the Permanent Residents Law, had thus far barred a woman (belonging to the state) from any property rights if she marries a person from outside the state. The provision also extended to the children of such women as they did not have any succession rights over the property. The revoking of this Article ended the age-old discrimination against women of J&K, who chose to marry outsiders.

The Modi government's decision to revoke Article 370 has ensured stability, market access, and predictable laws in the state, fostering an ecosystem that rewards the skills, hard work, and products of the region's people. "In today's world, economic growth cannot occur in a closed environment. Open minds and open markets will ensure that the youth of the region put it on the path to greater progress. The integration boosts investment, innovation, and incomes," Prime Minister Narendra Modi stated after the revocation of these discriminatory Articles. "Better connectivity, better linkages and better investment will help products of the region to reach across the country and the world, leading to a virtuous cycle of growth and prosperity to the common man," PM Modi further said.

And with the slew of infrastructure projects underway in the region, that is precisely what is happening. It needs to be mentioned here that Jammu and Kashmir had received 10 per cent of all central grants given to states over the 2000-2016 period, despite having only 1 per cent of the country's population. In contrast, Uttar Pradesh, making up about 13 per cent of India's population, received only 8.2 per cent of central grants in 2000-16.

That means, J&K, with a population of 12.55 million according to the 2011 Census, received Rs 91,300 per person over the sixteen year period between 2000-2016, while Uttar Pradesh only received Rs 4,300 per person over the same period.



Why J&K did not see any substantive development despite receiving a disproportionate amount of central assistance, begets a response. Well, funds alone cannot guarantee good governance if political will is lacking and an enabling ecosystem is missing. In one historic, fell sweep, Prime Minister Narendra Modi, by mainstreaming Jammu and Kashmir with the rest of India, ensured that the region could prosper like any other, without being beholden to a corrupt and conniving political class represented by the Abdullahs and Muftis.

The Modi government's commitment to the principle of "Sabka Saath, Sabka Vikas, Sabka Vishwas, and Sabka Prayas" is evident from the inauguration of major hydropower projects in Jammu on January 3, 2021. Memoranda of Understanding (MoUs) were signed with the National Hydroelectric Power Corporation (NHPC) to attract Rs 35,000 crore in investments, ensuring a 24-hour power supply in the Union Territory. These agreements include the implementation of the 850 MW Ratle Hydro Electric Project (HEP) and the 930 MW Kirthai-II HEP, as well as the execution of the Sawalkot HEP (1856 MW), Uri-I (Stage-II) (240 MW), and Dulhasti (Stage-II) (258 MW).

These projects are set to transform the economic landscape of Jammu and Kashmir. In the past seven and a half decades, J&K generated only 3,504 MW

of energy. However, in the next four years alone, the UT is expected to generate an additional 3,498 MW, ensuring the region's energy security, thanks to the vision of PM Modi.

The 19 distribution and transmission projects inaugurated on January 3, 2021, besides enhancing the ease of living in the region, are playing a significant role in raising per capita income, industrialisation and employment generation in J&K. The national average of electricity in rural areas is 20 hours and in urban areas, it is 22-23 hours across India. J&K too will reach that milestone if the pace of development is kept steady. With locals trained and given employment in NHPC ventures, J&K will see a new dawn of energy sufficiency and thereby inclusive development.

Last year, the Lok Sabha passed the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023 and the Jammu and Kashmir Reservation (Amendment) Bill, 2023. These bills sought to represent those who became refugees in their own country and also reserve one seat in the J&K Assembly for people who have been displaced from PoK. Before the revocation of Article 370, Jammu and Kashmir had distinct rules for delimiting Lok Sabha and Assembly seats. Post the abrogation, a Delimitation Commission was formed in March 2020. This commission was tasked not only with delimiting J&K's seats but also those of Assam,



Manipur, Arunachal Pradesh, and Nagaland, aiming to finish within a year. The commission concluded its delimitation process, resulting in an increase in J&K's legislative Assembly seats from 107 to 114, facilitated by the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023. What is the Jammu & Kashmir Reservation (Amendment) Bill, 2023?

The bill sought to amend Section 2 of the Jammu and Kashmir Reservation Act, 2004, which provided reservations in jobs and admissions to professional institutions for Scheduled Castes (SCs), Scheduled Tribes (STs), and other socially and educationally backward classes.

The amendment proposed changing the nomenclature for a section of people previously described as "weak and underprivileged classes (social castes)" to "other backward classes." The Jammu and Kashmir Reorganisation (Amendment) Bill aims to amend the 2019 Act and provide representation in the Legislative Assembly for Kashmiri migrants and displaced persons from Pakistan-occupied Kashmir (PoK). It proposes nominating two members from the Kashmiri migrant community, including one woman, and grants the lieutenant governor the power to nominate one person representing the displaced persons from PoK to the Legislative Assembly.

The bill also proposes increasing the total number of seats in the Jammu and Kashmir Legislative Assembly from 107 to 114, with 7 seats reserved for Scheduled Castes and 9 for Scheduled Tribes. According to the bill, 24 Assembly seats will remain vacant until the occupation of Pakistan-occupied Kashmir ceases. Consequently, the effective strength of the Assembly is 83, which the amendment increases to 90.

The changing landscape in Kashmir owes much to Union Home Minister Amit Shah, in addition to the significant contributions of PM Modi. For example, thanks to Amit Shah's relentless dedication, the Indian tricolour was hoisted at Lal Chowk in Srinagar in January 2022, after 30 long years. Theatres in Kashmir reopened after a gap of 33 years, and the Muharram procession, which had been banned, resumed after more than three decades. Clearly,

Kashmiriyat in its truest sense has regained relevance due to the determination of the Modi-Shah duo.

Indeed, in the final analysis, it can be effectively concluded that J&K is poised to make a quantum leap from being power deficit to a power surplus within the next four years. Post-abrogation of Article 370, growth has been given a new set of wings. Clean, affordable, and reliable energy is crucial for the growth of industries, businesses, and society. The Modi government has a well-laid-out plan to effectively harness J&K's hydro energy resources, with a goal to double energy generation by 2024-25. Construction has begun on several key projects, including the 60.84 km long Srinagar Ring Road, the widening of the National Highway from Pathankot to Jammu from four lanes to six, and the 670 km long Delhi-Amritsar-Katra Expressway, which will connect Pulwama and Ganderbal via Budgam. Additionally, out of seven centrally funded medical colleges, Jammu received four and Kashmir three. For government job recruitment, selection will now be based purely on written tests, without interviews.

In the recently concluded 2024 general elections, the Kashmir Valley saw a significant 30-point increase in voter participation compared to 2019, with the overall voter turnout across the Union Territory reaching 58.46 per cent. The three seats in the Valley—Srinagar, Baramulla, and Anantnag-Rajouri—recorded turnouts of 38.49 per cent, 59.1 per cent, and 54.84 per cent, respectively, the highest in the last three decades. The other two seats in the UT, Udhampur and Jammu, recorded voter turnouts of 68.27 per cent and 72.22 per cent, respectively. This indicates that the younger generation has asserted their faith and embraced democracy in a significant way.

Clearly, the abrogation of Article 370 has been a transformative measure by Prime Minister Narendra Modi in more ways than one.

# Iran's dilemma

## Exact revenge, evade war and still appear tough

Col Rajeev Agarwal



**D**ays since Hamas political chief Ismail Haniyeh was assassinated in Tehran, the same night, in Beirut, a precision strike from the air took out a senior Hezbollah military commander, Fuad Shukr. In Damascus, Brigadier General Amir Ali Hajizadeh, the commander of Iran's Islamic Revolutionary Guard Corps Aerospace Forces, was eliminated on the same night. Three key assassinations across three capitals in the region were hugely escalatory in nature, to say the least, and were bound to draw an immediate and sharp response.

Iran's supreme leader Ayatollah Ali Khamenei led the charge, outraged that the Hamas chief was assassinated in Tehran. Hezbollah leader Hassan Nasrallah too vowed retaliation. Fearing an all-out escalation, the US has appealed directly and through allies in the region for Iran to not undertake any military measures. At the same time, it has moved two aircraft carrier battle groups into the region. The USS Abraham Lincoln Carrier Strike Group has been rushed in, adding to the capabilities already provided by the USS Theodore Roosevelt Carrier Strike Group.

Israel, too, is in a heightened state of alert, expecting the strike any day. Iran, on the other hand, has been clear and vocal about its options and intentions. Soon after Haniyeh's assassination, Iran notified the UN that it would carry out a retaliatory attack on Israel in self-defence, against violations of its national security and territorial integrity, quoting Article 51 of the UN charter. At an extraordinary meeting of the Organisation of Islamic Countries on August 7, Iran made it clear that the assassination of the Hamas political chief was an attack on its sovereignty and would not go unanswered.

### Iran's options

Iran is aware that Israel is baiting it to join the war. In April, when it had carried out retaliation against an Israeli strike on its consulate in Damascus, it was very clear and careful that the strike should be enough to be counted as retaliation but not seen as escalation. Thus, its strike through a swarm of over 200 drones and missiles met with limited success as most of them were intercepted, partly due to the advance notice given by Iran to the US and its allies.

This time, however, the situation is different. After the April strikes, Iran declared that it would no longer exercise "strategic patience", and any future strike would be met with equal and effective counter-strike. The fact that the assassination this time took place in Tehran is an additional embarrassment. Also, Iran has declared that the retaliation would come through a direct strike by Iran and not merely through its proxies or allies, which puts additional pressure on Iran.

What works in Iran's favour, however, is the scope and timing of the attack. There were suggestions that Iran may await the outcome of ceasefire talks held in Doha earlier this month. The talks have not succeeded as Hamas rejected the "bridging proposal" in the ceasefire deal offered by the trio of Egypt-Qatar-US, which added new conditions to the ceasefire deal of May 2024, which had UN Security Council endorsement too.



There are also inputs that Iran may wait till August 25 when the Arbaeen pilgrimage, which marks the end of the 40-day mourning period for Huseein ibn Ali, the third imam of the Shia Muslims, comes to a close. The pilgrimage takes place across Iraq and Iran with over 22 million people participating in it. This kind of mass pilgrimage across the region is unparalleled in scale and scope and any threat or attack on it is therefore a major vulnerability for Iran. In case Iran carries out its revenge attack while this pilgrimage is still on, an Israeli retaliation could cause mass casualties among the pilgrims and could be very damaging to Iran's position in the region.

The most important factor is, however, the scope of Iran's retaliation. Iran could decide to strike only at major military sites and commercial infrastructure like ports, which would have the desired effect but may not be very escalatory in nature. Any strike resulting in mass civilian casualties or strike at sensitive locations like nuclear sites, Parliament, hospitals, etc, would be suicidal and counterproductive. Whatever the nature of strikes, Israel, going by its philosophy of immediate retaliation and seeking "peace through security", is unlikely to keep quiet and is expected to retaliate. But it could still be contained if the Iranian strike is precise and focused, without major casualties.

Iran would do well to include all its allies and proxies in the conduct of retaliation, especially Hezbollah, Hamas, and Houthis, to ensure that the retaliation is spread over a large geographical area and a larger number of actors. The prospects of Iran using its latest drones, ballistic, and cruise as well as hypersonic missiles are very likely as Iran would definitely want more hits than what it could achieve in April.

As per some media reports, there are suggestions from within Iran that it should accelerate its nuclear programme and declare itself as a nuclear weapon state soon. However, that could prove counterproductive and escalatory as it would give Israel, the US and others a valid reason to strike Iran hard and deep.

Iran could avoid a retaliatory strike altogether if its intelligence agencies are able to take out any

prominent political or military leader in Israel. The possibility of that happening is remote because the Iranian intelligence agencies do not have a record of any such successful operations in the past. Nor are they known to have the required network and wherewithal to carry out such a strike inside Israel.

## **The wait for Iran's strike**

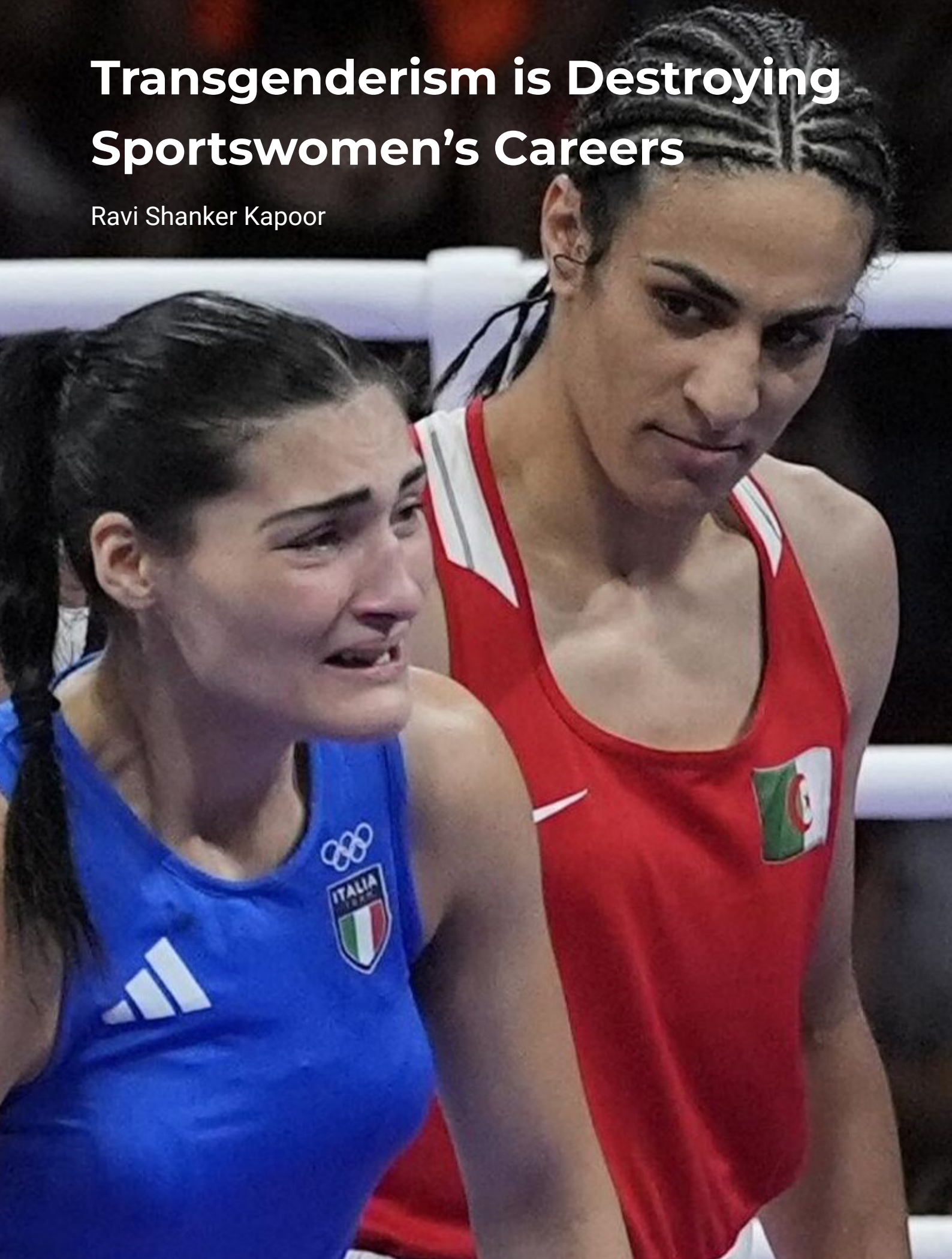
As the region waits for the Iranian retaliation to take shape, there is no doubt that it carries significant escalatory risk. The risk of war has to also be weighed in the context of the size and capacity of each country. Iran, with a land area of 15,31,595 square kilometres, is 70 times larger than Israel and thus has more capacity to absorb shocks of military strikes. Most of its important military and nuclear sites are well hidden and dug deep into the mountains, making it extremely difficult for the US or Israel to take them out through missiles and air strikes. Israel, on the other hand, with its small size, is more vulnerable.

In the case of a prolonged war, the possible escalation along its borders and the support from major military powers would matter a lot too. Here again, Israel faces hostilities across all its borders from Iran's allies. While the US is bound by its allegiance to support Israel no matter what, it will be interesting to see what role Russia and China play. Both have expressed clear support for Iran. There are reports that Russia has transferred large amounts of weapons and equipment to Iran in recent days, including Iskander short-range ballistic missile systems and Murmansk-BN electronic warfare systems. The supply of 4.5 generation Sukoi-35 fighter aircraft and S-400 Air Defence systems could also get expedited if the war escalates.

Iran is likely to strike soon, and it will certainly provoke a reaction from Israel. If tit-for-tat strikes continue, there could be no early hope for de-escalation. Iran is doing well to take time to be sure of when and how to retaliate. It has to weigh all options before the eventual strike; how to exact revenge while still not giving a full-scale war to Israel and yet look strong in the eyes of its support base and allies.

# Transgenderism is Destroying Sportswomen's Careers

Ravi Shanker Kapoor



**W**e often tend to shrug off horrible and revolting ideas as outlandish, keeping them beyond the realm of the possible. 'Arrey, aise thodi hota hai' (These things can't happen). But then, as the Adidas tagline says, 'Impossible Is Nothing', for the sad truth about life is that while good ideas may never come to fruition, evil ones often do. The ideas propounded by the postmodern ideology of transgenderism are among those that have escaped the fantasyland of left-wing academia and invaded the world of sports. Indeed, they have begun to hurt sportswomen—even literally. No one knows this better than Italian pugilist Angela Carini.

She exchanged a few punches in a 46-second bout with Algeria's Imane Khelif at the Paris Olympics. "They were enough to persuade Carini that her Olympic debut was finished," reported AP. "The Italy boxer abruptly walked away from her Algerian opponent and went to her corner Thursday, abandoning her bout—an extremely rare occurrence in Olympic boxing."

Khelif was disqualified from the world championships last year as she couldn't clear a gender eligibility test, but was allowed to compete at the Paris Olympics. This was primarily because the crazy idea of transgender ideology has entered the real world.

Transgender ideology has a couple of cardinal principles: first, gender identity may not be congruent with the 'sex assigned at birth'; second, a person can choose their gender, regardless of the biological facts.

This is how the World Health Organisation, which is badly infested and infected with left-wing bugs, distinguishes between gender and sex. "Gender interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs. Gender and sex are related to but different from gender identity. Gender identity refers to a person's deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth" (emphasis added).

This is the Left's new project: to differentiate between sex and gender. Commenting on the subject, conservative political philosopher Ryan T. Anderson wrote in 2018, "We live in a postmodern age that promotes an alternative metaphysics. As I explain in *When Harry Became Sally*, at the heart of the transgender moment are radical ideas about the human person—in particular, that people are what they claim to be, regardless of contrary evidence." He went on to demolish the claims of transgender activists which "are confusing because they are philosophically incoherent."

At the core of the ideology is the radical claim that feelings determine reality, he wrote. "From this idea come extreme demands for society to play along with subjective reality claims. Trans ideologues ignore contrary evidence and competing interests, they disparage alternative practices, and they aim to muffle skeptical voices and shut down any disagreement."

This is not hyperbole from a conservative thinker; the Left's ideological terrorism claimed a victim eight years ago when University of Toronto psychology professor Jordan Peterson was hounded and persecuted by radical teachers, students, and kindred spirits. His crime was the refusal to use gender-neutral, alternative pronouns like 'ze' and 'zir'.

The transgender ideology is also destroying the careers of sportswomen, as many of them struggle to compete against males and transgender males. There have been cases where males or transgender males, taking advantage of the growing acceptance of transgender ideology, have been able to masquerade as women and subsequently rape and molest women.

As I mentioned earlier, the left-leaning Biden administration nominated Judge Sarah Netburn for the Southern District of New York, even though she was a believer in this ideology. She had earlier placed a six-foot-two-inch biological male serial rapist in a women's prison just because he claimed that he was a transgender woman.

As mentioned before, the Carini-Khelif match may have highlighted the perils of men or transgender males hurting women's sports and sportswomen,



but the abomination is not new. Quite apart from being an affront to commonsense and decency, it underlines a major disease left-wing thinkers are afflicted with: solipsism. Encyclopedia Britannica describes it “as an extreme form of subjective idealism that denies that the human mind has any valid ground for believing in the existence of anything but itself.”

This is an essentially epistemological description of solipsism; left-wing solipsism also has moral and axiological aspects. It not only disputes alternative explanations of reality; it also deprecates, diminishes, and marginalises any version of the truth that is at variance with its own. So, anyone who questions or challenges the transgender ideology, faces calumny and canards from the Left-liberal establishment. They are also de-platformed; Amazon, for instance, refused to sell *When Harry Became Sally*.

The International Olympic Committee has simply succumbed to the dictates of the Left-liberal establishment over the gender issue. Much to the chagrin of Carini and other sportswomen. ■



# Bangladesh: Navigating Complex Challenges

Lt Gen Syed Ata Hasnain



**A**t times, in the first few days of any geopolitical crisis, I must admit that the situation often looks ominous and unresolvable. However, geopolitical crises generally carry the inherent danger of affecting national security. Therefore, any delay on the part of policymakers in correctly comprehending a crisis situation can be fraught with danger. Transparency and clarity seldom emerge easily, especially if one tries too hard to connect the dots. The problem with an issue such as the crisis in Bangladesh is that there are simply too many unconnected dots. You connect several, and then more appear in different directions.

Secondly, there are a few core beliefs that come from observing trends over time. However, during times like these, most of these trends take a back seat, and core assumptions can start to go awry. As events unfold, each must be examined and analysed based on credibility and without the bias of core beliefs. This is a difficult task, in fact, a challenge.

There are a couple of prime issues concerning the Bangladesh crisis. However, I recognise that as we move forward, many of these issues will change. The first striking observation is that the majority of people in Bangladesh, including respected senior functionaries, intellectuals, former civil servants, and analysts, are convinced that what has happened is for the good of Bangladesh. However, one wonders whether the economic and social progress Bangladesh made in the last 15 years under Sheikh Hasina was not a factor in her favour or that of her party, the Awami League.

Friends from Bangladesh who urge us to respect and understand the aspirations of the people often argue that such progress, without the freedom to choose their representatives, is not true progress. In other words, the desire for democratic empowerment has been very strong, and the Sheikh Hasina government has completely ignored this through the conduct of non-participatory elections and a hard-nosed attitude that brooked very little opposition. Perhaps many of us got this wrong too.

Secondly, the same people also tell us that while India supported the government, it never scrutinised what was transpiring within the nation under the rulers. In other words, the argument about India stretches back more than 50 years and suggests that it has never understood the people or attempted to establish a transformational link that could then permeate into a people-to-people understanding. Obviously, many of these individuals exhibited the same attitude before the downfall of the Sheikh Hasina government, but they voiced their concerns quietly, and such quietly voiced concerns are rarely heard.

Clearly, a lot of reality seems to be dawning on many of us. Yet, it is difficult to take sides, even now. What no one in Bangladesh wants to hear is that India must act according to its long-term strategic interests. These interests demand that we have the capability to cooperate and work with any government in power in Bangladesh, preferably one elected by a popular vote. The dilemma arises when there is a situation involving a friendly and effective government that does not meet the approval of the people.



The third point conveyed to me, and I believe it is the most important issue, is that Indians and India seem to view Bangladesh and its people through the prism of the 1971 crisis, which led to the Indo-Pak War, the defeat of the Pakistani Army, and the surrender of 93,000 prisoners of war. For a long time, this issue has rankled the self-esteem of Bangladesh. Deep down, it is well-known that India sacrificed its soldiers to secure Bangladesh's independence. In India, we often believe that the Bangladeshi people, across all segments, are only transactionally grateful for this act by India. If you step back and examine this, a certain truth does emerge.

We never had a single Bangladeshi representative in the iconic photograph of the surrender at the Maidan in Dhaka. No one thought of this at the time, and that half a century later, it would be a contributing factor to a certain angst against India. In reality, there

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**that Indians and India seem to view Bangladesh and its people through the prism of the 1971 crisis, which led to the Indo-Pak War, the defeat of the Pakistani Army, and the surrender of 93,000 prisoners of war. For a long time, this issue has rankled the self-esteem of Bangladesh. Deep down, it is well-known that India sacrificed its soldiers to secure Bangladesh's independence. In India, we often believe that the Bangladeshi people, across all segments, are only transactionally grateful for this act by India. If you step back and examine this, a certain truth does emerge.**

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was no established Bangladesh Army at that point, and Colonel Osmany, the senior-most officer, was in Kolkata; his presence no doubt could have been symbolic. But that is history.

Our perception was that India acted rather magnanimously by ensuring we withdrew our forces as soon as possible, transporting the 93,000 Pakistani prisoners of war to India and bearing the entire cost of the logistics while they remained in our custody. We also assisted in setting up many of the institutions that helped Bangladesh quickly get on its feet as an independent nation. In recent years, Indians have often praised and complimented the Bangladeshi government for lifting 25 million people out of poverty and building the economy to \$450 billion, with an annual \$60 billion apparel export industry. Yet, somewhere along the way, the perception did not align, and our communication of these positives was taken as condescension, which is unfortunate.



That is why it's difficult to absorb all the visuals that emerged from Bangladesh last week: the burning of the Indira Gandhi Cultural Centre and temples, and worst of all, the targeting of the Hindu minority. The toppling and desecration of Sheikh Mujibur Rahman's statue symbolised the anger in the streets.

I felt that the Bangladesh Army could have anticipated the threat to institutions once the situation reached a critical point. It is usually difficult to make such an assessment, but that is precisely what intelligence agencies are meant to do. The leeway given to mobs to desecrate the Parliament, Indian-sponsored institutions, and the PM's residence could have been mitigated with some pre-emption. I have served with the Bangladesh Army in two UN missions and spoken at its various training institutions in Dhaka. I consider it to be a very professional force, and its neutrality

and professionalism should ensure the stability of Bangladesh during these challenging times.

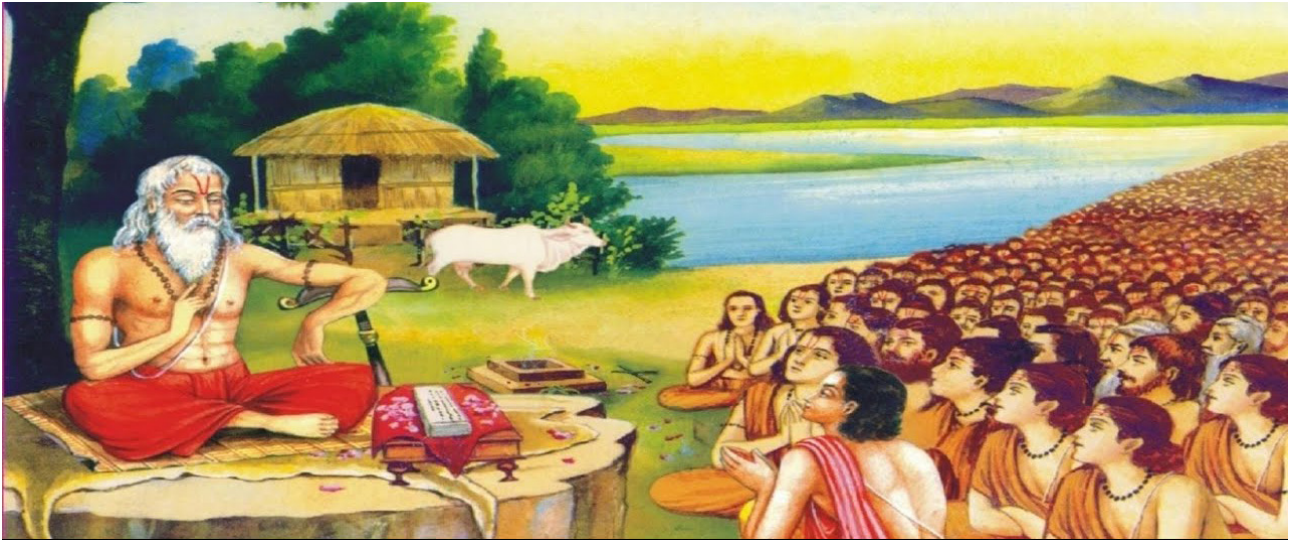
The Indian Armed Forces and the Bangladesh Armed Forces enjoy a special relationship and should regard 1971 as a joint heritage that enhanced their splendid records. There is some speculation in India among certain circles that the symbols of the joint victory have been desecrated, signifying the end of this special linkage. However, this is not true, as the events of the last few weeks reflect a frustrated and angry youth. They need to be placated by the Bangladesh Army through outreach, demonstrating that India and its Armed Forces continue to support Bangladesh's democracy, which will empower the people.

The potential threat hanging over the Indo-Bangladesh relationship relates to the degree of control and penetration that religious radicals have achieved in the national polity. There was a time when ISIS considered Bangladesh to be a highly viable society for proliferation due to the significant level of radicalism present in 2015. The Islamists, with their heritage tracing back to 1971, when they opposed Bengali intellectuals, were targeted by Sheikh Hasina, who ensured they held no position of influence. However, the situation may now be different, as the current rulers appear to be employing a softer strategy to prevent any backlash.

In the many demonstrations on the streets, the presence of Jamaat-e-Islami has been notable, and the initial targeting of the Hindu minority community has likely been instigated by them. The new government has taken steps to address the potential targeting of minorities, which is a bold and positive move.

India will need to navigate this situation carefully. A good interlocutor, preferably a veteran Indian diplomat with experience in Dhaka, could facilitate the establishment of a renewed relationship. Bangladesh's economy cannot be allowed to falter, as this presents an opportunity for significant Indo-Bangladesh cooperation. At the same time, India's genuine security interests must also be addressed, ensuring that militants from the Northeast are not allowed a foothold in Bangladesh.





# Ancient India's rich literature on jurisprudence

Patrick Olivelle

Every complex society has felt the need to create legal systems to adjudicate disputes between individuals and groups, and to determine whether people are guilty of the crime they are accused of. Such explicit and transparent systems are required if people are to have confidence in the outcome of verdicts. So, it has become a dictum that justice must not only be done but must also be seen to be done.

Ancient India was no exception.

I was part of an editorial team that produced the Cambridge Comparative History of Ancient Law, which was just published. As I was writing the chapter on 'Legal Procedure', it became obvious that ancient India produced some of the richest literature on this topic, vastly more copious and sophisticated than that of any other ancient civilisation. In the process, the Indian jurists created a well-developed technical vocabulary.

## Legal procedure

The first detailed account of legal procedure, known in Sanskrit as vyavahara, is found in Kautilya's Arthashastra. However, it does not directly designate a person or institution in whom judicial power and functions of a society are vested. It simply describes the structure of civil and criminal courts and the procedures they are supposed to follow.

Civil courts are headed by a bench of three senior officers of the State. Kautilya says, "Justices (dharmastha) of ministerial rank (amatya) should conduct trials of lawsuits." (Kautilya 3.1.1)

In the parallel criminal system, courts are overseen by a different set of officers called pradestri. Manava-Dharmasastra, or The Laws of Manu, written a century or so after Kautilya, on the other hand, explicitly vests judicial authority in the king himself. It is only in his absence that a substitute judge, called pradvivaka, presides over the court.

The king and chief judge, who are not necessarily legal experts, are assisted by three such experts called sabhya or assessors. These three legal consultants are probably related to the three justices of the Arthashastra. Other court personnel include bailiff, accountant, and scribe.

## Plaint and plea

A lawsuit (artha) begins with a plaintiff (arthi) filing a plaint with the court. This initial plaint, called bhasha, is written on an erasable surface such as a chalkboard. The plaintiff is permitted to revise it until the defendant (pratyarthi) files his plea (uttara), which is then written down along with the revised plaint on a more permanent surface such as a palm leaf.

Sources give clear guidelines as to the format of the plaint and plea. Any serious deviation from those guidelines would render them legally invalid. The fifth-century jurist Yajnavalkya calls the plaint and plea the first two of the four feet of a court proceeding.

Once the plaint and plea have been filed with the court, the substantive part of the court proceeding begins. According to Yajnavalkya, the third foot of the proceeding is the presentation of evidence. The task before that, however, is to determine which party has the burden of proof. This may seem obvious today: The plaintiff has the burden of proof. However, the ancient Indian jurists saw the issue as more complex.

The kind of plea entered by the defendant determines which party must produce evidence. If it is one of admission (sampratipatti), then the legal proceedings stop and the plaintiff wins the case. If it is one of denial (mithya), then the burden falls on the plaintiff.

The ancient law recognises two other scenarios: The defendant can present a qualified admission, also called a special plea. For example, if the plaint says the defendant took a loan of Rs 1,000, the defendant may admit that he did indeed take the loan but claim that he paid it back. Alternatively, the defendant can claim that the same plaintiff filed an identical lawsuit previously and a court found him innocent.

In both these cases, the burden of proof shifts from the plaintiff to the defendant. He has to prove that he did indeed pay back the loan or that a prior court ruled in his favour.

## Types of evidence

Once the burden of proof has been determined, the presentation of evidence begins. The most significant kind of evidence is live witnesses. (This was especially so prior to about the fourth century CE when writing became widespread and legal documents began to play an important role.) Unless both parties agree, a minimum of three witnesses is required.

There are detailed rules regarding the admissibility of witnesses for both the plaintiff and the defendant. These rules relate to a variety of factors, including social class, gender, and age. Witnesses are admonished by the judge to say truthfully what they have seen or heard, reminding them of the dire consequences, both here and in the hereafter, of bearing false witness:

“Whatever good deed you have done over hundreds of lifetimes, all that will go to the man you defeat by your false testimony.” (Yajnavalkya Dharmashastra 2,79)

A false witness, as also anyone who suborned perjury, is sent into exile. The sources identify clues to detect false testimony. These include sweating, the face changing colour, lips becoming parched, looking from side to side, and the like. It is, however, for the judge and assessors to determine who is speaking the truth, even though the statements of most witnesses are accepted as probative.

Post-Gupta sources place greater weight on documentary evidence (lekhyā). Here, the judges are told to be attentive and detect forged documents. The sources assume that most legal transactions—especially loans—are accompanied by a legal document attested by witnesses and they spell out the format and legal requirements of a valid document.

The third kind of evidence is possession (bhukti). This is especially pertinent for litigation with respect to land and houses. It is a principle of jurisprudence that possession over a certain number of years, usually 10, without objection establishes a person's ownership over real property.





The final form of evidence, which may seem quaint to us, is ordeals. Sources give detailed rules for ordeals with fire, water, balance, and so on. In medieval times, entire books were written on this topic. The assumption is that gods, who are wedded to truth, will identify a person who tells a lie in court.

## Judicial deliberation

The final phase of the proceeding—the fourth foot—is judicial deliberation (*pratyakalita*) followed by the verdict (*nirnaya*). The court usually issues a document (*jayapatra*) recording the judgment and gives it to the party that wins the case. The loser is forced to indemnify the victor and in addition, is assessed a fine.

The losing party, however, can file an appeal to a higher court. Sources generally recognise five fora or courts for resolving disputes: family (*kula*), guild (*shreni*), company (*gana*), the royal court, and the king himself. The legal procedure outlined above is that of royal courts. Individuals who lose cases at the family or guild level can always appeal to a royal court. The losing side in the royal court also can appeal to the king himself, whose judgment is final and not subject to appeal.

In this brief essay, I have given parenthetically the Sanskrit legal terms to highlight the sophisticated technical vocabulary of ancient Indian jurisprudence. Its earliest appearance can be found in documents from the centuries just before the Common Era. Around the sixth or seventh century, we get texts exclusively devoted to legal procedure, such as those ascribed to Narada, Katyayana, and Brihaspati. By the Gupta times (320-550 CE), this vocabulary can be seen to have undergone remarkable growth.

Jurisprudence stands out as one of the major achievements of ancient Indian intellectual tradition.

Further reading:

Hindu Law: A New History of Dharmaśāstra. Edited by Patrick Olivelle and Donald R. Davis, Jr. Oxford: Oxford University Press, 2018.

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# Pakistan army's iron walls are cracking

Praveen Swami



Five Generals, resplendent in their full ceremonial dress, sat at the table, glowering at the war hero before them. Five years earlier, in 1971, Major-General Tajammul Husain had held off superior Indian forces at Hilli, in East Pakistan. Then, denied promotion, General Husain decided to turn his guns on the inquisitors who had now gathered to judge him: Army chief Muhammad Zia-ul-Haq, Zia's spymaster, Lieutenant-General Ghulam Jilani, and Lieutenants-General Sarwar Khan, Faiz Chishti, and Gul Hassan.

Less than a week later, Tajammul was thrown out of the army. Letters were sent out to garrisons across the country, Tajammul wrote in his memoirs, letting troops know he had been plotting to overthrow Prime Minister Zulfikar Ali Bhutto's government and replace it with an Islamic State.

"Fanatic," Zia growled: He was, perhaps unaware he himself would hang the Prime Minister, and begin serving the will of God with public amputations and floggings.

The arrest and coming court-martial of former ISI chief Lieutenant-General Faiz Hameed, announced this week, is intended to crush former Prime Minister Imran Khan's supporters inside the military. Two officers active in Imran's support, Major Adil Farooq Raja and Captain Haider Raza Mehdi, have already been handed down sentences. Figures like Khadijah Shah, granddaughter to former Army chief Asif Nawaz Janjua, have spent months in jail.

Tajammul's failed coup reminds us that elements within the military have repeatedly sought to overthrow the state and their own commanders.

Losing lives every week in an unwinnable war in the country's north-west, the economic lives of their families and kin in ruins, and the unchecked power of a corrupt élite, the rank-and-file is showing signs of deep alienation, eminent scholar Ayesha Siddiqi notes.

Faiz's trial is meant to serve as a demonstration of Army Chief General Asim Munir's complete authority—but it could only too easily prove a dangerous gamble.

Like so much else to do with the Pakistan Army's power struggles, the story of Faiz's downfall has to do with mud—which the military has learned how to transform into gold through the dark arts. In 2004, journalist Marvi Sirmed reported, that property magnate Iftikhar Ali Waqar, together with his sister Zahida Aslam, put up the cash to build the Top City housing project in Rawalpindi. Zahida and Iftikhar soon fell out, though, and the brother ended up dying of suicide. For all practical purposes, control of the project ended up with her manager, Kunwar Moiz.

In 2014, Moiz found himself called on to aid the campaign of Tahir-ul-Qadri, a military-backed cleric who played a key role in destabilising then-Prime Minister Nawaz Sharif's government. He also became involved with Haider Abbas Rizvi, a Mohajir Qaumi Movement leader acting as a mediator between the government, military and Imran.

Likely, Moiz's political contacts greased Top City's wheels from the outset. The Auditor General of Pakistan discovered organised wrongdoing to aid its profitability. Land sold for the project, among other things, had been undervalued; permission had been given to build shops in residential buildings, and apartment blocks sanctioned in excess of the land-usage regulations.

The ties to the MQM were adroitly used by Moiz's business rivals, to seize a share of the project. In 2017, allegedly on Faiz's orders, personnel from the ISI and the Pakistan Rangers raided Top City's offices and confiscated jewellery and cash from Moiz's home. According to the businessman, he was only released from illegal custody when he handed over a part of his properties to nominees of Najaf Hameed, Faiz Hameed's brother and a low-level bureaucrat.

Faiz isn't the only one of Imran's military commanders to face corruption allegations. General Qamar Javed Bajwa, the former Army chief and Faiz's one-time boss, has been accused of accumulating an estimated \$56 million in property through his six years in office.

Though some of that came from land entitlements top Pakistani military officers are entitled to for their service, his relative and retainer Sabir 'Mithu' Hameed is accused of coercing landowners to sell land in areas where major projects were to be developed. Hameed is now being investigated by the Federal Investigation Agency on money-laundering charges, which could lead them to General Bajwa.

For months now, General Asim's frustration at not being able to crush Imran has been evident. Imran and his wife, Bushra Bibi, have succeeded in gaining bail in a series of graft cases; efforts to prosecute them for violating religious laws governing marriage also collapsed. To make things worse, the Supreme Court ordered that Imran's Tehreek-e-Insaaf party be given a share of reserved seats in the legislature, enhancing its political presence. Last week, Bilawal Bhutto, the head of the Pakistan People's Party, bitterly complained of pro-Imran judicial bias.

There's little doubt efforts have been made to bulldoze that supposed bias. In March, six judges of the Islamabad High Court complained that the ISI had used kidnapping, torture, and secret video surveillance in an effort to secure their compliance in cases against Imran. Even these crude tactics, however, didn't succeed in making the judiciary prisoners of war.

Faiz's prosecution potentially offers a means to prosecute Imran before a military court—but it's far from clear how the increasingly assertive civilian court system might treat such a development. The Supreme Court had, last year, stopped the trial of Imran supporters, alleged to have been involved in violence after his arrest, in military courts.

Even if he fails to draw Imran into the military justice system, though, General Asim could benefit by projecting himself as a crusader against corruption. Endemic corruption in the officer corps has caused



deep resentment in the ranks, but action has been rare.

Lieutenant-General Obaidullah Khattak, the former inspector-general of arms, and Major-General Ejaz Shahid were dismissed from service in 2016 after a court of inquiry, on the charge of misappropriating funds during their tenures within Balochistan. There were, however, no prison sentences handed down.

The Pakistan National Assembly had earlier indicted Lieutenant-General Javed Ashraf Qazi, a former spymaster who went on to become railway minister, on corruption charges. Together with Lieutenant-General Saeed-uz-Zafar, General Qazi was accused of handing over railway land to a Malaysian conglomerate without proper diligence. The case is still underway.

Too much pressure against Imran, though, could end up opening deep fault lines of class and ideology inside the armed forces. Following early meetings with the Islamist politician Abul A'la Maududi, the village-born Tajammul rejected the colonial heritage of the armed forces. "To become a good officer, one was expected to drink, dance and even speak the Urdu language with English accent," he recounted.

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**To his ranks of supporters, the former Prime Minister represents at least an illusion of an equitable, just Pakistan, free from corrupt military officers and predatory politicians. Lacking any political strategy for comprehensive economic and social reform, General Asim is seeking to break his opponents at the wheel—but it is far from clear if he can succeed.**

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"The sooner one adjusted oneself to complete European way of life, the better one's chances were to be regarded as a good officer."

"Anyone who talked about religion was considered to be a backward type and sometimes even ridiculed in public," Tajammul complained.

Following his first coup attempt in 1976, Tajammul again planned to install an Islamic government by assassinating Zia at the Pakistan Day parade in 1980, scholar Shuja Nawaz records. Islamist coup plots like these have been common. Led by Brigadier FB Ali, officers sought to overthrow the government in 1972–1973, believing the Government's un-Islamic ways, and General Yahya Khan's drinking had led to the loss of Bangladesh.

Then, in 1995, a group of 40 officers led by General Zahirul Islam Abbasi, Brigadier Mustansar Billa and Colonel Azad Minhas plotted to assassinate Prime Minister Benazir Bhutto, as well as the senior leadership of the army. The Army, Nawaz writes, "refused to face the reality that the army officer corps was increasingly coming from urban centres where there was a strong Islamist current, and that the army's own population, after all, mirrored the increasingly conservative bent of the country's general population."

Like his predecessors, General Asim confronts the millenarian impulses represented by Imran Khan: To his ranks of supporters, the former Prime Minister represents at least an illusion of an equitable, just Pakistan, free from corrupt military officers and predatory politicians. Lacking any political strategy for comprehensive economic and social reform, General Asim is seeking to break his opponents at the wheel—but it is far from clear if he can succeed.

# Caste-Based Quotas and Quest for Viksit Bharat

Akhileshwar Sahay

**I**n present-day Bharat, discussing or writing about the caste-based reservation system is a delicate and controversial subject. It is fraught with danger, especially for the writer, if one chooses to confront the issue and propose rolling back the current reservation system. However, I address this precisely because the clamour for increasing reservations in an era of reducing government jobs has become a self-fulfilling prophecy.

This multi-part series on reservation and affirmative action in India will delve into the historical, sociological, anthropological, constitutional, and political underpinnings of this complex issue. It will examine relevant constitutional provisions and judicial pronouncements, analyse the effectiveness (or lack thereof) of existing policies, and explore the shortcomings of the system—particularly how a select few have disproportionately benefited. Finally, I will address the most contentious aspect: how the entire framework of affirmative action needs to be reimagined if India is to achieve its goal of becoming a developed nation by 2047.



## In the Making for Decades

But first, why this piece? There are three precise reasons—one existential and historical, and the other two proximate. The proximate reasons are the most recent judgement by the seven-judge bench of the Supreme Court of India, pronounced on August 1, preceded by the political grandstanding and cacophony promising more and more reservation in the recent elections.

The existential reason is that this piece has been in the making for decades. The first case of individual manipulation of the reservation system I encountered was four decades ago. It was an open secret in the office that one

of my early railway bosses had climbed the IR hierarchy by falsely claiming to be SC, which he was not. He was caught just before his retirement. I have not followed the case since then. The latest such case occurred in my home city, Pune. Puja Khedkar, a Pune resident, became an IAS officer by cheating her way through the nearly sacrosanct UPSC system, feigning disabilities and falsely claiming to be from the non-creamy layer category of OBC. She has been dismissed since then.

These may seem like isolated incidents, but they are not. Only God knows how many individuals have prospered—and continue to prosper—by exploiting the reservation system at various levels of governance.

Also, ever since Independence, caste groups, vested interests, and power brokers have jostled to corner the SC/ST/OBC reservation bandwagon by hook or by crook. If the governments of the day do not agree soon, it will lead to street protests, violent agitations, and fasts unto death. More often than not, governments succumb—whether to protect or enlarge their electoral fortunes is a matter of detail.

The most famous such case is that of a Rajasthan community that has virtually monopolised all ST jobs in the Government of India. A simple Google search will reveal who they are, whose genuine quota they have usurped, and why the fear of political backlash prevents political parties of all stripes from conducting impartial investigations and taking corrective or curative measures.

Moreover, even if it is a dangerous path to traverse, I have no compunction in stating that the 27 per cent reservation in educational institutions and jobs in the country—a legacy of the Morarji Desai-Bindeshwari Prasad Mandal-Vishwanath Pratap Singh trio—is not the solution Bharat needed. Most who have secured reservation benefits in this category are what I term “forwards among backwards”. The genuinely backward and downtrodden continue to suffer as their condition worsens daily. Thus, the OBC reservation, far from being the affirmative action it was intended to be, has become a game of political one-upmanship fuelled by the new

brand of identity politics. I will return to this later in the piece.

## Inopportune Time

The timing of this discourse to roll back reservation, as we know it, could not have been more inappropriate. In the recent election, the Opposition upped the ante by shifting the narrative in favour of more and more reservation. Election manifestos and speeches promised a pan-India caste census, the abolishment of the 50 per cent reservation ceiling imposed by the Supreme Court, reservation for minorities, and the inclusion of more castes within the reservation system.

This subject is so fraught that the mere shift in narrative by the Opposition—that a BJP return to power with 400 Lok Sabha seats would mean the scrapping of caste-based reservation—put the ruling dispensation on the defensive. This undoubtedly cost them votes and seats in the election.

## Circumspect

The topic of reservations in education and government employment undoubtedly remains one of the most contentious issues within public discourse in India. It has frequently sparked large-scale protests and violence, a plethora of court cases, and multiple constitutional amendments. The burden on the judiciary, particularly the high courts and the Supreme Court, due to reservation policy matters, has been truly immense. Furthermore, the complexity and

contentiousness of the subject have often led to a cautious and circumspect approach even within the higher judiciary, particularly when pronouncing judgements. This is evident in the latest ruling from the seven-judge constitutional bench of the Supreme Court of India.

## The Case

In its latest pronouncement on August 1st, a six-to-one majority ruling by a seven-judge constitutional bench headed by Chief Justice of India D.Y. Chandrachud held that states have the power to create sub-classifications within the Scheduled Castes (SC) and Scheduled Tribes (ST) categories. This ruling aims to provide wider protections – through fixed sub-quotas – to the most disadvantaged communities within these groups. This landmark judgement overturns the 2004 apex court ruling in *E.V. Chinnaiah v. State of Andhra Pradesh*, which deemed the SC/ST list a “homogenous group” not subject to further division.

Illustrating the complexity of reservation policies, even this recent judgement features six different opinions. The Chief Justice wrote for himself and Justice Manoj Misra. Justices B.R. Gavai and Pankaj Mithal authored separate, concurring opinions. Justices Vikram Nath and S.C. Sharma wrote in agreement with the Chief Justice and Justice Gavai, respectively. Justice Bela Banerjee stood as the sole dissenter.



## A Bridge Too Far

Four of the seven judges on the bench also individually stated that the government should extend the “creamy layer principle” to Scheduled Castes and Scheduled Tribes, as was done with the Other Backward Classes (OBC) category. Their logic was that the time had come to exclude affluent individuals and families from the benefits of reservation, thus making space for the truly underprivileged within these groups. However, scrutiny of the judgement reveals that the “creamy layer” aspect is presented more as advice or suggestion to the government than a directive. This “affirmative action within affirmative action” seems, for now, to remain a bridge too far.

## Judges' views

Delving into the specifics of each judge's stance is beyond the scope of even this multi-part series. Nonetheless, I will briefly address the views of two justices: Justice Bhushan R. Gavai, the sole Dalit judge on the seven-member bench and next in line to become Chief Justice of India (only the second Dalit to hold the position, after K.G. Balakrishnan), and Justice Pankaj Mithal, whose perspective strikes at the very root of caste-based reservation.

It is beyond the scope of this piece to fully unpack Justice Gavai's entire judgement. Nonetheless, I will present a few extracts:

Justice Gavai says, “The State must evolve a policy for identifying the creamy layer, even from the Scheduled Castes and Scheduled Tribes, so as to exclude them from the benefit of affirmative action,” He asserts. “In my view, only this, and this alone, can achieve true equality as enshrined under the Constitution... The question that must be posed is whether equal treatment to unequals within the category of Scheduled Castes would advance the constitutional objective of equality, or would it thwart it? Can a child of an IAS, IPS, or Civil Service officer be equated with a child of a disadvantaged member belonging to the Scheduled Castes studying in a gram panchayat or zilla parishad school in a village?”

He further laments: “It is also widely known that disparities and social discrimination, highly prevalent in rural areas, begin to diminish as one moves to urban and metropolitan areas. I have no hesitation in holding that placing a child studying in St. Paul's High School and St. Stephen's College and a child studying in a small village in a backward and remote area of the country in the same bracket would obliterate the equality principle enshrined in the Constitution.”

While Justice Gavai is unequivocal about the need to identify and exclude creamy layers within SC/ST communities from reservation benefits, he stops short of providing a concrete way forward. He acknowledges that the criteria for SCs and STs “ought to be different” from that for OBCs but doesn't delve into the critical question of what those specific criteria should be.



**Justice Gavai says, “The State must evolve a policy for identifying the creamy layer, even from the Scheduled Castes and Scheduled Tribes, so as to exclude them from the benefit of affirmative action,” He asserts. “In my view, only this, and this alone, can achieve true equality as enshrined under the Constitution... The question that must be posed is whether equal treatment to unequals within the category of Scheduled Castes would advance the constitutional objective of equality, or would it thwart it?....”**

As for Justice Mithal, he is upfront in his assertion that the reservation policy has become a swollen balloon, and a trap that has created vested interests, demanding urgent re-evaluation. In saying so he has delivered a real punch, striking at the root of what ails the caste-based reservation system in India as prevalent today.

Describing the existing system as a “trap” that, instead of fostering genuine equality, perpetuates division and dependency, Justice Mithal is categorical in stating that only children from affluent or urbanised castes can access higher education and capitalise on reservation benefits, highlighting a persistent inequality. He also makes it abundantly clear that any reservation, if implemented, must be restricted to the first generation of the family to prevent the creation of vested interests in reservation.

To the best of my understanding, Justice Mithal’s opinion posits that caste should not be the basis for reservation. Instead, other criteria – namely, economic conditions, living standards, and vocations – should be considered.

However, considering the opinions of both Justice Gvai and Justice Mithal, a fundamental question arises in my troubled mind: “What good are judicial advice and opinions?” This is especially pertinent given the vested interests in not only expanding reservation percentages but also widening the net of castes eligible for reservation. Make no mistake, the entire issue of reservation, like Frankenstein’s monster or a runaway train, has spiralled beyond its creators’ control.

## Haunting Images

Trust me, writing about reservation sends chills down my spine. It conjures haunting images, two of which are described below:

One, Rohith Vemula: The first image that surfaces is that of 26-year-old budding scholar Rohith Vemula’s tragic suicide. He aspired to be a science writer like Carl Sagan, yet his life was cut short. “My birth is my fatal accident,” he wrote in his suicide note. Rohith died unsung.

Two, Rajeev Goswami: This name holds little meaning for young Bharatiyas today. Even those who lived through that era may have forgotten him. But on September 19, 1990, this young commerce student from Delhi’s Deshbandhu College attempted self-immolation. He survived but succumbed to complications arising from the attempt at the young age of 32, in 2004. More importantly, Goswami’s act sparked a wave of violent protests and self-immolations across the country, claiming the lives of over 100 students, according to some estimates. Historian Ram Guha places the figure closer to 200.

These youngsters died for what? They were protesting against the implementation of the recommendations of the Second Backward Classes Commission (also known as the Mandal Commission) by Prime Minister VP Singh. With a single stroke of the pen, 27 per cent of seats in government employment and educational institutions were reserved for candidates from Other Backward Classes (OBC). The Mandal Commission, headed by Bindeshwari Prasad Mandal, the former Chief Minister of Bihar, was established by Prime Minister Morarji Desai.

## The Collateral Damage

Whenever I reflect on the history, sociology, anthropology, and politics of caste-based reservation in the country, the faces of Rohith Vemula and Rajeev Goswami haunt me. Their messages are contrasting, yet both have inflicted undeniable collateral damage on the basic fabric of the nation, undermining the dreams of millions.

The central message of Rohith Vemula’s death by suicide is a sombre commentary on the state of the nation. It reveals that the true downtrodden have failed to rise above their station of birth. For meaningful change, Bharat needs a holistic reimagining of affirmative action policies.

I acknowledge that reservation has benefited many, but a significant number still remain deprived.

The central message arising from the tragic self-immolations of over 100 students is even more disastrous for the nation, primarily because political

factions of all kinds continue to compete to expand the ever-increasing reservation base and percentage.

I humbly posit that the 27 per cent reservation for OBCs was driven more by political grandstanding and one-upmanship than by any real or perceived neglect of backward castes. The implementation of the Mandal Commission report has fostered a unique brand of identity politics that threatens to tear the nation apart.

The situation in 2024 is far more volatile than it was in 1990, and the simmering discontent among youth—with fast-growing unemployment in the country—over perceived or real discrimination could ignite at any moment. If proof of my assertion is needed, one need only look east to observe what is unfolding in Bangladesh.

## Whither Bharat

From the outset, let me be clear: I am not opposed to a well-crafted, reimagined affirmative action policy that uplifts the downtrodden and the needy. I firmly believe that certain existential conditions necessitate the continuation of affirmative action for specific segments of the Indian population.

However, I must emphasise that affirmative action becomes meaningless if extended to the majority of the population, as is the current tendency across the political spectrum.

Sadly, it is the truly disadvantaged and needy—those for whom these policies were designed—who are being denied the real benefits of reservation. India today must fundamentally rethink its approach to affirmative action. We must restrict it to those in genuine need and diligently weed out the undeserving. It's also time to acknowledge that reservation is not a panacea. The real need is to address the root causes of why certain groups or individuals require affirmative action.

India needs a targeted, tailored approach. One size does not fit all.

## The Problem Definition

When granting the judicial stamp of approval to the 27 per cent reservation for OBCs, a nine-member constitutional bench of the Supreme Court of India established a golden rule: reservations in educational institutions and jobs shall not exceed 50 per cent. However, in November 2022, a three-member constitutional bench of the Supreme Court extended this limit to 60 per cent. This occurred when the court upheld the constitutional amendment granting an additional 10 per cent EWS quota to the “poorest of the poor” among forward castes.

## Where does Bharat stand today?

Since the 1992 Indra Sawhney judgement of the Supreme Court, numerous states—including Bihar and Maharashtra (most recently), Haryana, Telangana, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Rajasthan and Chhattisgarh—have passed laws exceeding the 50 per cent limit. Others are waiting in the wings. If states haven't yet succeeded in reserving 100 per cent or near 100 per cent of seats based on real or perceived reasons of backwardness or historical injustice, it is solely due to judicial intervention.

The foremost question on my mind is whether the framers of the Constitution of India envisioned Bharat as it exists today. And can this Bharat truly achieve viksit status by 2047? To answer these questions and grapple with the many others swirling in my mind, Part II will delve deeper into the history and sociology of reservation in India, examining the debates of the Constituent Assembly, constitutional provisions, and judicial pronouncements. I will also explore why everyone in the country seems unwilling to take the bull by the horns.



# How Historical Context Shaped India's Reservation System

Akhileshwar Sahay

**T**oday, the reservation system has permeated the very fabric of India. Its scope encompasses Scheduled Castes, Scheduled Tribes, Other Backward Castes, Economically Weaker Sections, and people with disabilities. Moreover, reservation extends throughout the entire value chain, encompassing education, employment, and promotion. It is also present in the Lok Sabha and Legislative Assemblies.

## A Muddled Mind

My mind is confused and muddled, with varied questions on the subject matter of the caste-based reservation system in India, as it has evolved. Some of these questions include: What are the historical, sociological, and anthropological underpinnings of the prevalent reservation system? What did the Constitutional Assembly envisage while framing the Constitution, and what did they not foresee? How have the often-conflicting judgements of even the apex court preceded and followed by a multitude of Constitutional Amendments shaped the discourse and narrative around reservation over the past 77 years?

## The Nagging Fear

In Part II of this multipart series, I try to answer some of the above fundamental questions before re-imagining a curated, futuristic affirmative action agenda for Viksit Bharat. Importantly, I also address a nagging fear in my mind: whether India – particularly as it transpires that over the course of the past 77 years, Bharat has deviated from the original vision of the framers of the Constitution, particularly in treating ‘backward class’ as synonymous with ‘backward caste’ – has strayed from its intended path. This is such a complicated topic that it raises temperatures alarmingly, and in the past has upended the nation with ghastly sights: burning trains, towering infernos, self-immolated human bodies, fasts-unto-death, and political grandstanding.

I begin with the history, sociology, anthropology, and politics of reservation – when, why, and where reservation began in India, what its motives were, and what impact it has had so far.

## Hunter Re-Hunted

Before that, it is important to discuss the Hunter Commission for two specific reasons. First, there is a popular narrative that it gave birth to the idea of reservation. Second, and more salient, had the Commission's recommendations been understood and implemented properly in India, there would have been no need for reservation in education, employment, promotion, or legislature in present-day Bharat.

Let me debunk the first myth. The establishment of the Hunter Commission, its terms of reference, and its main recommendations had nothing to do with reservation. Its principal purpose was the reform and advancement of education. The name of the Commission set up by Lord Ripon is self-explanatory: the Indian Education Commission. Sir William Hunter (a member of the Viceroy's Executive Council) headed the Commission, which had 20 other members and it popularly became known as the “Hunter Commission.”



The sole focus of the Hunter Commission was the improvement of primary and secondary education in the country. Its terms of reference included providing suggestions for primary education reforms; determining whether government educational institutions should function as usual; evaluating the standard of education provided by missionaries; and determining if private Indian educational institutions required encouragement from the government.

The Commission produced a long wish list of educational reforms. Had the Hunter Commission's recommendations regarding primary and secondary education been properly implemented and further supplemented with salutary reforms in higher education, we would be witnessing a different Bharat today.

Alas, it was not to be.

## History Revisited

The history of caste-based reservation in India is relatively recent, originating during British rule but

championed by princely states within their own territories. It began two decades apart in two such states: Kolhapur (present-day Maharashtra) in 1902 and Mysore (present-day Karnataka) in 1921. Here's a brief look at the reservation's pre-independence history:

**One, Universal Education Reforms:** The early seeds of educational reform and reservations for the downtrodden were sown by Maharashtra's social reformer, Jyotiba Phule. It's fitting then that the history of reservation also began in present-day Maharashtra. In 1902, Chhatrapati Shahu, the king of Kolhapur, introduced reservations in education for non-Brahmin and backward communities. Whether Shahu was inspired by Phule, who had died a decade earlier, or acted independently is difficult to determine.

“

**Chhatrapati Shahu emerged as a social reformer whose goal was an egalitarian, casteless society, and his chosen instrument was the universalisation of education. He offered free education to all and established numerous hostels to facilitate access. He also advocated for suitable employment for those who were educated and campaigned against untouchability. However, there is no evidence that Chhatrapati Shahu actively pursued or mandated compulsory reservations in education or employment.**

.....

Nonetheless, Chhatrapati Shahu emerged as a social reformer whose goal was an egalitarian, casteless society, and his chosen instrument was the universalisation of education. He offered free education to all and established numerous hostels to facilitate access. He also advocated for suitable employment for those who were educated and campaigned against untouchability. However, there is no evidence that Chhatrapati Shahu actively pursued or mandated compulsory reservations in education or employment. That development occurred two decades later in the Princely State of Mysore.

The central message from Shahu's Kolhapur reforms is clear: had India adopted his model, at least for the first fifty years after independence, the need for reservation might have disappeared by now.

**Two, Mysore Raja Nalvadi Krishnaraja Wadiyar – Harbinger of Caste-Based Reservation: It is**

he who holds the mantle as the first proponent of caste-based reservation. Notably, he did so under duress, succumbing to pressure from non-Brahminical groups. Their agitation forced him, on August 23, 1918, to establish a committee to implement reservations for non-Brahmins in government jobs and education.

This committee, in its report, recommended: "Within seven years, the proportion of members representing the backward communities in all departments of the state service should be gradually increased to 50 per cent, as long as they possess the prescribed qualifications."

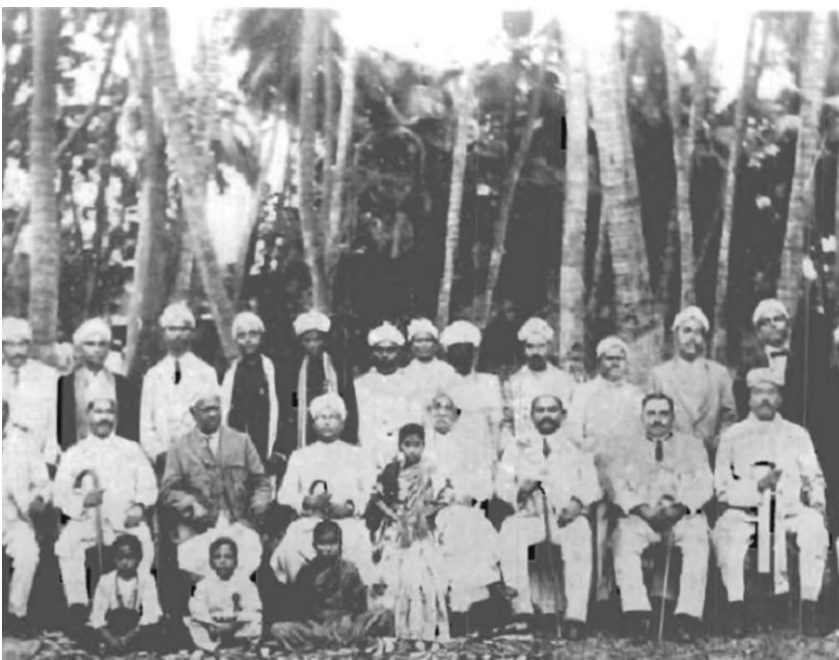
I posit that the implementation of these recommendations ultimately sparked a chain reaction that engulfed the whole nation. The mere formation of the committee led to the resignation of the then Diwan of the State of Mysore, Sir M. Visvesvaraya – the

later recipient of the Bharat Ratna – in protest.

**Three, Justice Party:** Parallel to the formation of the pressure group in the Princely State of Mysore, the Justice Party was established in 1916. Its aim was to advocate for the reservation of non-Brahmins in government jobs within the Madras Presidency. This culminated in a government order in 1921, proposing a 44 per cent reservation, which faced immediate and stiff opposition, resulting in a stay. Finally, in 1927, a revised government order implementing a 100 per cent job reservation scheme came into effect where a separate percentage of the quota was allocated to different communities.

While the state of Mysore sowed the seeds of the incendiary system of reservation, the Madras Presidency (now Tamil Nadu) arguably took it to an extreme. The fact of the matter is, given the opportunity, there's a possibility that the entire political spectrum of India would come together and enact measures similar to what the Madras Presidency did in 1927.

**Four, Round Table and the Communal Award:** While reservation in education and employment originated in the Mysore and Madras Presidency, reservation in legislature was crafted in London in 1932. This came in the form of the 'Communal Award,' proposed by British Prime Minister Ramsay MacDonald during the Round Table Conferences. The award provided separate representation





for Muslims, Sikhs, Indian Christians, Anglo-Indians, and Europeans. The Depressed Classes, corresponding to present-day Scheduled Tribes (STs) and Scheduled Castes (SCs), were assigned seats to be filled by elections within constituencies where only they could vote. However, they retained the right to vote in other constituencies as well.

**Five, Poona Pact:** The Communal Award triggered the first fast-unto-death in India concerning the reservation. The participant in this protest was none other than Mahatma Gandhi, who began his fast on 23 September 1932, while still imprisoned. This act of resistance led to the Poona Pact, an agreement forged between Gandhi and B.R. Ambedkar. This concise, nine-point document, written in quasi-legal language, outlined the manner and extent of representation for the Depressed Classes (without separate electorates) in both central and provincial legislatures.

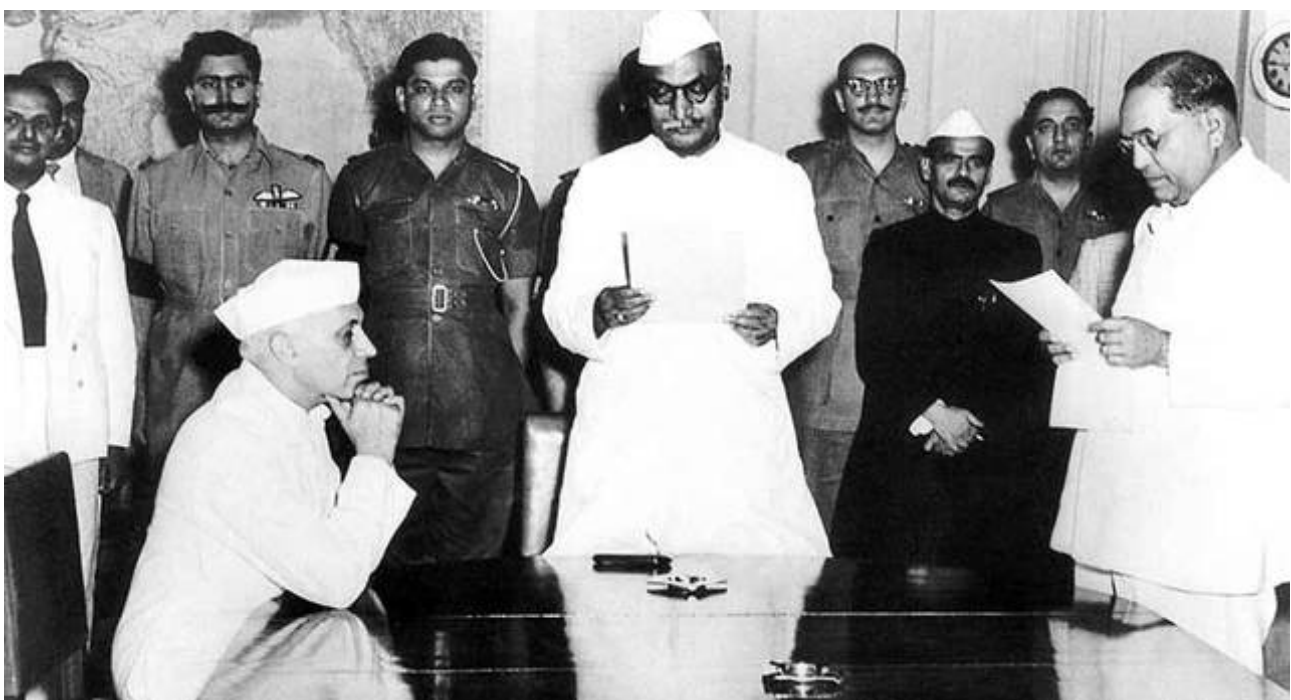
Crucially, the Poona Pact advocated for the non-discrimination of Depressed Classes in public services. It also included a provision proposing the allocation of a portion of state educational grants specifically for the Depressed Classes. The pact, signed on 26 September 1932, found resonance in the Government of India Act of 1935, where separate electorates were granted to Muslims, Sikhs, and other groups, but not to the Depressed Classes.

It is significant to note that the Poona Pact, negotiated by B.R. Ambedkar, the father of the Indian Constitution, did not propose reservation in education or jobs per se. Instead, he discussed fair representation in public services and the earmarking of a portion of state grants for the Depressed Classes.

## **The Constituent Assembly Debate: A Turning Point for Reservation**

A pivotal debate took place on November 30, 1948, concerning Draft Article 10 of the Indian Constitution, which eventually became Article 16. Given its significance, the full text of Draft Article 10, as introduced in the Constituent Assembly, is reproduced below:

“10(1) There shall be equality of opportunity for all citizens in matters of employment under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State. (3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.”





Three things become clear at this stage-

- The primary focus of Article 10 was to ensure equality of opportunity for all citizens in matters of employment under the state.
- Discrimination based on religion, race, caste, sex, descent, or place of birth was strictly prohibited in matters of employment.
- Clause 10(3) was an enabling provision, granting the government the power to reserve appointments or posts for any “class of citizens” deemed inadequately represented in state services.

Careful reading reveals that there is no explicit mention of “caste.” The wording refers only to a “class of citizens.”

However, the events of November 30, 1948, in the Constituent Assembly, irrevocably altered the future course of the Indian nation. While a detailed analysis of the debate is beyond the scope of this piece, here is the primer.

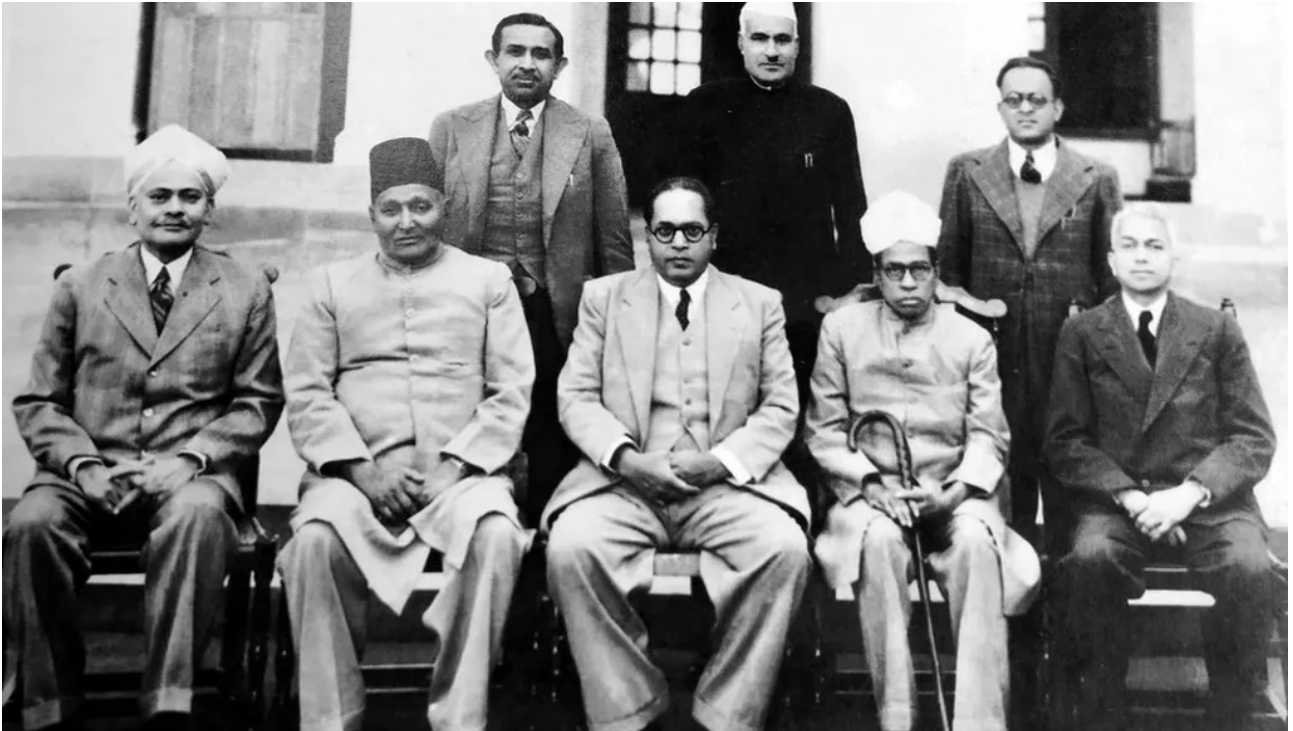
**One**, it is instructive to note that it was the Drafting Committee of the Constitution, under the Chair of Dr BR Ambedkar, that inserted the word “backward” between the words “in favour of any” and “class of

citizens”, amending Clause 10(3) to: “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any ‘backward class of citizens’ who, in the opinion of the State, are not adequately represented in the services under the State.” [Emphasis supplied in italics].

To the best of my knowledge of sociology, I humbly submit that the insertion of “backward class” in place of “backward caste” appears to be a deliberate act of the Drafting Committee.

**Two**, the debate was acrimonious, to say the least. Some found the words “backward” and “backward class” vague, difficult to define, and likely to create complications in the future. Others wanted the reservation to be limited to ten years, and still, others advocated for strictly merit-based employment.

**Three**, it is here that the reply of Dr H.C. Mookherjee, Vice President of the Constituent Assembly, needs to be read carefully. He replied: “... The clause [10(3)], which has so long been under discussion, affects particularly certain sections of our population – sections which have in the past been treated very cruelly. And although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India... I would,



therefore, very much appreciate the permission of the House so that I might give a full discussion on this particular matter to our brethren of the backward classes...?"

It is worth noting again that there is no mention of caste, though there is a mention of "backward classes".

**Four**, it is here that the debate became rather interesting, with Sri T. Channiah (Mysore) explaining the north-south distinction. I repeat his words verbatim:

"The backward classes of people, as understood in South India, are those classes of people who are educationally backwards – it is those classes that require adequate representation in the services. There are other classes of people who are socially backward; they also require adequate representation in the service."

Five, lastly, the words of wisdom from the horse's mouth, BR Ambedkar, that sealed the debate and led to the adoption of Clause 10(3). Despite the limitations of words, Ambedkar's utterances were so profound, that I quote extensively below:

"... there are three points of view ... for us to reconcile if we are to produce a workable proposition which will be accepted by all.

View 1: There shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity.

View 2: Shared by a section of the House is that, if this principle is to be operative – and it ought to be operative in their judgment to its fullest extent – there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned.

View 3: Then we have quite a massive opinion which insists that, although theoretically, it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration ... the Drafting Committee had to produce a formula which would reconcile these three points of view.



... If honourable Members will bear these facts in mind – the three principles we had to reconcile – they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of Article 10 of the Constitution.

It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration, which has now – for historical reasons – been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services.

Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public service to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be equality of opportunity.

... If honourable Members understand this position that we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as “backward” the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That, I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word ‘backward’ ...”

## The Provisions

I decide to close this part with the provisions of the Constitution of India as they were adopted on January 26, 1950. The subsequent amendments (and there have been many) will find their place in Part III. The Constitution guarantees equality before the law and equal protection of the law. In a nutshell, the goal is “equality of status and of opportunity.” And I have a caveat: Articles 14 to 18 must be understood not merely with reference to what they say but also in light of the several articles in Part IV (Directive Principles of State Policy) – “Justice,

Social, Economic and Political”. This provides the landscape for reservation in India.

Having said that, the touchstone remains Clause 16(4), which reads as follows:

“Article 16 Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

This was the state of the nation on 26 January 1950. What happened after that is a series of violent football games full of fouls and self-goals. The two Backward Class Commissions, particularly the second, muddled the field further. Conflicting judicial pronouncements did not help the case either and led to plentiful, controversial constitutional amendments.

The story from 1950 to 2024 follows in Part III. Suffice it to say, the die is cast, and the path ahead is fraught with difficulty. It’s unlikely anything will change, no matter what we do. Can Bharat find redemption? Improbable, yet possible.

# Time for India to Break Free from the Caste Trap

Akhileshwar Sahay

After tracing the pre-independence historical evolution of caste-based reservation, I now analyse its post-independence changing calculus (1947-2024) shaped by multiple statutes, executive orders, two Backward Classes Commission Reports, a plethora of judicial pronouncements, and two dozen Constitutional Amendments. I conclude this three-part series at a time when, on the 78th Independence Day, Prime Minister Narendra Modi “reiterated the firm resolve to make Bharat Viksit by 2047,” while in her message to the nation, President Droupadi Murmu affirmed the “strengthening of affirmative action as an instrument of inclusion.”

## Phase I (1947-1990) Class Not Caste

At Independence, India inherited reservations for depressed classes in public employment (Government Orders of 1943 and 1946), reservations for depressed classes in the legislature (Poona Pact), and religion-based reservations in the legislature (Communal Award). After the Constitution was promulgated, in addition to 12.5 per cent reservation for Scheduled Castes (SCs), 5 per cent reservation for Scheduled Tribes (STs) was added. In 1970, reservation was enhanced to 15 per cent (SC) and 7.5 per cent (ST), to make it proportional to the population ratio. There has been no change since then.

Furthermore, the Constitution provided reservation for SC/ST/Anglo-Indian Communities in the Lok Sabha and State Assemblies for 10 years, while it abolished religion-based reservation. Notwithstanding Article 16(4) empowering the government to provide reservation in jobs for ‘socially and educationally backward classes’ and the deafening clamour from various caste groups, the Central government did not reserve any jobs for Other Backward Classes (OBCs) until 1990. However, the saga of reservation unfolded differently in a few states, particularly south of the Vindhyas.

## South of the Vindhyas

At Independence, the reservation policies in vogue in the southern states continued even after the adoption of the Constitution. The most contentious reservations were in educational institutions and employment in Madras Presidency (Tamil Nadu), then known as the Communal G.O. and the state of Mysore (Karnataka). I will revisit these later.

## Class, Not Caste

The framers of the Constitution eschewed using the word “caste” to describe any group of citizens belonging to “backward classes”. Instead, they inserted “socially and educationally backward classes” in Article 16(4) but left it undefined. It was much later that “caste” entered the lexicon.

## In the Temples of Democracy

Before I discuss reservation in educational institutions and employment, I must address Constitution Articles 330 to 334, which provide reservation in the Lok Sabha and State Assemblies – for SC/STs (proportional to the population) and Anglo-Indians (two seats by nomination). Article 334 limited this reservation to ten years, but lawmakers, through decennial amendments to the Constitution, have extended it to 2030. It took 72 years to annul the controversial reservation for the Anglo-Indian community through the Constitution (104th Amendment) Act, 2019.

## Undefined

Framers of the Constitution inserted Article 16(4), empowering the state to provide reservation in employment for “socially and educationally backward classes of citizens,” but did not define the term “backward classes.” The concluding remarks of Ambedkar before the Constituent Assembly adopted Clause 16(4) are instructive here: “Somebody asked me: ‘What is [a] backward community?’ Well, I think anyone who reads the language of [the] draft will find that we have left it to be determined by each local Government.



A backward community is a community which is backwards in the opinion of the Government.”  
Circumspect Approach

Notwithstanding Article 16(4), which empowers the state to make provisions for “reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the state,” the Central government refrained from providing any reservation for backward classes for forty years after the adoption of the Constitution, even though states like Tamil Nadu and Karnataka continued kept pushing the reservation envelope.

## Hurried Under Duress

I submit that Article 15(4) was inserted hurriedly under duress, due to political agitation in Tamil Nadu emanating from two Supreme Court judgements that held the reservation under communal orders as ultra-vires to the Constitution. Insertion of Article 15(4) through the First Amendment was its direct result and within 16 months of the adoption of the Constitution, merely six months before the first General Election, and without the Rajya Sabha in place. Even the Lok Sabha Select Committee,

headed by Prime Minister Nehru, submitted its report on the amendment in a record six days, ignoring valid apprehensions and dissent notes from six members, including Shyama Prasad Mukherji and H.N. Kunzru.

Worse, the Select Committee modified the originally introduced Article 15(4) without proper explanation. The Select Committee controversially added a reference to Article 19(2) in Article 15(4) with the lame excuse by PM Nehru—“it was omitted in [the] original bill due to oversight”. Furthermore, the wordings of the bill were changed from “educational, economic, or social advancement of any backward class of citizens” to “advancement of any socially and educationally backward class of citizens”. Lastly, the serious apprehension of many Select Commission members that the provision may be misused by future state governments was summarily brushed aside.

By removing the words “economic advancement” from Article 15(4), Nehru, in one stroke, eliminated poverty as a “defining criterion of backwardness,” and the article, as inserted by the 1st Amendment Act, 1951, eventually became: “Nothing in this article or in Clause (2) of Article 29 shall prevent the state from making any special provision for



the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

## Bridge Too Far

The apprehensions of the Select Committee members soon materialised with the introduction of reservations for OBCs. These reservations were largely usurped by the “forward among backwards,” with the intended benefits failing to reach the truly disadvantaged.

Furthermore, Article 15(4) led to competition among states to reserve increasing numbers of seats, with the beneficiaries largely being the haves rather than the have-nots. This also resulted in a surge of cases requiring adjudication by the higher judiciary.

It is time now to discuss the first Backward Classes Commission.

## The Commission

On 29 January 1953, the President constituted the first Backward Classes Commission under Article 340. The 11-member commission, headed by Kaka Kalelkar, was tasked with investigating the conditions of socially and educationally backward classes and making recommendations regarding steps to be taken by the Union or any state to improve their conditions.

The commission identified many social and educational indicators of backward classes, such as traditional occupation; literacy; population and its spatial distribution or concentration; position in the caste hierarchy; representation in government service; traditional apathy for education; lack of educational institutions, facilities, and a defective education system; living in inaccessible areas; and unemployment among the educated. The Commission determined that backwardness was essentially a rural phenomenon. Further, it decided that “caste status” was the predominant criterion of backwardness.

## Divided We Stand

Most of the Commission’s recommendations were consensual and had far-reaching implications – pages 159-209 provide a summary of the recommendations. However, two recommendations (Paragraphs 249 and 290) proved to be highly divisive.

Paragraph 249 reserved 70 per cent of seats for OBCs in science, medical, engineering, agriculture, veterinary, and other technical and technological educational institutions of higher learning.

Paragraph 290 provided for minimum reservation in employment as follows: Class I (25 per cent), Class II (30 per cent), and Class III and IV (40 per cent).

Paragraphs 249 and 290 led to dissent notes from many members. Moreover, Kaka Kalelkar, after signing the majority report as Chairman, distanced himself from it. As it happened, Kalelkar had delegated the report writing to Mariapa, a member from Mysore state. Mariapa decided to implement the Mysore model at an all-India level.

## Head-Man Revolts

When submitting the Commission Report to the President, Kaka Kalelkar appended a 30-page plea urging the president to reject the report. He argued that the caste-based reservations and other remedies proposed in the report were against the interests of society and the country. He added: “The principle of caste should be eschewed because then alone [will it] be possible to help extremely poor and deserving members of all communities.” He further wrote, “My eyes have opened now with [a] rude shock, which [has] driven me to the conclusion that the remedies we suggested were worse than the devil we were out to combat.”

The Government of India presented the report to Parliament on 3 September 1956, along with a memorandum stating, “The caste system is the greatest hindrance to India’s progress [towards] an egalitarian society, and as such, recognising certain specified castes as backward will only serve to perpetuate existing distinctions based on caste.”

The report was subsequently shelved without any discussion in Parliament.

## The Order

On 14 August 1961, the Central government, through a government order, advised states that while they had the discretion to choose their own criteria for defining backwardness, the view of the Government of India was that it would be better to “apply economic tests than to go by caste.” It also suggested that states compile their own lists of backward classes. This order initiated an era of laissez-faire. Over the next twenty-five years, ten states set up sixteen backward class commissions with the purpose of providing reservations in education under Article 15(4) and government jobs under Article 16(4).

## South Sizzles, North Burns

While Southern states successfully pushed the boundaries of the reservation to the extreme, Northern states found it challenging to implement the OBC reservation smoothly. In Uttar Pradesh, a 15 per cent OBC quota under Ram Naresh Yadav and in Bihar, a 20 per cent OBC quota under Karpoori Thakur was met with arson, destruction of public property, and the forced closure of schools and colleges. In the North, both sides were dissatisfied: the backward classes felt it was too little, too late, while the forward classes viewed it as an assault on meritocracy.

## Part B (1978-2014): Caste Asserts, Class takes Backseat

In this politically charged situation, amidst the ascendancy of the middle-class peasantry in Uttar Pradesh and Bihar (predominantly from backward castes), Prime Minister Morarji Desai announced the formation of the five-member Second Backward Classes Commission on the floor of Parliament on 20 December 1978. The commission, headed by B.P. Mandal, consisted entirely of members from backward castes. This composition, where all members belonged to the beneficiary group, could be considered a classic example of “police, pleader, and judge” being the same, potentially impacting the commission’s recommendations.

## Devil in the Detail

The terms of reference (ToR) of the Mandal Commission mirrored those of the Kaka Kalelkar Commission, with one significant difference. The Mandal Commission, by virtue of the third point in its ToR, was specifically tasked with: “examin[ing] the desirability or otherwise of making provision for reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of any state.”

## The Report

Unsurprisingly, the main recommendations of the Mandal Commission (1980) revolved around reservations in employment and educational institutions. These included:

- **Job Reservation:** The commission, having estimated the OBC population at 52 per cent, proposed a 52 per cent reservation in all posts in “the central government, state governments, public sector undertakings (PSUs), nationalised banks, universities, affiliated colleges, and the private sector that received financial assistance from the government.” However, citing “legal constraints” (the 50 per cent ceiling on reservations established by the Supreme Court in the Balaji case), the commission settled for a 27 per cent OBC reservation, excluding states where existing reservations already exceeded 27 per cent.
- **Reservation in Promotion:** The commission also recommended a 27 per cent reservation in promotions at every level in both central and state governments.
- **Reservation in Education:** A 27 per cent reservation was proposed for all scientific and professional educational institutions under both central and state governments. States with reservation levels exceeding 27 per cent were to maintain the status quo.
- **Double Benefit:** The commission stipulated that OBC candidates recruited on merit in an open competition would not be adjusted against the 27 per cent quota.

## Issues Galore

Despite being discussed in Parliament twice, in 1982 and 1983, the Mandal Commission report was not implemented by either the Indira Gandhi or Rajiv Gandhi governments due to various inconsistencies. Some of these inconsistencies included the disproportionately large number of backward classes identified—3,743 compared to 2,399 by the Kaka Kalelkar Commission; the assertion that caste was the sole “recognisable and persistent collective” in Hindu society; and the selective use of Supreme Court judgements that suited its hypothesis, while ignoring others, including the Balaji case, which held that “caste” could not be the predominant criterion for backwardness.

However, the most controversial aspect was the commission’s estimation of the OBC population, both in terms of the base adopted and the methodology employed. In a non-empirical manner, through a process of elimination, the commission arrived at an OBC population of 52 per cent (Hindu 43.7 per cent, non-Hindu 8.40 per cent).  
North Rises

During the decade when the Mandal Commission recommendations remained unimplemented, north India witnessed the political ascendancy of the “middle-class peasantry”—the so-called backward castes—in Bihar and Uttar Pradesh. These castes became a dominant force within the Janata Dal, formed by V.P. Singh, who became Prime Minister after the 1989 Lok Sabha elections. Singh subsequently accepted the Mandal Commission recommendations through an Office Memorandum dated 13 August 1990. On that day, the Prime Minister addressed Parliament, stating: “...treating unequals as equals is [the] greatest injustice...and [the] correction of this injustice [is] very important... Let us not forget that the poor are begging for some crumbs. They have suffered for thousands of years.”

I contend that the key beneficiaries of the Mandal recommendations did not endure such suffering for 1,000 years. Those who did suffer continue to do so, with the benefits of affirmative action failing to reach them. I leave it to readers to form their own judgements.

Stalled

V.P. Singh’s 1990 order accepting the Mandal Commission recommendations frayed the social compact, creating political fissures and leading to widespread protests. Writ petitions flooded the courts, accompanied by destruction of public property and self-immolation in north, east and west India, ultimately compelling the Supreme Court to stay the implementation of the recommendations. The Chief Justice referred the case to a nine-judge Constitution Bench, in what is now famously known as the Indra Sawhney case.

I will return to the Indra Sawhney case shortly. But before that, it is time for the anatomy of a Supreme Court judgement, which I consider pathbreaking and historical.

## Anatomy of a Judgement

The case, Vasanta Kumar v. State of Karnataka, saw a five-judge bench headed by Chief Justice Y.V. Chandrachud deliver five separate judgements on 8 May 1985. While the five judges wrote five distinct judgements, the verdict could have had far-reaching consequences. This, again, was a case from Karnataka, which had reserved 68 per cent of seats in educational institutions and 66 per cent in government employment. I will briefly discuss the key points of the verdict.

First, Chief Justice Chandrachud emphatically stated that, in its current form, SC/ST reservation should continue for a maximum of 15 years (totalling 50 years since the adoption of the Constitution). After this period, reservations, he argued, should be subject to a means test (assessing economic backwardness). He believed that 50 years was sufficient time for the upper strata of the oppressed classes to overcome the harmful effects of social oppression, and that the privileged among the underprivileged should not monopolise preferential benefits indefinitely. For backward classes reservation, he proposed two conjunctive tests: backwardness comparable to SC/STs and fulfilment of the means test. He further added that the policy of reservation in employment, education, and the legislature should be reviewed every five years to rectify any distortions arising from it.





**Second**, Justice Desai, in a well-explained judgement, held that economic criteria should be the sole determinant for identifying backward classes, discarding all other criteria.

**Third**, Justice Chinnappa Reddy stated that caste, in the Indian context, was the primary indicator of social backwardness. He suggested that if, in a given case, certain members had progressed sufficiently in social, economic, and educational spheres, an upper-income ceiling could be implemented to ensure that reservations reached the truly deserving.

**Fourth**, Justice A.P. Sen opined that poverty should be the predominant and sole factor for granting special provisions under Article 15(4) or 16(4). Caste, he argued, should only be used for identifying groups comparable to SC/STs, and reservations should be for a limited period.

**Fifth**, Justice Venkataramiah believed that backward classes could be classified based on caste but emphasised two key points: the application of a means test and periodic reviews to make necessary adjustments.

Had the key messages of this judgement—backwardness comparable to SC/STs, the means test, the centrality of poverty and economic criteria, and reservation for a limited period—been heeded, it would have been a different Bharat today.

## Indra Sawhney Judgement

A 6-3 majority in the Supreme Court's nine-judge bench in 1992 upheld the 27 per cent reservation for OBCs but left many questions unanswered. Here's a summary of the historic judgement:

**First**, the judgement did not specify a timeframe for the lapse or review of reservations, even though the Mandal Commission had suggested a review after 20 years, with a provision for reservations to last one full generation.

**Second**, disagreeing with Chief Justice Chandrachud's 1985 judgement, the bench determined that OBC backwardness did not need to reach the level of SC/STs to warrant reservation.

**Third**, it excused the court from framing procedures or methods for identifying backward classes (despite neither the Constitution nor any law prescribing it). It left this responsibility to the designated authority—the Mandal Commission, in this instance.

**Fourth**, it held that caste constitutes a class if it is socially backward for the purpose of Article 16(4). The earlier, near-unanimous judicial view was that groups had to be both socially and educationally backwards, not socially or educationally backward. It agreed that even non-Hindus could have backward classes. It also held that, within OBC reservation, the “creamy layer” could and should be excluded, and economic criteria could be used for this purpose.

**Fifth**, it held that backward classes cannot be identified solely based on economic criteria in a country where, even in 2024, 80 crore Indians depend on free rations from the government. Had Nehru not omitted “economic advancement” from the original Article 15(4), such a judgement might not have emerged from the apex court.

**Sixth**, it agreed that there was no constitutional barrier to categorising backward classes into backward and more backward categories. Had targeted reservation been implemented solely for the latter category, India today might look very different.

**Seventh**, it fixed the maximum permissible reservation under Article 16(4) at 50 per cent, except in extraordinary circumstances. However, it stipulated that this 50 per cent rule should apply annually and cannot be calculated based on the total strength of a class, category, service, or cadre. This aspect of the judgement has significantly distorted the contemporary understanding of reservations.

**Eighth**, it held that Article 16(4) made no provision for reservations in promotions.

**Ninth**, the judgement stated that reservation can be implemented in a service or category only when the state is satisfied that the representation of backward classes therein is inadequate. This crucial aspect has been largely disregarded by states currently pursuing “proportional reservation” instead of “adequate reservation.”

**Tenth**, the 10 per cent reservation in favour of “other economically backward sections” not covered by existing schemes was struck down as constitutionally invalid.

**Eleventh**, the judgement deemed it unnecessary to express an opinion on the accuracy and adequacy of the Mandal Commission’s findings.

The entire edifice of this judgement rested on a few key hypotheses: that caste could be an indicator of social backwardness, that social backwardness forms the crux of Article 16(4), that social backwardness contributes to educational and economic backwardness, and that these factors are interconnected with lower-status occupations in Indian society. Finally, it asserted that the scope of Article 16(4) was far broader than that of Article 15(4).

## Phase III: 2014-2024

I start the phase III story with a tale of two states. From South of the Vindhyas

In an affidavit submitted to the Madras High Court on 3 April 2024, in the case of Periya Nambi Narasimha Gopalan v. State of Tamil Nadu, the Tamil Nadu government expressed its inability to implement the 10 per cent EWS quota in education as demanded by the petitioner. The state’s plea cited the fact that 89 per cent of its population was already covered under existing reservations: backward classes (68 per cent), scheduled castes (20 per cent), and scheduled tribes (1 per cent).

If the High Court ultimately affirms the 10 per cent EWS reservation (already upheld by the Supreme Court), only 1 per cent of Tamil Nadu’s population will remain eligible for the merit-based quota. This begs the question: how much reservation is too much? Furthermore, it raises questions about Ambedkar’s assertion during the Constituent Assembly debates that “reservation must be for [a] minority” and about Supreme Court judgements in the Balaji and Indra Sawhney cases, which limited total reservations to 50 per cent.

## From the Land of Buddha

On this Independence Day, the prime minister rightly spoke of rekindling the spirit of the world-famous Nalanda University. I have just compiled data from the latest 2023 caste survey of Bihar, and my findings are revealing. Even before Bihar increased its reservation quota to 65 per cent in 2023 (which has been stayed by the High Court and is currently pending before the Supreme Court), the representation of reserved categories (OBCs, SCs, and STs) in government services in Bihar stood at 68.51 per cent, with a comparable representation in educational institutions.

Applying the litmus test of the Balaji case, both the Bihar and Tamil Nadu reservation policies appear to be a fraud on the constitutional power conferred upon the state. However, no action can be taken against Tamil Nadu, as its 69 per cent reservation policy has been included in the Ninth Schedule, rendering it non-justiciable. If the Supreme Court sets aside Bihar's 65 per cent reservation policy, will the state also pursue a constitutional amendment? Rule Not Sacred

The 103rd Amendment, 2019, amended Articles 15(6) and 16(6) to introduce a 10 per cent reservation for the EWS category. The Supreme Court's nine-judge bench in the Indra Sawhney case had previously ruled that such a quota was ultra vires (beyond legal power or authority). However, a five-judge bench of the Supreme Court, in a 3:2 verdict on 7 November 2022, in the case of Janhit Abhiyan v. Union of India, upheld the reservation, interpreting that the 50 per cent cap on quotas was not inviolable.

## Reimagining Affirmative Action

Total government sector jobs (Centre, states, PSUs) represent a small portion of organised employment and a minuscule portion of total employment. With reservation having become a self-fulfilling prophecy, it's time to reimagine affirmative action if India truly aspires to become a 'Viksit Bharat' by 2047.

The country must address the root causes of social, educational, and economic backwardness. Contrary

to the assertions of Kaka Kalelkar and B.P. Mandal, the notion that such backwardness is solely a rural problem is a myth in contemporary India. It will be an absurdity in 2047 when 50 per cent of India's projected 160 crore population will reside in cities. Reservation will not solve the problems of a 'Viksit Bharat'; transformative reforms in education and employment will.

The time to act is now. Time is the one thing India does not have.

The issue of caste-based reservation is a ticking time bomb for the executive and legislative branches and fodder for political parties during elections. Already both the ruling dispensation and the main Opposition party – the Congress – have made it clear that they do not agree with the Supreme Court's latest judgement about the "creamy layer in SC/ST".

The judiciary however is unshackled and is not bound by such constraints that the executive and legislatures face. It is time for a full Supreme Court Constitutional Bench to frame key questions to initiate the rollback of caste-based reservation. The framers of the Constitution envisioned a "casteless, egalitarian India"; what we have is a "caste-ridden India." This generation has missed the bus; let us safeguard the future of the next generation, irrespective of caste, creed, race, or religion. We have lost 77 years waging a war of self-destruction. Let the journey towards a 'Viksit Bharat' commence today. I have nothing more to say. Period.



# Three sides of India's nuclear security regime

Rajeswari Pillai Rajagopalan, Sameer Patil, Shravishtha Ajaykumar, Prateek Tripathi



Three individuals were arrested in Bihar for the possession of a restricted nuclear material, californium, on 10 August. This was based on a tip-off from the local police. While arrests were made and the Bhabha Atomic Research Centre determined these samples were not radioactive, the incident underscores the pressing need to discuss nuclear security as a function of responding to threats in India.

India's threat perceptions are conditioned by its decades-long experience with terrorism, which has almost entirely originated in Pakistan. The fact that anti-India terrorist organisations such as Lashkar-e-Taiba (LeT), Jaish-e-Mohammed (JeM), and Hizbul Mujahideen have been nurtured by Pakistani security establishment has remained a sore point in India-Pakistan ties.

China, an all-weather ally of Pakistan, has only accentuated the complexities. It has repeatedly prevented the United Nations from taking action against terrorists based in Pakistan. The current political, economic, and social instability in our neighbouring country is an added concern, especially in the context of nuclear material safety.

Threats to India emanate not just from Pakistan but from China as well—at least historically. This can be seen in China's involvement with insurgent groups in Northeast India, specifically the National Socialist Council of Nagaland (Isak-Muivah) or NSCN-IM. Beijing has allegedly sheltered and supported insurgent leaders including Hangshi Tangkul, NSCM-IM's arms procurer.

Despite ongoing peace talks, the region's separatist movements remain unresolved, with localised violence expected to continue, particularly in Manipur and Assam. Additionally, India has concerns about Left-wing extremist groups and their propensity for violence. Although they have not yet expressed any interest in nuclear weapons, their possible collusion with other anti-India terrorist groups who may harbour nuclear inclinations cannot be ruled out.

The number of terrorist incidents has gone down since India's surgical strike following the 2019 Pulwama incident, which is a positive shift compared to a decade ago, when such attacks were commonplace. However, this calm is all the more reason to keep our guard up. The recent violence in Jammu and the October 2023 Hamas attack prove that unlikely threats can become real without warning.

India should be particularly wary of such threats playing out in the context of nuclear and radiological materials.



**The event of an outright attack on a nuclear facility is low due to the safety measures in place at nuclear power plants. However, attackers could employ advanced persistent threats to establish a long-term presence within the systems that were targeted, conducting surveillance and extracting data over extended periods**

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## India's nuclear security regime

India has a well-established nuclear security regime, which includes a comprehensive legal architecture centred around the Atomic Energy Act 1962 and independent institutions that have ensured the security of its nuclear installations. It has been reviewing and updating its nuclear policy and regulatory measures, with various amendments that account for contemporary challenges.

Institutions like the National Investigation Agency (NIA), which was established in 2008, are critical in investigating cases related to terrorism and nuclear threats. Additionally, India's online nuclear licensing process, e-Licensing of Radiation Applications (eLORA), stipulates a comprehensive review of the security and emergency plans at radiation facilities. The process ensures that these facilities are equipped with measures to prevent unauthorised access, theft, or loss of radioactive materials.

The eLORA has proven reasonably successful in ensuring safe transport and monitoring of radioactive materials, with built-in provisions for real-time reporting of any loss or theft that help mitigate security breaches immediately.

But nuclear security requires constant vigilance and adaptation, especially regarding the transport of nuclear and radioactive materials. In 2023, there were 168 illegal incidents involving such materials globally. India must improve technology to detect even small amounts of radioactive substances to eliminate such risks.

The tip-off by local police in the Bihar californium trafficking case highlights that communication between departments is crucial. Strict databasing and tracking of nuclear material is also required to ensure it cannot be illegally moved.

And nuclear security is not isolated from coastal security. Terrorists are perfectly capable of using small boats or drones to target coastal installations. The 2008 Mumbai attacks should be a reminder of how vital coastal security is for India.



Nuclear security must consider threats emerging through new-age technologies. In 2019, a cyberattack on India's largest nuclear reactor in Kudankulam showed continued vulnerabilities, highlighting the need for stronger cybersecurity measures.

The event of an outright attack on a nuclear facility is low due to the safety measures in place at nuclear power plants. However, attackers could employ advanced persistent threats to establish a long-term presence within the systems that were targeted, conducting surveillance and extracting data over extended periods.

Phishing, social engineering, and exploiting software vulnerabilities are common tactics used by non-state actors to gain initial access. Once inside, attackers can deploy malware designed to disrupt industrial control systems (ICS) or supervisory control and data acquisition (SCADA) systems that manage nuclear operations.

Cyberattacks can also add another dimension to insider threats by providing avenues for blackmailing or radicalising employees in nuclear installations. India's nuclear security regime, based on a risk-informed approach, has been quite effective in

minimising risks to a manageable level. This approach is based on recommendations by the International Atomic Energy Agency (IAEA). It includes physical protection (monitoring and securing nuclear materials), detection (identifying materials out of regulatory purview), and emergency response (regaining control in case a nuclear material poses a threat to the public).

Essentially, India has taken a multi-pronged approach consisting of strong legal measures, intelligence cooperation across atomic energy and security agencies, as well as robust counterterrorism measures to ensure that terrorists and other non-state actors do not gain access to nuclear and radiological materials. One area that it needs to focus on, however, is transparency and international policy outreach, which can be particularly useful in the context of its efforts to integrate with the global nuclear non-proliferation architecture.

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