राष्ट्रीय सहारा

Date: 01-06-16

शरणार्थी समस्या पर तवज्जो जरूरी

मनीषा सिंह

पिछले दिनों भूमध्य सागर में हुए नाव हादसों में 700 से ज्यादा लोगों की मौत की घटना का मानव इतिहास के बीते 50 साल की सबसे बड़ी मानवीय त्रासदियों में दर्ज किया जाए तो कोई हैरानी नहीं होगी। संयुक्त राष्ट्र के अनुसार प्रवासी शरणार्थियों को यूरोप ले जा रही कुछ नावों के पलट जाने और खराब मौसम का शिकार बन जाने की ये घटनाएं साबित कर रही हैं कि अफ्रीका से यूरोप पलायन कर रहे प्रवासियों को कितने कठिन हालात का सामना करना पड़ रहा है। पिछले कुछ ही अरसे में हिंसाग्रस्त पश्चिम एशिया और उत्तरी अफ्रीका से दस लाख से ज्यादा लोगों का पलायन अपेक्षाकृत शांत और स्थिर यूरोप की तरफ हुआ है- यह आंकड़ा संयुक्त राष्ट्र की रिफ्यूजी एजेंसी और इंटरनेशनल ऑर्गनाइजेशन फॉर माइग्रेशन जारी कर चुकी है। पलायन की इस आपाधापी में हजारों लोगों का समुद्री रास्ते में डूबकर मर जाना या फिर गायब हो जाना मानव इतिहास की सबसे बड़ी त्रासदी की ओर इशारा कर रहा है। पिछले साल पलायन के प्रयास में तुर्की के तट पर बहकर आए मासूम, तीन वर्षीय मृत सीरियाई बच्चे आयलान कुर्दी की तस्वीर ने पूरी दुनिया को विचलित कर दिया था, पर इसका एक परिणाम निकला कि दुनिया का ध्यान पलायन की इस समस्या की तरफ गया। इससे पहले अनगिनत बार ऐसा हुआ है, जब अवैध ढंग से यूरोपीय देश में घुसने की कोशिश करते सैकड़ों लोग कंटेनरों या ठसाठस भरी नौका के बीच रास्ते डूबने के कारण जान गंवा चुके हैं। दुनिया में शायद ही कोई व्यक्ति अपना घर-बार आसानी से छोड़ने को राजी होता है, लेकिन सीरिया, इराक, यमन, लेबनान, सूडान, लीबिया, इथोपिया, सोमालिया, नाइजीरिया और

अफगानिस्तान आदि दर्जनों देशों से ऐसा पलायन जारी है। इसके पीछे सिर्फ बेहतर जीवन की आस नहीं है, बल्कि खुद को और अपने परिवार की जिंदगी बचाने और किसी तरह जीवन को सुरक्षित बचा लेने की कोशिश है। जिन देशों से हजारों की संख्या में लोग पलायन कर रहे हैं, उन ज्यादातर देशों में गृह युद्ध की स्थितियां हैं। मजहब के नाम पर मारकाट जारी है। ग्रीस, इटली, जर्मनी, ऑस्ट्रेलिया, बुल्गारिया, साइप्रस, माल्टा आदि देशों में जैसे-तैसे पहुंचने के लिए ये लोग मानव तस्करों के शिकार भी बन रहे हैं। भारी-भरकम रकम के बदले ये तस्कर अवैध तरीकों से लोगों को कंटेनरों में भरकर या रबर की समुद्री नौकाओं में ठूंसकर रवाना करते हैं, पर रास्ते के खतरों से उन्हें बचाने का कोई जतन नहीं करते। ऐसा भी नहीं है कि जान पर खेलकर और जीवन की सारी जमापूंजी दांव पर लगाने के बाद इनकी जिंदगी सुरक्षित हो ही जाएगी। यूरोप के जिन देशों की आबादी तेजी से बढ़ रही है, वे प्रवासियों के आगमन पर खुश नहीं होंगे। ऐसे में अपनी आबादी का बढ़ता बोझ देख रहे ये देश ज्यादा लंबे समय तक प्रवासियों को अपने यहां डेरा डाले नहीं देख सकते। हालांकि जर्मनी जैसे देशों को ज्यादा दिक्कत नहीं होगी। जिन देशों में जन्मदर में गिरावट हो रही है, वहां यह डर सता रहा है कि श्रमशक्ति की कमी के चलते वे अपने आर्थिक प्रतिद्वंद्वियों के सामने ठहर नहीं पाएंगे। इसलिए सस्ते श्रम की जरूरत के मद्देनजर वे प्रवासियों के लिए दरवाजे खोल सकते हैं। जर्मनी के बाद ऐसे देशों में ग्रीस, बाल्टिक के देश, हंगरी और रोमानिया शामिल हैं। हालांकि कई अर्थशास्त्रियों का कहना है कि अधिक प्रवासियों का मतलब है सरकारी खजाने में अधिक टैक्स आना, सार्वजनिक सेवाओं स्वास्य, शिक्षा आदि का विस्तार होना। लेकिन सरकार को सार्वजनिक सेवाओं की बढ़ती हुई मांग से निपटने के लिए और ज्यादा खर्च करना पड़ेगा। ऐसे में यूरोपीय देश जल्द प्रवासियों को बाहर का रास्ता दिखाने का विकल्प चुन सकते हैं। वैसे तो इन ज्यादातर देशों का अत्यधिक ठंड मौसम एक बड़ी मुश्किल है, जिसके सामने टिकना भी चुनौती ही है, पर जिंदगी की जद्दोजहद में प्रवासियों ने फिलहाल इसकी परवाह नहीं की है। यहां एक सवाल यह भी कि खुद खाड़ी के अमीर मुल्कों ने पड़ोसी देशों से पलायन कर रहे लोगों की मदद का जज्बा क्यों नहीं दिखाया? हो सकता है कि इससे वे अपनी जनसंख्या का अनुपात बिगड़ने और संसाधनों के बंटवारे जैसी समस्या से डरे हुए हों, लेकिन उनका यह रवैया खेदजनक ही है। मानव इतिहास के बीते 50 साल की सबसे बड़ी मानवीय त्रासदी कही जा रही इस शरणार्थी समस्या पर दुनिया को पूरी गंभीरता से विचार करना होगा।

THE ECONOMIC TIMES

Date: 02-06-16

Triple talaq, polygamy sap minority rights

Some 50,000 Muslim women and men have signed a petition asking that oral, unilateral divorce of a wife by the expedient of the husband pronouncing talaq three times be outlawed, along with polygamy. These practices should go. That they go against the Quran, or that many Islamic countries have done away with them, is incidental. They must go because they violate democratic rights guaranteed by the Constitution.

In practice, the rights of Muslim women are being subverted in the name of rights guaranteed to minorities by the Constitution. In the past, the court has used the opportunity accorded by cases relating to divorce, alimony and maintenance for Muslim women to urge the government to move to a uniform civil code. Such directives have fallen on deaf ears and, on occasion, proved to be counterproductive — with the political and electoral calculations taking precedence.

The issue is not whether a religious community has the right to live by its holy laws but whether any community has the right to live by rules that subvert the rights guaranteed to every citizen in the Constitution.

The Constitution guarantees minority communities the right to freely practise and propagate their religion, own property and establish places of worship and run educational institutions. This constitutional protection draws strength from a framework of liberal democracy.

Practices that violate democratic rights weaken democracy and dilute the protection minorities derive from constitutional democracy.

It is for Parliament to enact or amend laws, but the Supreme Court determines if laws violate democratic rights guaranteed by the Constitution. The court needs to step up and say that the Muslim Personal Law (Shariat) Application Act subverts the rights guaranteed to individuals.

THE TIMES OF INDIA

Date: 02-06-16

Smritiji, Lift The Handbrake: Education reports are pointless if we can't move away from the control mindset

We all are devotees of the new. The new, we assume, will rid us of the defects of the old. All that we need to make up for our past failures in education is, therefore, a new policy.

If this assumption per se were valid, we would have had a far better track record in education. We have tried our hands at this before; even if it is over three decades since we made the last attempt. The gulf between our proposed educational goals and the means adopted continues, if anything, to widen.

The T S R Subramanian Committee has submitted its report on the new education policy to the human resources ministry. The text is not yet available to us; but some

signposts are visible at a distance. It is a welcome thing that a massive effort has been undertaken and an education policy evolved, that is hopefully wiser from our past experiences.

It is pertinent to ask in this context: Why have the previous policies failed? Are there pitfalls that the present approach needs to avoid?

Our problem never really was that we did not have good reports or policies. It is that we are ham-handed at implementation. The Kothari Commission Report on Higher Education – the 6th Education Commission Report – is a case in point. It is an outstanding document, reflecting the best of insights and theories that prevailed till then. But the Report has, by and large, been forgotten.

What we lack, primarily, is not a brilliant policy. What we lack is a national enthusiasm to educate. We are still hagridden by an exclusivist, protectionist, neurotic mindset in respect of the dissemination of knowledge. The regulated monopoly of knowledge is still, albeit subliminally, the key strategy for preserving hegemonic control and exclusion of commoners from the fruits of development.

One look at the appalling demand-supply imbalance in higher education will suffice for us to realise this. In point of fact, there is a will not to educate. There is a deep-seated anxiety that opening the portals of higher education to citizens as a whole, in an economy plagued by underdevelopment, is a shortcut to social upheavals.

Education is a cultural project. Like politics itself, it is substantially influenced by the prevailing socioeconomic conditions. Quality of education will not improve, enrolment ratio will remain recalcitrant, the sleeping intellectual energies of our country will not wake up as long as a shared national excitement about rediscovering the full potentials of “Incredible India” is not enunciated and citizens – especially teachers – enabled to internalise it as a mission in which they are of crucial importance.

As of now, a teacher who is aware of the link between classroom transactions and nation-building is a rare exception. Teachers do not see beyond the syllabus and annual examinations. So long as this remains unchanged, optimism about a new spurt in education is far-fetched.

It is only too obvious that improving the service conditions of teachers – vastly improved pay, for example – has not worked to the benefit of education. Rather, the contrary. It has promoted an indolent, consumerist attitude, especially among teachers in higher education.

The issue is one of mindset. If that remains unchanged, a new Indian Education Service cadre will only open the door of education to an inferior version of babudom. The point is not that the proposal for a new IES should not be welcome. It is that this welcome move should be fortified with terms and conditions that can ensure its beneficial implementation.

Reportedly, the Report addresses the issue of assessing institutions. The current practice of assessment by NAAC is unprofessional and regressive. Rather than promote excellence, it is custom-made to coerce all institutions into conforming to a common, mediocre mode. Often the assessors have no idea or experience of excellence in higher education. No one who cares for excellence in higher education would want to be part of this assessment and dis-creditation process.

The issue of autonomy raised by the Committee is an interesting one. A thorough study of the track-record of autonomy needs to be undertaken. Once again the point is that mere change in mode, without a radical change in mindset, will not lead us to a new heaven and a new earth.

Education needs to be autonomous. Extraneous interference cripples education. The very purpose of education is to set people free. Burdening this process with political meddling and bureaucratic controls, as is now happening even in routine things, is destructive of education. But institutions need to be ready for the opportunities and challenges of academic freedom. Are they?

The emphasis the Committee reportedly, lays on value education is welcome. The exclusive faith in knowledge, as the highway to power, is dangerous. Knowledge needs to be tempered with social purposes.

It is common sense that to go forward it is necessary not only to start the engine of your automobile afresh, but also to release the handbrake. The handbrake of this national vehicle has remained jammed these many decades. There is no sign that it has been released. This presents HRD minister Smriti Irani with a historic opportunity. If only she would lift this handbrake, and set the vehicle of human empowerment in motion, she will find a permanent niche in the educational history of this country.

The Indian EXPRESS
JOURNALISM OF COURAGE

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Haryana mayhem

Prakash Singh panel chronicles administrative breakdown during Jat stir. Course correction calls for political will.

The Prakash Singh Committee report on the administrative and policing failures during the violent Jat quota agitation in Haryana is a shocking eye-opener. It tells the story of institutional decay in the state's bureaucracy. The home secretary's abject confession before the commission that he has no powers, the top police official's blithe deposition that he was indisposed and therefore could not visit the affected areas, officials taking refuge in inaction as the best option, all confirm what

was evident during those five days of mayhem — a failure of leadership from the top downward. Singh, a former Uttar Pradesh DGP with an impeccable reputation, has put down every incident in which officials were found to be "non-performing" and has not shied away from expressing his own opinion about each of them. His report brings out the manner in which the highest echelons of bureaucracy acted with unwarranted trepidation when circumstances required firm and resolute action against rioters. It seemed that instead of controlling the spiralling violence, the state administration was more worried about how they may have to justify any tough measures in the aftermath. One of the most important observations of the report relates to how a parochial law and order machinery is designed for failure. Political interference in recruitment and postings has played havoc with the police force which has come to be dominated by the dominant caste of the state. The fallout of this was collusion with rioters, desertions and an obvious caste bias.

Date: 01-06-16

Going beyond the ambit

Arun Jaitley's remarks on judicial activism are timely. The Supreme Court is increasingly, and controversially, asserting control over the executive and legislature.

Written by T. R. Andhyarujina

Finance Minister Arun Jaitley cautioning legislators against ceding more powers to the judiciary is a timely reminder of the courts' increased intrusion into the government's actions. "Step-by-step, brick-by-brick, the edifice of India's legislature is being destroyed," he recently warned in the Rajya Sabha after the Opposition sought a court-monitored dispute redress mechanism in case of the GST.

The Supreme Court has been activist in its interpretation of certain provisions in the Constitution but it is the day-to-day judicial control and correction of the executive branches of government that set it apart from other common law countries.

This judicial activism began when access to courts was opened up to the poor, indigent and disadvantaged sections of the nation and their basic rights were enforced through what has now become the Public Interest Litigation (PIL). The judiciary, led by the Supreme Court, became an active participant in the dispensing of social justice and increased its relevance to the nation in a manner not envisaged by the makers of the Constitution.

This activism, widely welcomed in India and acclaimed abroad, has, however, metamorphosed into a correctional jurisdiction that the superior courts exercise over governments and public authorities. As a result, over the years, the judiciary in India has acquired the supremacy over the legislature and the executive, despite not having, in Hamilton's famous words, the power of the purse or the sword.

The PIL began haltingly, with little idea of its potential, when the Supreme Court in 1980 entertained complaints by social activists drawing its attention to the conditions of certain sections of society or institutions deprived of their basic constitutional rights. This easy approach by disregarding the conventional requirement of the applicant's locus standi and the non-adversarial character of the courts' intervention, came to be widely appreciated and even imitated by other common law jurisdictions. Article 38 of the Constitution of South Africa adopted the relaxed locus standi rules for anyone acting in public interest to enforce the Bill of Rights.

When the Emergency came to an end in 1977, the Supreme Court, as if to refurbish its image in a new political climate, became more responsive to socio-economic changes in legislation. For one thing, the right to property was deleted from the chapter of Fundamental Rights in the Constitution (44th Amendment Act, 1978), leaving no scope for invalidation of property laws by the courts. Thereafter, by a process of reinterpretation of two fundamental rights — the Right to Personal

Liberty in Article 21 and the Right to Equality before Law in Article 14 — the court gave the judiciary an enlarged power of review to protect the basic rights of citizens.

The Supreme Court, in Maneka Gandhi (a minor case of the government not granting a passport in 1978) and other cases, overruled Gopalan v State of Madras (1950). It now held that "law" in Article 21 required more than mere laws made by a legislature and that the procedure referred to had to conform to the requirement of reasonableness in terms of fundamental rights. The "procedure established by law" of Article 21 now meant that the law or action by the government must be just, reasonable and fair. The apex court also adopted a revisionist interpretation of "life" in Article 21, by enlarging its dimensions from not being deprived of life without authority of law but as an affirmative guarantee for the dignity of the individual and the worth of the human life. This interpretation enabled the court to assume jurisdiction in almost all matters for the purpose of ensuring good human existence. Simultaneously, in Maneka Gandhi and subsequent cases, the apex court, in a new interpretation of the Right to Equality before law in Article 14, imposed the condition of reasonableness on every law and action of the government.

The PIL was originally conceived as a jurisdiction firmly grounded on the enforcement of basic human rights of the disadvantaged unable to reach courts on their own. The courts' function was to supplement the other government departments in improving the social and economic conditions of the marginalised sections. It did not assume the functions of supervising and correcting the omissions and actions of government or public bodies; it, rather, joined them in a cooperative effort to achieve constitutional goals.

Over the years, however, the unexceptional social action dimension of the PIL has been diluted, converted, and eclipsed by another type of "public cause litigation". In this type of legal process, the court's intervention is not sought for enforcing the rights of the disadvantaged but to simply correct the actions or omissions of public officials, government departments or other public bodies.

Taking advantage of the relaxed locus standi requirements for petitioners, the court was moved to correct the discretionary powers of ministers to allot petrol pump sites, shops sites and stalls. It laid down rules for the conduct of important public institutions and authorities. It gave directions to the Election Commission to order candidates to disclose their criminal convictions, their assets and liabilities at the time of elections, called for quotas in medical and engineering colleges and issued orders to safeguard women from sexual harassment at workplaces. It ordered control over automobile emissions, mandatory wearing of seat belts and helmets, action plans to control and prevent the menace of monkeys in cities and towns, among others.

The Supreme Court also monitors the conduct of investigating and prosecution agencies, a process which began in Vineet Narain vs CBI (1998), in which the court entertained a petition to get the CBI to investigate high-ranking officials suspected of corruption. The court directed the government to set up a Central Vigilance Commission (CVC), with statutory status, and gave orders for the selection of its commissioner.

In 1993, the court even issued orders on the conduct of a military operation in Hazratbal, Kashmir, where the army had, as a matter of strategy, restricted food supplies to hostages. The court ruled that food of 1,200 calorific value should be supplied to hostages. It prompted an army general to write, “For the first time in history, a court of law was asked to pronounce judgment on the conduct of an ongoing military operation. Its verdict materially affected the course of operation”.

Even proceedings of legislatures have not been out of its ambit. In the Jharkhand assembly case, the speaker was directed to conduct proceedings as per a prescribed agenda and record them for the court. These orders were made in spite of Article 212, which forbids courts from inquiring into any proceedings of the legislature.

In several PILs concerning the environment and the welfare of those disadvantaged, the court has directed policy changes in administration. In the 2G spectrum case, a two-judge bench differed from the policies of the expert body, the Telecom

Regulatory Authority of India, and of the government, which had issued spectrum licenses at a fixed price and on a first come, first served basis. The court invalidated 122 spectrum licences allotted by the government and held that all public resources and assets can only be disposed off through a public auction. This far-reaching policy direction led the president to make a reference to the court for its advice, under Article 143 of the Constitution, as to whether such a direction was correct and was to be followed. A larger bench of the court made a correction: The policy of auctioning was not for every public resource.

The public in India has now become accustomed to seeing the Supreme Court correcting government action in trifling matters which should not be its concern. The apex court has original jurisdiction only to entertain petitions for breach of fundamental rights under Article 32 of the Constitution, and therefore these micro-managing exercises are hung on the tenuous jurisdictional peg of Article 32 taken with Article 21 or Article 14. In reality, no legal issues are involved in such petitions; the court is only moved for better governance and administration in such cases, which does not involve the exercise of any judicial function. Jaitley's pungent statement, therefore, should revive the debate on the overreaching jurisdiction of the Supreme Court.