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## **Break the cycle of mediocrity**

### ***India is getting serious on physical infrastructure, time to get serious on higher education***

Two global rankings of the institutions of higher education are closely followed every year by education watchers: The Times Higher Education World University Ranking and FT Top 100 Business Schools. Each year the rankings stand testimony to the mediocrity of the institutions of higher education in India. Knowledge is power. Human history is not just a wonderful tale of war, conquest and glory; it is also a story of the evolution of knowledge, science, technology, engineering and their use for human development. Today the land of Aryabhata, Charaka, Ramanujam, Raman and others, has nothing that can remotely compare with Nalanda and Vikramshila Universities in their heyday. It is time we examine what has gone wrong in our quest to be the global centre for learning, knowledge and wisdom.

Not surprisingly, the pecking order of development in the world is paralleled by the pecking order of universities and engineering colleges. USA, UK, Germany, China, Japan, Australia, Singapore are countries whose economy manifest the inextricable interface of science, technology, industrialization and development. On the other hand, India is at the tail end of knowledge based economic development or much worse, at risk of being left out altogether in the next spiral of development. India has made strong, aggressive and purposeful strides in infrastructure, but it must be equally serious about education. If India wants to compete globally, education holds the key. A critical criterion on the basis of which the Vice Chancellors of Central Universities, Directors of IIMs and IITs are appointed is their academic achievement—publications, research guidance and teaching. It is a stupefying leap of faith to believe that academic achievements will lead someone to provide academic leadership and that, and more importantly, it will crown them with administrative acumen and managerial capabilities.

Hierarchical structure, centralized decision making, jumbo sized senates and bureaucratic processes with their emphasis on control, command and compliance are some of the greatest enemies of higher education. It is time each university and institute is mandated to establish committees to periodically examine, evaluate and establish, if necessary, the vision, purpose, structure, processes and strategy of the institution and their alignment with each other and the changing context.

Can one imagine a system where administrative mandarins sitting in the UGC and AICTE decide on what courses to study, the curriculum and the syllabus, the mode of delivery and the number of contact hours and also conduct admission tests, delivering any results? There is an in-built rigidity in the system, where flexibility and adaptability are demons to be exorcised. Syllabi do not change not only because the process is tedious, but also because policy makers are far removed from developments in the field and their emergent connections with other disciplines. It is this lack of relevance that has stigmatised students as no longer employable and marketable. India today yearns for knowledge, its creation, dissemination and application for resolving its problems and assisting it in the march of its development. UGC and AICTE have stymied all efforts in that

direction. The role, responsibilities, scope, vision and mission of UGC and AICTE themselves need to be freshly examined. A committee should be established to look into the detail of how these institutions are functioning.

Today around 11 IIMs have no full time Directors. IIM Ranchi, for one, is being governed by an Acting Director from IIM Kolkata for the last three years and that too without any Board of Directors. The institute has virtually collapsed and in terms of administration and governance is the finest example of the erosion of the IIM brand. Then, there has been the issue of location of the new IIMs — Kashipur, Sirmaur, Gaya, Udaipur etc. Just as it is impossible for a medical college to be good unless and until it has a hospital attached to it, it is difficult to imagine how there can be good management institute far removed from the context of management—industry and the corporate world. It befuddles us what makes decision makers blind to the obvious.

To lead a university, IIT or an IIM as a Vice Chancellor or a Director, MHRD has recently circulated an application form which is scholastic in nature. But one should think of criteria that combine highly impactful and acclaimed research and intense connectedness with corporate, academic and regulatory bodies with some outstanding administrative achievement such as creating and developing new academic programmes, shepherding coveted international accreditation or driving the corporate connections, placements and brand positioning of the institute.

We believe that it is the need of the hour that MHRD constitutes an advisory committee/ council of 7 to 9 members representing different domains of the academic world. In order to ensure continuity, this advisory body of domain experts should have a tenure of at least five years. This committee should be like Niti Aayog and be tasked with the job of advising the government and the Prime Minister on the strategy and action plan for education. As a start, this committee should request the government to create a peer review system which will examine, every five years, the institutions in their domain on their purpose, structures, systems and processes and achievements in the arena of knowledge creation, dissemination and application.

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## हालात बदलने की नई आस

हसीना फारस को अच्छी तरह मालूम है कि कठमुल्लों से कैसे लड़ा जाए। उनका महाराष्ट्र के प्रमुख शहर कोल्हापुर का मेयर बनना उन घोर प्रतिक्रियावादी मौलवियों और कठमुल्लों के मुंह पर करारा तमाचा है, जो औरतों को समाज में बराबरी के अधिकार देने-दिलवाने का विरोध करते रहते हैं। आज हसीना पूरे देश की मुस्लिम महिलाओं के लिए प्रेरणा की स्रोत बनकर उभरी हैं। दरअसल, कोल्हापुर के कठमुल्ला हसीना और अन्य मुस्लिम महिलाओं के नगर निगम चुनाव लड़ने का विरोध कर रहे थे। इनका कहना था कि महिलाओं का चुनाव मैदान में आना इस्लाम सम्मत नहीं है। पता नहीं कहां से उन्होंने किसी महिला के चुनाव लड़ने को मजहब से जोड़ दिया। इसके बावजूद हसीना चुनाव लड़ीं और विजयी भी रहीं। मौलवियों ने फतवा सुना दिया था। इसके बावजूद 19 मुस्लिम औरतें चुनाव मैदान में उतरीं। पांच को कामयाबी भी मिली। इनका चुनाव लड़ना और जीतना कहीं न कहीं इस बात को मजबूती देता है कि अब मुस्लिम महिलाएं अंधकार के युग में रहने वाले मुल्ला-मौलवियों के फतवों को खारिज करने लगी हैं। अब वह मुख्यधारा में शामिल होने को तत्पर हैं।

हसीना फारस कट्टरता और संकीर्णता का सामना करते हुए मेयर चुनी गईं। हालांकि उन्हें पर्दे के पीछे जिंदगी जीने के लिए धकेला जा रहा था। उन्हें यह सब कुछ नामंजूर था। अब हसीना से यह उम्मीद की जानी चाहिए कि वह देश भर की मुस्लिम महिलाओं को गुलामी की जंजीरों से मुक्ति दिलाने के लिए आगे आएंगी। उनकी असली लड़ाई तो अब शुरू हुई है। तीन तलाक और हलाला जैसे गंभीर मसलों से देश की करोड़ों मुसलमान औरतों का जीना कठिन होता जा रहा है। हसीना फारस सरीखी औरतों को इन असहाय महिलाओं को मुक्ति का रास्ता दिखाना होगा। इस लिहाज से हसीना जैसी महिलाओं पर बड़ी जिम्मेदारी आ गई है। हसीना फारस भी मानती हैं कि जमाना बदल रहा है, जिससे मुस्लिम महिलाएं दूर नहीं रह सकतीं। दिक्कत यह हो रही कि मुस्लिम समाज अपने को बदलने के लिए कतई तैयार नहीं है। वहां पर बहस के लिए कोई गुंजाइश नहीं है।

कोई बदलाव के रास्ते पर चलने की चेष्टा करता है तो उसकी टांग खींच ली जाती है या तोड़ दी जाती है। इस लिहाज से हसीना फारस की उपलब्धि महत्वपूर्ण है। अब यह जाहिर हो चुका है कि तीन तलाक मामले में मुस्लिम समाज के रूढ़िवादी तत्व कुछ सुनने को तैयार नहीं हैं। वे पूरे मुस्लिम समाज पर हावी हैं। वे मुस्लिम महिलाओं की जिंदगी में मानो उम्मीद की किरण देखना ही नहीं चाहते। उनके खौफ से कोई बोलता तक नहीं। इनकी ख्वाहिश है कि मुस्लिम औरतें अपने सीलन भरे घरों में ही दफन हो जाएं। वक्त का यह तकाजा है कि तरक्की पसंद मुसलमान अब हसीना फारस जैसी औरतों का साथ दें और अपने हकों के लिए सड़कों पर उतरें। इन्हें अपने समाज की प्रतिगामी ताकतों को धूल में मिलाना ही होगा। चुनौती कठिन है, पर नामुमकिन नहीं है। ऐसा भी नहीं है कि मुस्लिम समाज में अपने हकों के लिए लड़ने वाली औरतों की कमी है।

अब लेखिका नूर जहीर का ही उदाहरण लें। तीन तलाक और हलाला पर नूर जहीर लगातार कट्टरपंथियों से दो-दो हाथ कर रही हैं। उन्हें अपने तर्कों से पानी पिला रही हैं। इन बहस में नूर जहीर ने एक नया आयाम जोड़ा है। उनकी मांग है कि मुस्लिम महिलाओं को भी उतनी ही आसानी से तलाक देने का अधिकार मिले जितनी आसानी से मर्दों को मिलता है। औरत भी तीन बार तलाक कह सके और जब चाहे मर्द को छोड़ सके। बेशक, अन्य समाजों की तुलना में मुस्लिम औरतें आर्थिक रूप से कहीं कम स्वावलंबी हैं। ये आर्थिक रूप से पूरी तरह पुरुषों पर ही निर्भर हैं। शायद इसी वजह से अंधेरे और घुटन में सांसें ले रही हैं। तालीम की रोशनी मुस्लिम लड़कियों को सही तरह से नहीं मिल पाती। अगर किसी समाज की हालत और प्रगति के बारे में जानना हो तो यह देखें कि उस समाज में औरतें किस स्थिति में हैं।

जिस जंग को तलवार, बंदूक और तोप से नहीं जीत सकते उसे आप तालीम से जीत सकते हैं। भारत की कुल आबादी में लगभग 17.22 करोड़ मुस्लिम हैं। जाहिर है, इनमें औरतें आधी हैं। शिक्षा, आर्थिक सामाजिक और पारिवारिक स्थिति के मामले में मुस्लिम महिलाएं बदतर हालात में हैं। सरकारी आंकड़े बताते हैं कि भारत की लगभग 60 फीसद मुस्लिम महिलाएं शिक्षा से वंचित हैं। मात्र 10 फीसद महिलाएं उच्च शिक्षा ग्रहण कर पाती हैं, जबकि शेष 30 फीसद महिलाएं दसवीं कक्षा तक अथवा उससे भी कम तक की शिक्षा पाकर घर की बहू बनने के लिए मजबूर होती हैं। शिक्षा की तरह आत्मनिर्भरता के मामले में भी मुस्लिम महिलाओं की हालत चिंताजनक है। सञ्चर समिति की रिपोर्ट के मुताबिक हिंदू महिलाओं के 46.1 फीसद के मुकाबले केवल 25.2 फीसद मुस्लिम महिलाएं ही रोजगार के क्षेत्र में हैं।

यानी लगभग 75 प्रतिशत मुस्लिम महिलाओं को पैसे के लिए अपने शौहरों पर ही निर्भर रहना पड़ता है, जिसके चलते वे अपनी मर्जी से अपने ऊपर एक भी पैसा खर्च करने के काबिल नहीं हैं। यह सभी आंकड़े न सिर्फ चौंकाने वाले हैं, बल्कि बहुत ही डरावने हैं, और मुस्लिम समाज के लिए एक चेतावनी भी हैं। यह सच है कि मुस्लिम महिलाओं की बदहाली के लिए धार्मिक कारण काफी हद तक जिम्मेदार हैं। दरअसल धर्म की मनमर्जी व्याख्या से इनकी दुर्दशा हो रही है, जिसमें पर्दा जैसी रुकावट और रूढ़िवादी सोच शामिल है। अब भी बड़ी तादाद में मुस्लिम परिवारों में लड़कियों को क्यों पढ़ाए वाली मानसिकता है? ससुराल में जाकर चूल्हा-चौका ही तो संभालना है? और यह भी कि लड़की अगर ज्यादा पढ़ लिख जाएगी तो शादी के लिए रिश्ते नहीं आएंगे, इस सोच के चलते कई बार लड़कियां खुद तालीम हासिल करने से पीछे हट जाती

हैं या हटा दी जाती हैं। इन तमाम अवरोधों के बावजूद भारत में अनेक मुस्लिम महिलाओं ने बेहद सराहनीय काम किए हैं। रजिया सुल्तान भारत की पहली मुस्लिम महिला शासक थीं। अवध के नवाब वाजिद अली शाह की पत्नी बेगम हजरत महल ने हिंदू-मुस्लिम एकता को मजबूत करने के लिए उत्कृष्ट कार्य किए थे। अब हमारे समाने हसीना फारस हैं। फिर मुस्लिम समाज में औरत की यह बदतर हालत क्यों हैं? तमाम निराशा और कठिनाइयों के बावजूद लगता है कि हालात सुधरेंगे। मुस्लिम महिलाएं अपने हकों के लिए घरों से बाहर निकलेंगी। आखिर, उनके सामने हसीना फारस जैसी कर्मठ और जुझारू महिलाओं के उदाहरण जो हैं।

**[लेखक आरके सिन्हा, राज्य सभा के सदस्य हैं]**

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## एनजीओ की निगरानी

सुप्रीम कोर्ट ने इस पर उचित ही नाराजगी जताई कि आखिर गैर सरकारी संगठनों एवं समितियों के कोष और उनके उपयोग की निगरानी के लिए कोई नियामक व्यवस्था क्यों नहीं है? किस्म-किस्म के गैर सरकारी संगठन और समितियां कहां से कितना धन हासिल करती हैं और उसे किस तरह खर्च करती हैं, यह सब सुनिश्चित करने वाली व्यवस्था का निर्माण तो बहुत पहले कर दिया जाना चाहिए था। यह समझना कठिन है कि इस तरह के संगठनों और समितियों के कामकाज की समीक्षा की जरूरत महसूस करने के बाद भी केंद्र सरकार ने उनके लिए कोई नियामक संस्था बनाने की दिशा में कदम क्यों नहीं बढ़ाए? वह इससे अनभिज्ञ नहीं हो सकती कि किस तरह एनजीओ के तौर पर सक्रिय तमाम संगठन सामान्य नियम-कानूनों का भी पालन नहीं कर रहे हैं? हाल में केंद्रीय गृहमंत्रालय ने करीब बीस हजार गैर सरकारी संगठनों के विदेश से पैसा लेने के लाइसेंस को इसलिए रद्द किया था, क्योंकि वे विदेशी चंदा नियमन कानून के विभिन्न प्रावधानों का उल्लंघन कर रहे थे। क्या इस बारे में सुनिश्चित हुआ जा सकता है कि जो गैर सरकारी संगठन विदेश से पैसा नहीं ले रहे वे अपना काम सही तरह कर रहे हैं? यह सवाल इसलिए, क्योंकि सुप्रीम कोर्ट ने यह पाया कि ऐसे संगठनों के खातों का कोई ऑडिट नहीं होता। यह तो एक तरह की अंधेरगद्दी ही है कि देश में करीब तीस लाख गैर सरकारी संगठन हैं, लेकिन इनमें से मुश्किल से तीन लाख ही अपने आय-व्यय का विवरण देते हैं।

निःसंदेह सवाल केवल गैर सरकारी संगठनों की आय और व्यय का ही नहीं, इसका भी है कि वे समाज सेवा के नाम पर कुछ और तो नहीं करते? यह ठीक है कि गैर सरकारी संगठनों के खिलाफ शिकायतें मिलने पर उनकी जांच होती है, लेकिन आम तौर पर जब गड़बड़ी करने वाले ऐसे संगठनों के खिलाफ शासन के स्तर पर कोई कार्रवाई की जाती है तो वे यह प्रचारित करने लगते हैं कि उनके विरुद्ध बदले की कार्रवाई हो रही है या फिर उन्हें सरकारी नीतियों की खामियां उजागर करने के कारण परेशान किया जा रहा है। इन दिनों ऐसा ही हो रहा है। कई ऐसे गैर सरकारी संगठन तो इसी आरोप के सहारे अदालतों की शरण में हैं।

इनमें कुछ वे भी हैं जिन्होंने अनुचित तरीके से पैसा जुटाया या फिर पैसे को अनुचित तरीके से खर्च किया। पिछले कुछ समय में गैर सरकारी संगठनों और समितियों की संख्या जिस तेजी से बढ़ी है उससे यह धारणा गहराई है कि समाज सेवा ने एक धंधे का रूप ले लिया है। सबसे गंभीर बात यह है कि कई गैर सरकारी संगठन पर्यावरण और मानवाधिकारों की रक्षा के बहाने विकास विरोधी एजेंडे को आगे बढ़ते दिखे हैं। कुछ गैर सरकारी संगठनों के बारे में यह धारणा भी है कि वे परोक्ष रूप से धर्मांतरण को बढ़ावा देने का काम करते हैं। आम तौर पर संदिग्ध किस्म के गैर सरकारी संगठनों के खिलाफ कोई ठोस कार्रवाई इसलिए नहीं हो पाती, क्योंकि उनके संदर्भ में स्पष्ट नियम-कानूनों का अभाव है। रही-सही कसर निगरानी के अभाव ने पूरी कर दी है।

Date: 11-01-17

## Central To The Market

***Long-term investments in social sector are essential for growth, political stability.***



The so-called social sector is not just for soft hearts; it's a hard fact that it can create much-needed jobs and boost economic growth. Financial markets and macro economists often look upon health, education and the wider social sector as a side show. They believe these services are a desirable "public good" but not central to markets, growth or even a stable economy. We believe this is wrong. Look carefully. Health and education play a vital role in the economy in more ways than you can imagine. Let's start with what's going to hit us as 2017 begins – the central government budget. India made great strides in 2015 when it channeled the extra fiscal resources made available by falling oil prices towards higher capital spending

(roads, rails and bank recapitalisation). These kinds of things do much more for growth than so-called current spending, such as subsidies, because the benefits last for years. And indeed, through the year, government investment added a record two percentage points to India's GDP growth. But why stop there?

Health and education spending can be even more helpful than capital or current. Unfortunately, we only feel the benefits after the first five years (between the sixth and eighth year), well beyond the tenure of the government of the day. Not much political benefit there. It is therefore not surprising to see that the quantity and quality of India's social sector spending is below average for both emerging markets and the world.

This needs to change. As India's new Fiscal Responsibility and Budget Management committee submits its reports and hopefully reiterates the importance of lower government debt and deficits, bureaucrats will have to focus on the expenditure that is best for growth, for that alone can bring down debt and deficits sustainably over time. Moreover, health and education are the last bastions the central bank has to conquer if it is going to meet its newly legislated 4 per cent medium-term inflation target. Our estimates suggest that even if all other components of the inflation basket (food, fuel, household goods, etc) fall sharply, it will not be possible to keep overall inflation sustainably at 4 per cent if health and education prices remain high.

If you look at health and education inflation carefully, you will see it has a life of its own. It is affected far more by so-called supply side bottlenecks than other sectors. Doing something about those will make a big difference to how many rate cuts will be possible and whether the central bank's inflation targeting can work. But doing something about the social sector has an impact on more than just effective spending and inflation. India needs to create 80 million jobs over the next 10 years, at a time when global demand is likely to remain weak and domestic demand will have to work overtime to compensate. However, prospects at home are not encouraging. Over the last decade or so, labour has been departing agriculture (as it has in similar transitions elsewhere), but is only going to construction and unregistered (that is, informal sector) manufacturing, which are not markedly better jobs. Services, where labour tends to be most productive, are not generating the additional jobs the country needs.

If business-as-usual continues, India will be staring at 24 million missing jobs over the next decade. Not a pleasant picture for political stability. Is there any reason to be optimistic? We've looked at the new sector, e-commerce, and while it looks promising, at best we believe it can close only half the jobs gap. Only those sectors that drive domestic demand, such as health and education, can comfortably fill the other half. And the personnel gap there is glaring. Focusing on raising the skills that the health and education sectors require will go a long way in generating quality jobs. In short, social sector spending is not just desirable for its own sake, but is also central to economic growth and political stability.

What should the government do? It should allow decentralised spending decisions by states and focus on the quality of learning. And in the health sector, it should change the focus from tertiary to primary care and spend more there. In India's season of bold policy moves, the budget on February 1 is a good chance to look beyond just the current five years and undertake steps that bring many benefits over equally many years.

If we don't, we will all eventually have to foot the bill.

***Pranjul Bhandari*** *The writer is chief India economist, HSBC*

**Date: 11-01-17**

## Stuck between 4 and 3

***The SC verdict on the RPA is about reasonable restrictions on free speech. But appeals to identity by persecuted groups should not be seen as a violation of the principles of secularism***



At the heart of the case relating to the interpretation of Section 123 of the Representation of People's Act, 1951 (Act), is the issue of free speech. Section 123 does impose restrictions on speech and hence it is necessary to understand the limits of those restrictions and the purpose of the law. The Act is intended to ensure free and fair elections in a democracy where universal adult franchise is guaranteed by Articles 325 and 326 of the Indian Constitution. Universal adult franchise itself is based on our citizenship and hence, when we vote, we vote as citizens.

The Act has several provisions to guarantee free and fair elections, giving a constitutional status to the Election Commission of India. Certain practices were categorised as "corrupt practices" under Section 123 of the Act, one of them being appeal by candidates for votes on the grounds of religion, race, caste, community or language or the use of, or appeal to religious symbols. A corrupt practice, if proved, would entail to a declaration of the election of such candidate to be void under Section 100 of the Act.

The Constitution Bench delivered the judgment in the much-awaited Hindutva case on January 2 through a majority of 4:3. On the face of it, the entire judgment turns on a semantic issue, namely what is the meaning to be given to the expression "his religion" used in Section 123. Does it mean that only an appeal by the candidate himself or herself based on the religion of the candidate is a corrupt practice? Or would an appeal made by a third party, say, a party leader, at an election rally based on any religion also amount to a corrupt practice? The issue was seminal since the Supreme Court itself, in previous judgments, has held, for example, that only appeals based on "his religion" — that is the religion of the candidate, including the rival candidate — would amount to corrupt practice (Prabhoo case: 1996 (1) SCC 130). The absurd consequence of such an

interpretation would be that the candidate could not make such an appeal but a party leader could at his election rally. Apart from the absurd consequence that would follow, the critical issue was this would leave political parties free to canvass for a theocratic state through their manifestos and election speeches. Using a purposive interpretation, the majority held that the expression “his religion” refers to the religion of “(i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector” and this interpretation is in consonance with the purpose of the Act that is “maintaining the purity of the electoral process and not vitiating it”. Former chief justice, T.S. Thakur, went a step further and justified the purposive interpretation in the secular framework of India that acts as a limitation on free political speech when he noted that in interpreting Section 123 (3) of the Act “which one of the two interpretations ought to be preferred by the Court keeping in view the constitutional ethos and the secular character of our polity.”

Does this prevent social mobilisation as suggested by the minority judgment in the following words: “Social mobilisation is an integral element of the search for authority and legitimacy. Hence, it would be far-fetched to assume that in legislating to adopt Section 123(3), Parliament intended to obliterate or outlaw references to religion, caste, race, community or language in the hurly burly of the great festival of democracy.” The majority judgment nowhere suggested that all references in electoral speeches to religion or caste etc would amount to a “corrupt practice”. In fact, during the arguments it was specifically suggested that if the appeal was intended to correct a historical or constitutional wrong or was intended to preserve and protect fundamental entitlements under the Indian Constitution, it would not be a corrupt practice. This is what the precedents of the Supreme Court itself have indicated.

The problems arose when the SC held that an electoral speech by a party leader stating that elections were being fought in the name of the Hindu religion and Hindutva was not a corrupt practice as consent of the electoral candidate to the speeches of the party leader was not proved (Manohar Joshi case: 1996 1 SCC 169). The court stated that “what is relevant is the candidate and not the plank of the political party”, “requisite consent of the returned candidate or his election agent which is a constituent part of the corrupt practices under sub-sections (3) and (3A) of Section 123, and an ingredient of the ground under Section 100(1)(b) has nowhere been pleaded in the election petition either in connection with the allegations based on the speeches” and “a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope. However, despicable be such a statement, it cannot be said to amount to an appeal for votes on the ground of his religion”. This is what gave rise to two grave concerns, can a political party in its manifesto depart from the secular foundations of the Constitution and claim to set up a Hindu, Muslim or Christian state? It is this question that Justice Thakur attempted to answer when he insists that the secular foundations of the Constitution are not negotiable, whether by a candidate or by a third party.

While Pratap Bhanu Mehta (‘High principle, dubious law’, IE, January 4) mentions that respect for precedent gives legitimacy to our judges, he forgets that the minority judgment does not refer to a host of precedents which were cited to point out legitimate references to religion and caste and illegitimate references in political speeches. It is painful to see the use of the language of the oppressed and historically discriminated to justify illegitimate references to religion, caste, etc.

Speech that is protected and will not be a corrupt practice is the one anchored in the goalpost of the Indian Constitution, that is secularism. India is a secular state, no matter what understanding one may have of what is secular — at the very least, it is not theocratic. During arguments, precedents illustrative of permissible and impermissible references to religion, caste etc., were brought to the notice of the SC. An attempt was made to distinguish between permissible speech and impermissible speech and it was submitted before the court that: “Not all reference to religion, race, caste, or language in an election speech is corrupt practice. A reference to a group discriminated on the ground of religion, race, caste, or language coupled with the promises to remove the discrimination and correct an imbalance will not be an appeal on the ground of religion since the thrust of the speech will be to promote secularism.”

Hence, an appeal on the grounds of religion, race, caste, or language can legitimately be made on behalf of a discriminated group whether based on religion, race, caste, language or sex, coupled with the promise to reverse the discrimination. Hence, when the appeal is contextualised in a rights framework, in particular fundamental rights, and for the reversal and redressal of constitutional wrongs it would not fall under the meaning of corrupt practice within S.123(3). Similarly, an appeal to protect and promote the rights of a persecuted group would not be an appeal on the grounds of religion, race or caste.

Neither the majority nor the minority made any effort to deal with this issue or record these submissions. Indeed, it appears that the majority and the minority were not speaking to each other and who knows, this could be because of the limitation of time and the fact that the CJI was due to retire on January 3, the judgment being delivered one day before his retirement in haste by all the judges. Neither made an effort to convince the other of their point of view. If the case was seen for what it was, one about free speech, both the minority and majority would have been compelled to address the legitimate limits of free speech for indeed, the Constitution does impose limits that have consequences for the secular fabric of the country.

***The writer is former additional solicitor general of India. She was an intervener in the case on behalf of Teesta Setalvad and others***

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**Date: 11-01-17**

## **Jung 2.0**

***Bedi has some good ideas about governance. She undermines them by painting government as adversary, herself as saviour.***

Lieutenant governor of Puducherry, Kiran Bedi, has told this newspaper that she does not plan to run her office “as a post-office”. Pointing to the powers the Constitution has bestowed on the office of the LG, Bedi also said she may choose to overlook the legislature if the situation is compelling and will have a say in the state budget. The LG, according to the Constitution, is the administrator of the Union Territory and she governs as representative of the President. Bedi thinks Puducherry, a UT, needs to be administered by her even if it has a legislative assembly, a council of ministers and a chief minister. She has cited Puducherry’s debt burden, the “imbalance” in the allocations of funds to rural and urban areas and so on to justify her intervention in governance.

But Bedi’s activism — some of her ideas on civic amenities are compelling — begs the question: Why must she make Raj Bhavan seem an active power centre? To say, as she has, that she “may or may not” consult the legislature shows a contempt for the Constitutional red lines between an Assembly and a Raj Bhavan. Surely, it makes no sense to have a legislature and a council of ministers if these are to be overruled by a hyper-active LG. If Bedi is to run the administration — she has designed an executive rule for herself and has ignored the chief minister’s plea that ministers not be bypassed to communicate directly with bureaucrats, especially through WhatsApp groups — the council of ministers will be reduced to a ceremonial institution feeding on public funds with no administrative role. This certainly could not be the role the Constitution envisaged for the legislature, even in a UT. Bedi’s approach, eerily similar to that former LG of Delhi, Najeeb Jung, took against the AAP government causing acrimony, is tantamount to overriding the public mandate and upsetting the balance of powers that the Constitution envisages between the LG and the legislature. Bedi’s concern for governance in Puducherry is understandable but she ought to restrict her role to that of an advisor to the elected government. Her capabilities and enthusiasm will be better appreciated if they are directed to guide the administration than to appropriate the role of the chief minister and his council of ministers. Propriety and custom insist that the LG allows primacy in administration to the elected government.

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**Date: 11-01-17**

## Mind the gender gap



During the 2014 national and State elections, for the first time women’s safety and empowerment were topics of debate, marking a significant shift in how gender concerns are viewed by the political class as well as by voters in India. In the two years since, policy focus and public scrutiny on persistent gender inequality has grown exponentially. In 2015, 194 member states, including India, adopted the Sustainable Development Goals. Gender equality is one of the 17 goals to “transform our world”. This year, India ratified the Paris Agreement. The direct link between empowering women and alleviating poverty, increasing productivity, and combating

climate change is well-recognised. However, the lack of targeted resources is often stated to be the biggest reason behind the sluggish progress in furthering the gender agenda. Therefore, it is important that India’s budget priorities reflect its commitment to invest in women and girls.

Last year, the World Economic Forum’s annual Global Gender Gap Report ranked India 87 in terms of gender equality in economy, education, health, and political representation. Women’s declining labour participation, under-representation in Parliament, skewed child sex ratio, and prevalent gender-based violence are recognised challenges. To bridge these gaps, India formally adopted Gender Responsive Budgeting (GRB) in 2005. The rationale behind GRB is that policy outcomes are not as gender-neutral as commonly believed, and can reinforce or exacerbate existing hierarchies. Hence, gender budgeting initiatives aim to integrate critical gender concerns into fiscal policies and administration to address disparities.

Every annual budget since 2005 has included a statement that lists out two parts. There is Part A, which reflects ‘Women Specific Schemes’, namely, those which have 100 per cent allocation for women, and Part B, which reflects ‘Pro Women Schemes’, namely, where at least 30 per cent of the allocation is for women. Over the years, India has stood out for its implementation of gender budgeting, and with the Ministry of Finance (MoF) playing the central role, it has managed to successfully institutionalise the concept at both the national and State levels (16 States have embraced the exercise). Studies substantiate the positive link between GRB and improved indicators for women. For instance, a recent International Monetary Fund study found that States that employ GRB also show better female to male school enrolment ratios. Further, it was observed that GRB also has a positive impact on infrastructure spending.

### ***Decentralisation of funding***

Despite the successes, better implementation and planning are needed to ensure that these policies percolate right down to the last woman in the most remote parts of the country. In recent years, allocations have either remained stagnant or have been on the decline. For instance, Budget 2016-17 was widely considered to be a mixed bag for women. While the Ministry of Women and Child Development and National Commission for Women saw nominal increases, the scheme meant for implementing the Domestic Violence Act did not receive any allocation. Further, there was a decline in the number of ministries and departments that fall under GRB. The budget also initiated the decentralisation of funding in GRB, thus shifting the onus for budgeting and implementation from the Central Ministry to State counterparts. While this did empower the States to come up

with women-specific policies as per their respective challenges, the obvious downside was the risk that States could choose to not prioritise gender in their budgeting. In this way, the intent of universalising the process, so that it equally benefits women in all States, was lost in the pragmatism of the move.

For it to be truly effective, GRB must be viewed as an essential tool to tackle societal inequality that hinders progress instead of a symbolic exercise for pleasing the emerging women constituency. So far, GRB has focussed on identifying schemes that are exclusively dedicated to women. While this focus is imperative, it has restricted benefits without the incorporation of a gender lens across all welfare schemes. Sectors such as energy, urban development, food security, water supply and sanitation continue to operate in silos, despite having causal interrelationships with women’s empowerment. Policies carried out by these sectors do have a different impact on men and women. Therefore, moving forward, every budget presents the opportunity to mainstream gender in the policy environment, and demonstrate the commitment to include and enable women’s inclusion in India’s growth story. Equally, women’s potential in enabling development, instead of being passive beneficiaries of it, must be recognised in these processes. Commendably, the MoF organises pre-budget consultations. It must be ensured that women are given adequate representation and opportunities to voice their different experiences on such platforms.

Gender budgeting alone is not sufficient to tackle deep-rooted gender disparities. However, policies can be more effective if budgeting takes a broader, gendered approach which includes planning targeted interventions, getting the right policy push with the right budget allocation, and monitoring and evaluation mechanisms to ensure implementation. Moreover, policies should also be flexible to change based on feedback from the intended recipients as their exclusion from planning and execution processes is often the reason behind the failure of well-intentioned policies. It would also help if the Central government could, through an incentive mechanism, encourage State governments to take up GBR as a priority in their budget layouts. As the government gears up to present the Union budget in February, it will hopefully keep current realities and feedback in mind. While some issues can be debatable, the need to urgently address gender inequality is not.

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**Date: 11-01-17**

## Stemming the moral rot within

***It is time that attitudes changed and the law asserted that all women have an inviolable right to space and untrammelled dignities***

On December 31, 2016, the streets of Bengaluru became one of the most dangerous places in the country for women of all ages. On New Year’s Day, photographs emerged of terrified women there clinging to police officers as mobs surged around them, and reports described the brazen spree of mass sexual assaults that occurred overnight.



On the same evening, in another part of Bengaluru, an unrelated violent attack on a woman walking through a dark alley was captured in a spine-chilling, two-minute CCTV video. The two sets of visuals from Bengaluru that night were mirror images of shameful events that occurred elsewhere in the world, including the “taharrush” (collective harassment) attacks that have, since 2005, blighted the epochal political

events in Tahrir Square, in Cairo, Egypt, and the 2015 New Year's Eve attacks in Cologne, Germany, among others. Yet, as countless women would confirm across India, where, paradoxically the female essence is apotheosised as god, and mother, sister, and daughter are regarded as sacred and pure in the pantheon of religiosity, mass molestations run parallel to brutal everyday acts of leering, catcalling, verbal abuse, threatening behaviour, groping, and violent sexual acts across the spectrum. It is a fact that the freak show of sexual perversion in Bengaluru on New Year's Eve could have happened just about anywhere in the country, in any nook or cranny into which the grotesque ghoul of Indian masculinity finds its way.

### ***Learned behaviour for men***

What is wrong with men in general, and Indian men in particular, that they have lived comfortably for this long in a moral vacuum, in a world where the schizophrenic divergence between their proclaimed conservative mores and their repressed, distorted sexual impulse does not produce an evolutionary response towards a more civilised ethos? In part, the answer is that in India, masculinity and the progression — some would justifiably call it descent — from boyhood to manhood has never been governed by taught principles or enlightening examples in the majority of cases. Machismo, the objectification of women, and that deranged ability to regard some women with pious fidelity and others with unbridled, disrespectful lust are learned behaviours for most Indian men, whose fathers, grandfathers and higher forefathers have all carried on in the same vein. However, the notion that 586 million citizens out of a population of 1.2 billion can be subject to daily threats of attack and humiliation must be anathema even to consequentialist political leadership of the sort that the country has now, and proactive policy attention must focus on practical solutions that can genuinely impact the ground realities.

Given the sheer weight of India's patriarchy, and the historic-psychic inertia of its two-faced conservatism, creative thinking is needed to encourage the emergence of a new breed of more gender-sensitive men who may be capable of teaching themselves, fathers to sons and one generation after the other, to respect women not only in the privacy of their family settings but also in wider society and in public places. This new, imagined cohort of men will have to contend with the misogynistic forces of globalisation, including everything from the numbing effects of pornography, which has surged into the country since the globalisation project of India took hold, to the dehumanising impact of the trafficking of women for prostitution. In this regard, Indian men would, however, be no more disadvantaged in their prospects for becoming more humane than their counterparts across the open global order.

A useful tool in curbing runaway sexism and sexual violence could be a much greater degree of advocacy for gender sensitivity by the government, starting with gender education from the primary school level, through the years of high school and university learning. Yet the mission to secure the safety and dignity of women in India cannot wait on such a grand, softly-softly type of project. There is an urgent need for the legal system to deal with sexual violence with an iron fist. The magnitude of the problems that abound in this domain are daunting. In the aftermath of the 2012 gang rape case in New Delhi, which was one of those rare occasions that seemed to focus the minds of the political leadership on practical legal solutions, Section 354 of the Indian Penal Code was revamped to give it more teeth and make prosecutions more expedient and, hopefully, effective.

Yes, fast-tracking of legal cases of extreme sexual violence and mandating harsher punishments can help, but surely more is needed to address the horrifyingly commonplace sexual assaults that women and girls face in so many everyday situations, from the walk down the street to the grocery shop, to the celebration of New Year's Eve in public to that all-too-familiar tragedy of a young girl who spends a nightmarish afternoon in the home of a relatively unknown older male relative, to be scarred for life by what he did to her. In this context, it is the overall interpretation of the statutes by law enforcement officials that need to be more sensitive. Specifically, police attitudes in dealing with victims of sexual violence need to be forced into a more sensitive mode through aggressive monitoring and carrot-and-stick incentivisation, if India is to become even marginally more secure for all women and girls. If not, then ever more crimes against women will go unreported or under-reported and male impunity will rise even higher.

## ***Changing primitive notions***

In terms of broader social attitudes, the preoccupation with the anachronistic notion of “outraging the modesty” of a woman needs to go. Why is being “modest” a precondition for getting the protection of the law from sexual assault? Doesn’t every woman, regardless of her attire, her attitude or her locational and physical presence, deserve rock-solid insulation from any and all such assaults?

Directly related to this colonial-era legal anachronism is the morally indefensible and logically flawed puritanism of blaming women who wear “Western attire” for “inviting” sexual assault, as indeed at least two political leaders insinuated in the aftermath of the New Year’s Eve incidents in Bengaluru. When all of these patriarchal notions have been unceremoniously shoved into the dustbin of history, when retribution for sexual assaults is swift and just, and when boys learn from their fathers that all women have an inviolable right to space and untrammelled dignity, then alone will the creeping moral rot within India be arrested and the country become egalitarian.

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## **सहभागिता होगी जरूरी**

हाल ही में 8 और 9 जनवरी को बेंगलुरु में 14वां प्रवासी भारतीय दिवस सम्मेलन आयोजित किया गया। यह अब तक का सबसे बड़ा प्रवासी सम्मेलन था, जिसमें छह हजार प्रवासी भारतीयों (एनआरआई) ने शिरकत की। सम्मेलन में देश के विकास में प्रवासी भारतीयों से सहयोग की नई चमकीली संभावनाएं दिखाई दीं और प्रवासियों के माध्यम से यह बात उभरकर सामने आई कि प्रवासी भारतीय नए भारत के निर्माण में आर्थिक सहभागी बनेंगे। प्रधानमंत्री नरेन्द्र मोदी ने प्रवासी भारतीय दिवस समारोह में प्रवासी भारतीयों का अभिनंदन करते हुए प्रवासी भारतीयों को भारत की महान पूंजी की संज्ञा दी। प्रधानमंत्री ने 200 देशों में रह रहे करीब 3.12 करोड़ प्रवासी भारतीयों से देश की आर्थिक-सामाजिक तस्वीर को बदलने की अपील की।

उन्होंने कहा कि प्रवासी भारतीयों ने नई ऊंचाइयों को पाने के लिए तमाम देशों में संघर्ष किया है और अबसरो को खंगाला है। साथ ही भारत को नई पहचान दी है। अब समय बदल गया है, भारत नई शक्ति के साथ उठ रहा है और यही कारण है यह समय भारत के लिए ब्रेन ड्रेन को ब्रेन गेन में बदलने का है। उन्होंने कहा कि हम पासपोर्ट का रंग नहीं खून का रिश्ता देखते हैं। उन्होंने कहा कि प्रवासी भारतीयों की तरफ से वर्ष 2016 में होने वाला इन्वेस्टमेंट करीब 69 अरब डॉलर पहुंच गया है। यह एक अमूल्य योगदान है। उन्होंने कहा कि उनके लिए एफडीआई का मतलब सिर्फ फॉरेन डायरेक्टर इन्वेस्टमेंट नहीं है, बल्कि फ्रूट डेवलप इंडिया है। सम्मेलन में मोदी ने प्रवासी भारतीयों की उत्साहपूर्ण मौजूदगी में उनके सपनों का समृद्ध और शक्तिशाली भारत बनाने का संकल्प व्यक्त करने के साथ प्रवासी भारतीयों से देश के आर्थिक और सामाजिक विकास के लिए अपनी सहभागिता सुनिश्चित करने का आह्वान किया। मोदी ने यह भी कहा कि विज्ञान व तकनीकी विभाग संयुक्त शोध सेवाएं शुरू करने जा रहा है, जिससे प्रवासी भारतीय वैज्ञानिक और टेक्नोक्रेट भारत के शोध और विकास में भागीदार बन सकेंगे। विदेशों में

रोजगार चाहने वाले भारतीय युवाओं के लिए सरकार जल्द एक प्रवासी कौशल विकास योजना शुरू करेगी। गौरतलब है कि प्रवासी भारतीयों को एक साझा मंच देने और उन्हें देश से जोड़ने के लिए 2003 से जनवरी माह में प्रवासी भारतीय दिवस मनाया जाता है। इस मौके पर देश के उद्यमी, कारोबारी, राज्य सरकारों और केंद्र सरकार द्वारा दुनिया के कोने-कोने से आए भारतवंशियों को देश के लिए लुभाने और देश के प्रति स्नेह भाव पैदा करने का प्रयास किया जाता है।

14वें प्रवासी सम्मेलन में भाग लेने वाले प्रवासियों का आकर्षण इसलिए बढ़ा हुआ था, क्योंकि प्रधानमंत्री मोदी ने पिछले ढाई साल में प्रवासियों में उत्साह व देश प्रेम पैदा किया है। अपने प्रभावपूर्ण भाषण से प्रवासियों को देश से जोड़ने का प्रयास किया है। विदेशों में विभिन्न सभाओं में एक ओर उन्होंने देश में पूंजी की जरूरत के लिहाज से प्रवासियों की भूमिका को महत्वपूर्ण बताया था। वहीं दूसरी ओर उन्होंने प्रवासियों की सुविधाओं के लिए अभूतपूर्व घोषणाएं भी की। स्थिति यह है कि उन्होंने जो घोषणाएं की, उन्हें सरकार ने देखते-ही-देखते अमलीजामा भी पहना दिया। निश्चित रूप से केंद्र सरकार देश के साथ-साथ पूरी दुनिया से उच्च शिक्षा प्राप्त कुशल पेशेवरों और प्रतिभाओं को अपने साथ जोड़ने की डगर पर आगे बढ़ रही है। इसके लिए केंद्र सरकार ने एक सितम्बर से 30 सितम्बर, 2016 तक की अवधि तक पहले चरण में 100 आवेदकों के चयन के लिए ऑनलाइन पेशकश की थी। इस पेशकश के मद्देनजर सौ गुना से अधिक विदेशी आवेदकों ने अनुबंध आधार पर तीन साल के लिए देश के विकास में अपना योगदान देने के लिए आवेदन किया है।

आवेदकों में अमेरिका के प्रसिद्ध कोलंबिया, कॉनेल और येल जैसे विविद्यालयों के प्रोफेसर्स, ऐप्पल, गूगल, फेसबुक सहित अन्य प्रमुख नियंत्रण कंपनियों में काम करने वाले पेशेवर और साइंटिस्ट भी शामिल हैं। उल्लेखनीय है कि कुछ समय पहले अमेरिका के ड्यूक विविद्यालय, कैलिफोर्निया विविद्यालय और हार्वर्ड विविद्यालय के सहयोग से कॉफमैन फाउंडेशन द्वारा किए गए शोध अध्ययन में कहा गया है कि चूंकि भारत का आर्थिक परिदृश्य अनुकूल है अतः अमेरिका और अन्य विकसित देशों से भारतीय प्रतिभाएं भारत की ओर तेजी से लौट सकती हैं। यदि हम चाहते हैं कि प्रवासी भारतीय भारत की ओर विदेशी मुद्रा के प्रवाह में भारी वृद्धि करें और भारत के विकास के पूर्ण सहभागी बनें तो हमें प्रवासियों के प्रति सांस्कृतिक सहयोग और स्नेह बढ़ाना होगा। वस्तुतः दुनिया के सारे प्रवासी भारतीय बहुत धनी नहीं हैं। अधिकांश देशों में इनकी आर्थिक हालत बहुत अच्छी नहीं है। खासतौर से विभिन्न खाड़ी देशों में लाखों कुशल-अकुशल भारतीय श्रमिक इस बात से त्रस्त हैं कि वहां पर इन्हें न्यूनतम वेतन और जीवन के लिए जरूरी उपयुक्त सुविधाएं नहीं मिल पा रही हैं। जिस तरह चीन प्रवासी चीनियों के हितों की रक्षा करता है, हमें उसी तरह भारतीय प्रवासियों को हितों की रक्षा के लिए आगे आना चाहिए।

हमें उनके आर्थिक-सामाजिक मुद्दे मजबूती से उठाना चाहिए। जब हम खुलकर प्रवासियों की मदद करते हुए दिखाई देंगे तो फिर निश्चित रूप से दुनिया के अधिकांश भारतीय प्रवासियों का भारत के प्रति लगाव और बढ़ेगा और उनके कदम भारत में निवेश करने के लिए तेजी से आगे बढ़ेंगे। आशा करें कि आने वाले समय में भारत को विकसित देश बनाने में प्रवासियों की भूमिका महत्वपूर्ण होगी। जिस तरह कोई तीन दशक पहले चीन में जब प्रवासी चीनियों ने सारी दुनिया से कमाई हुई अपनी दौलत चीन में लगाकर चीन की तकदीर हमेशा के लिए बदल डाली, उसी प्रकार से भारत की तकदीर बदलने में प्रवासी भारतीयों द्वारा और अधिक कारगर सहयोग किया जाएगा। हम आशा करें कि प्रवासी भारतीय दुनिया के कोने-कोने में अपने ज्ञान और कौशल का परचम फहराते हुए विदेशों से डॉलर, यूरो और अन्य बहुमूल्य विदेशी मुद्राओं का ढेर स्वदेश भेजकर जहां एक ओर भारत को बढ़ती हुई विदेशी पूंज की जरूरत के लिए मदद करेंगे, वहीं दूसरी ओर प्रवासी भारतीय अपने ज्ञान व कौशल के सहयोग से भारतीय अर्थव्यवस्था और भारतीय समाज को चमकाते हुए भी दिखाई देंगे।

**जयंतीलाल भंडारी**