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How to tackle runaway crime

Talwars' trial paints grim picture of a broken criminal justice system in desperate need of reform

Baijayant 'Jay' Panda

India's broken criminal justice system was exemplified by the long running trial of a dentist couple, the Talwars, whom the Allahabad high court recently acquitted of murdering their teenage daughter nearly a decade ago. From investigations with contradictory conclusions, to incompetence in preserving basic evidence, to crucial documents not being filed in court, and staggering delays, this case had it all.Add to that the high court's scathing observation that the lower court judge who had earlier found the Talwars guilty was "unmindful of the basic tenets of law", and a grim picture emerges of the state of affairs. It is even grimmer for the millions of other cases that do not dominate the news.Occasionally, when horrific cases like the Nirbhaya gang rape and murder straddle the news cycle for more than the customary day or two, public outrage compels governments to fast track the investigation and prosecution. But there is a long overdue, and now desperate, need for systemic reforms.

Statistics corroborate the widespread belief that our fight against crime is inadequate. Even after adjusting for increasing population, India's crime rate has been rising over the years. The decade from 2005 to 2015 saw a 28% increase in complaints of cognisable offences, from 450 per lakh population to 580.Using similar measures for the resources needed, the vast shortage of police, judges, etc is stark. Against a UN norm of 222 police personnel per lakh of population, India's officially sanctioned strength is a paltry 181, and the actual strength is an abysmal 137. Similarly, all the judges in the country now add up to just 18 per million population, despite a three-decades old Law Commission recommendation to increase it to 50, which itself is at the low end of the ratio in developed countries.

There are also enormous shortfalls in the number of police chowkis, weapons, forensic science laboratories (FSLs) and the like. Consider just forensics. Nearly a million items sent for forensic examination in India, representing a shocking 38% of all such cases, remain unattended for a year or more. The effect of that on investigations of lakhs of crimes is nothing short of cruel.But the problem is not just of numbers, it is equally about processes and structures. Three crucial areas for reform are interminable court delays, ineffective prosecutions, and outdated police service rules.Many chief justices of India have pleaded for courts to enforce a maximum of three adjournments per case, but in vain.

Delays have become hardwired in the culture of our judiciary. The Vajpayee government tried a go-around by launching fast track courts with expedited procedures. Those succeeded, with a resolution rate far higher than existing courts.But when the Union government discontinued funding in 2011, few states picked up the tab to keep them going. Thankfully, following the 14th Finance Commission's recommendations, Delhi has now again allocated more than Rs 4,100 crore to set up 1,800 new fast track courts. These funds are available till 2020, but the onus remains on state governments to avail of them.Similarly, though the Supreme Court's recent decision to make public the deliberations of its secretive "collegium" system of appointing judges is welcome, it nevertheless disappointingly remains the world's only self-appointing judiciary.

The SC's 2015 judgment overruling the National Judicial Appointments Commission (NJAC), passed unanimously by Parliament, was a huge setback to the process of streamlining and introducing checks and balances in judicial appointments. Though modelled on the UK's excellent Judicial Appointments Commission, where judges have a lesser say in appointing judges, the Indian version provided far more powers to the judiciary.In fact, the NJAC composition had effectively given a veto to the SC in appointing judges, while making the process more transparent and broad-based. (For more on the NJAC, please see an earlier edition of this column: 'Collegium has run its course'.)

Regarding prosecutions, India's conviction rate of 47% – compared to more than 85% in developed democracies like France, Japan and the US – exposes the gross inadequacies of our system. I have advocated, in a private members bill in the Lok Sabha, for an independent directorate of prosecutions in every state. These would report directly to the state home department, with stipulated objective criteria on caseloads and pendency. Furthermore, to reward capability rather than political connections, appointments of prosecutors from district level upwards should have checks and balances, with concurrence by the judiciary.Finally, much has been written about insulating the police from political interference, with recommendations such as fixed tenures to prevent frequent transfers. Many of those ideas are excellent and must be implemented, but beyond a point they will be contrary to the spirit of democracy if the police are not accountable to the elected polity. Equal emphasis must be put, as in other modern democracies, on devolving some routine police functions to district and even panchayat level. States like Assam and Kerala have launched community policing initiatives that bear watching.The first requirement of a republic must be to maintain law and order and provide relatively swift justice to its citizenry. Our polity has often put off important reforms because they do not pay off in time for the next election cycle. But the need to overhaul our criminal justice system has reached a volatile tipping point that must no longer be ignored.

नईदुनिया

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चुनाव सुधार पर ठोस पहल का वक्त

ए. सूर्यप्रकाश,(लेखक प्रसार भारती के अध्यक्ष तथा वरिष्ठ स्तंभकार हैं)

सुप्रीम कोर्ट के समक्ष इस वक्त सांसदों और विधायकों के मामलों से जुड़ी दो जनहित याचिकाएं लंबित हैं। इन याचिकाओं में मांग की गई है कि चुनाव लड़ते समय दायर किए जाने वाले हलफनामे में दी गई जानकारियां यदि गलत पाई जाएं तो चुनाव बाद उनके खिलाफ कड़ी कार्रवाई की जाए। इनमें उनके द्वारा घोषित संपत्ति और देनदारी के अलावा आपराधिक ब्योरे जैसे पहलुओं को शामिल किया गया है। साथ ही आय से अधिक संपत्ति के पैमाने को भी जोड़ा गया है। इनमें से एक मामला 'लोक प्रहरी नाम की गैरसरकारी संस्था यानी एनजीओ ने दायर किया है। इसमें याचिकाकर्ता की दलील है कि शपथपत्र दाखिल करते समय केवल संपत्ति की घोषणा ही काफी नहीं है। उसका कहना है कि प्रत्येक प्रत्याशी के लिए आमदनी के स्रोत का उल्लेख भी अनिवार्य बनाया जाए, क्योंकि दो चुनावों के दौरान तमाम सांसदों व विधायकों की संपत्ति में कई गुने का इजाफा देखने को मिलता है। उसने अदालत को बताया कि 2014 में लोकसभा के लिए पुन: चुने गए 320 सांसदों की संपत्ति में 100 प्रतिशत तक की बढ़ोतरी हुई। इनमें से भी छह सांसदों की संपत्ति में तो 1000 फीसदी की हैरतअंगेज उछाल दिखी और 26 सांसदों की संपत्ति 500 प्रतिशत तक बढ़ी। इस दौरान अन्य तमाम विधायकों की धन-संपदा में अप्रत्याशित उछाल देखने को मिली। इन सांसदों/विधायकों की संपत्ति की जांच करने के बाद आयकर अधिकारियों ने अदालत को बताया कि सात सांसदों और 98 विधायकों की संपत्ति उनके चुनावी हलफनामे में उल्लिखित आमदनी से अधिक पाई गई। शीर्ष अदालत ने केंद्र सरकार को निर्देश दिया कि सांसदों और विधायकों से जुड़े आय से अधिक संपत्ति के मामलों की त्वरित सुनवाई के लिए विशेष अदालतें गठित की जानी चाहिए।

दूसरे मामले में याचिकाकर्ता ने कहा कि भले ही शीर्ष अदालत ने ये सुनिश्चित कराया हो कि शपथपत्र में प्रत्याशी संपत्ति व देनदारी, शैक्षणिक योग्यता और आपराधिक ब्योरे का उल्लेख करें, लेकिन उसमें किए गए दावों की सत्यता की पुष्टि के लिए कोई तंत्र नहीं है। साथ ही गलत हलफनामे दाखिल करने वालों को सजा देने के लिए भी कोई व्यवस्था नहीं है। याचिकाकर्ता ने कहा कि यह चुनावी प्रक्रिया को पारदर्शी बनाने की शीर्ष अदालत की कोशिशों का ही नतीजा है कि प्रत्याशियों के लिए तमाम तरह की जानकारियां देना अनिवार्य हो गया है, लेकिन उन जानकारियों को परखने की कोई उचित व्यवस्था नहीं है। इसकी सख्त जरूरत है। इस पर अदालत ने केंद्र सरकार और चुनाव आयोग से जवाब मांगा है। इन दो मामलों में आने वाले फैसले ही तय करेंगे कि हम चुने हुए जनप्रतिनिधियों को कानूनों के प्रति किस हद तक जवाबदेह बना पाएंगे? यह ध्यान रहे कि नेताओं को सभी मामलों में पारदर्शी बनाना किसी भी सूरत में आसान नहीं रहा है। इस मामले में सबसे पहले विधि आयोग ने कदम उठाए थे जब चुनाव सुधारों पर 1999 में पेश अपनी 170 पन्नों की रिपोर्ट में उसने कहा था कि जनप्रतिनिधित्व अधिनियम, 1951 में निश्चित रूप से संशोधन किया जाए और उसमें संपत्ति, देनदारी और आपराधिक ब्योरे से जुड़ा हलफनामा दायर करना अनिवार्य बनाया जाए। हालांकि निर्वाचित जनप्रतिनिधि इस विचार पर कुंडली मारे बैठे रहे, क्योंकि चुनावी प्रक्रिया में पारदर्शिता और जवाबदेही लाने वाला कोई भी सुधार सांसदों और विधायकों को कभी रास नहीं आया। आखिरकार राजनीतिक बिरादरी को तब यह प्रस्ताव स्वीकार करने को मजबूर होना पड़ा जब इस मामले में हस्तक्षेप करते हुए सुप्रीम कोर्ट ने इन प्रावधानों को लगभग एक कानून की शक्ल दे दी। शीर्ष अदालत ने चुनाव आयोग को निर्देश दिया कि वह हलफनामे दाखिल कराना सुनिश्चित कराए जिसमें अगर प्रत्याशी का कोई आपराधिक इतिहास रहा है तो

उसका भी उल्लेख हो।सभी हलकों से पड़ने वाले दबाव को देखते हुए संसद ने सुप्रीम कोर्ट के फैसले में आंशिक रूप से बदलाव करते हुए तय किया कि आपराधिक मामले में अदालत से दोष-सिद्ध हुए मामले का ही हलफनामे में उल्लेख करना होगा। उसके अनुसार संपत्ति, देनदारी व **शैक्षिक** योग्यता सहित चुनाव प्राधिकरण द्वारा मांगी गई किसी तरह की अन्य जानकारी देने की जरूरत नहीं। इन **प्रावधानों** को एक अन्य मामले में चुनौती दी गई और एक बार फिर सुप्रीम कोर्ट को दखल देना पड़ा और उसने अपने पुराने आदेश को निष्प्रभावी बनाने को असंवैधानिक करार दिया। नतीजतन सभी वांछित पहलुओं के आधार पर प्रत्याशियों को **शपथपत्र** दाखिल करना अनिवार्य हो गया। अब कानून के अनुसार सांसद और विधायक पद के सभी प्रत्याशियों को अपनी **संपत्ति**, देनदारी और अगर कोई आपराधिक रिकॉर्ड रहा है तो उसकी जानकारी हलफनामे में देना जरूरी है। हलफनामे में **प्रत्याशी** का पैन नंबर, आयकर रिटर्न, जीवनसाथी और सभी आश्रितों का ब्योरा, उनकी संपूर्ण चल-अचल संपत्ति के ब्योरे के साथ ही सभी सरकारी व सार्वजनिक वित्तीय **संस्थानों** की देनदारी का उल्लेख करना भी अनिवार्य है। प्रत्याशी को अपने पेशे, व्यवसाय और शैक्षिक अर्हताओं की जानकारी देना भी जरूरी है। चुनावी मोर्चे पर पारदर्शिता लाने के लिहाज से **सुप्रीम** कोर्ट का यह फैसला क्रांतिकारी सुधार का सूत्रपात करने वाला रहा।

जब तक ऐसे शपथपत्र दाखिल करना **अनिवार्य** नहीं था, तब तक जनता को यह मालूम ही नहीं पड़ता था कि प्रत्याशी शिक्षित है या नहीं? गरीब है या अमीर? उसका कोई आपराधिक अतीत तो नहीं रहा? शपथपत्र **अनिवार्य** रूप से दाखिल किए जाने के बाद से मतदाताओं के पास सूचनाओं का अंबार लग गया है, क्योंकि प्रत्येक निर्वाचन क्षेत्र में **स्थानीय** मीडिया शपथपत्र का विस्तृत ब्योरा प्रकाशित करता है। इससे **स्थानीय** मीडिया को भी प्रत्याशियों के बारे में सूचनाओं का समग्र विश्लेषण करने में मदद मिलती है, क्योंकि उनके पास **प्रत्याशियों** के एक से अधिक चुनावों के दस्तावेज होते हैं। निश्चित रूप से इससे पारदर्शिता बढ़ी है, लेकिन सुप्रीम कोर्ट के **समक्ष** लंबित इन याचिकाओं को देखते हुए लगता है कि पारदर्शिता का स्तर अभी और बढ़ाने की जरूरत है। जैसा कि 'लोक प्रहरी द्वारा जुटाए साक्ष्य दर्शाते हैं कि पांच वर्ष की अवधि में अनेक सांसदों व विधायकों की संपत्ति में 500 प्रतिशत से अधिक उछाल आया है। यह निश्चित रूप से आयकर विभाग और भ्रष्टाचार की जांच करने वाली अन्य एजेंसियों के लिए जांच का विषय होना चाहिए। दोनों ही याचिकाओं में इस **तथ्य** पर जोर दिया गया है कि आय के स्रोत के संबंध में पर्याप्त सूचनाओं का अभाव है। वहीं दूसरी याचिका इस बात पर जोर देती है कि हलफनामे में दी गई जानकारियों की सत्यता जांचने के लिए कोई तंत्र नहीं है। साथ ही ऐसा कोई कानून भी नहीं है जो प्रत्याशी को इसके लिए बाध्य करे कि वह अपने दावों की पुष्टि के **समर्थन** में कोई प्रमाण पेश करे। इन दोनों याचिकाओं के नतीजों पर नजर बनाए रखने की जरूरत है।

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The road to partnership

India-US ties have deepened but remain short of fulfilling their potential. Trump regime could contribute to India's rise as a regional power.

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In calling for an ambitious 100-year partnership with India last week, US Secretary of State, Rex Tillerson, has drawn attention to an enduring paradox that marks the relationship between India and America. One dimension of the paradox is about the gap between expert expectations and actual outcomes. Pundits in both countries have been consistently sceptical about the prospects of India-US cooperation. No other major Indian relationship has

been subjected to such intense bureaucratic suspicion and negative public scrutiny. Yet, the partnership has advanced faster than any other that India launched in the last quarter of a century.The other is about the fact that the relationship remains way below potential. Neither side has taken full advantage of all the possibilities that have emerged. Consider, for example, the domains of commerce and defence. Gone are the days when trade between the two countries was "flat as a chapati". Annual trade between the two countries has now advanced to $115 billion, with the surplus in India's favour. Yet multiple obstacles remain in boosting two-way trade to the proclaimed goal of $500 billion.

In defence, the scale and scope of the exchanges have expanded. America, for example, has become a major arms supplier for India. The volume of Indian defence imports has grown from near zero at the turn of the century to about $15 billion now. Yet there are residual issues in Washington about supplying advanced defence technologies to India and Delhi remains reluctant to inject greater political content into the security partnership.One explanation for the enduring gap between public scepticism and the positive trajectory of the India-US partnership lies in the under-estimation of the bipartisan political commitment in both countries to build a strong strategic partnership. Consider the role of the last three US presidents. Bill Clinton overruled his advisers in deciding to travel to India in 2000 — the first visit by a US president to India in 22 years. The non-proliferation community in Washington said the president should not head to India without significant nuclear concessions from Delhi. Clinton, however, understood that the world's largest democracy cannot forever be put in the nuclear dock. The Clinton visit helped launch a long overdue effort to remove much of the accumulated poison in the bilateral relations during the Cold War.

President George W. Bush went two steps further. He invested huge political capital to reconcile America with the reality of India's nuclear weapons programme and lifted the decades-old domestic and international restrictions on atomic energy cooperation with India. Bush also got the Washington establishment to end the perennial temptation to mediate between India and Pakistan on Jammu and Kashmir. In what was called the "de-hyphenation" of ties with Delhi and Rawalpindi, Bush put the relations with the two countries on separate tracks. President Barack Obama resisted the temptations to connect the problems in Kashmir and Afghanistan, completed the negotiations on the nuclear deal, and elevated India to a central position in America's strategy towards Asia and the Indo-Pacific.The political enthusiasm for India in Washington was matched by the desire of successive recent governments in Delhi to transform the partnership with America. Although the initiative goes back to the 1980s, when Indira Gandhi and Rajiv Gandhi sought to end the stalemate between the two nations, it was the end of the Cold War that nudged India towards America. P.V. Narasimha Rao said the "sky is the limit" for the India-US partnership. Vajpayee declared India and the US as "natural allies". Manmohan Singh presided over the negotiation of the historic civil nuclear deal and the 10-year framework for defence agreement. But the Congress party panicked at the thought of a strong engagement with the US and slowed the pace down.

Prime Minister Narendra Modi, however, shed many of the "historic hesitations" that dogged India during the decades after the Cold War. He has put the relationship on a fast track and raised hopes for realising the full potential of the bilateral relations. Meanwhile many had expected trade and immigration issues might derail ties between India and the US. But both Trump and Tillerson have signalled renewed strategic enthusiasm for India. The greatest potential contribution of the Trump Administration to the partnership could lie in bringing America's regional posture in alignment with India's interests.Historically, the biggest drag on India-US relations has been the seemingly unbridgeable differences on Pakistan and China. More broadly, Delhi and Washington could rarely come up with a common assessment of the political dynamic in Asia and the Indo-Pacific. In the last couple of decades, Delhi and Washington made progress by setting aside their differences on Pakistan and China. The

Trump Administration is promising to change that.In demanding that Pakistan suspend cross-border terrorism and asking that India play a larger role in the region — from stabilising Afghanistan to balancing China — Trump and Tillerson have begun to clear the path for strategic regional coordination between India and the United States. The India-US conversation about burden-sharing in the Indo-Pacific will necessarily be a prolonged one. Delhi and Washington will need to iron out many wrinkles and progress is bound to be slow and uneven. One thing, though, is quite clear. In the past, US power tended to limit India's room for regional manoeuvre. Now it could contribute to India's leadership in the Indo-Pacific.

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With or without the veto

India should pursue the lead offered by the U.S. to end the deadlock over the Security Council's expansion

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Some recent statements of Nikki Haley, the U.S. Permanent Representative to the UN, suggest, in a somewhat befuddled manner, that the American position on an expansion of the Security Council is evolving to favour India's permanent membership without the power of the veto. But instead of exploring the idea further with the U.S., the Indian "government sources" which responded to Ms. Haley took a combative position and stated that there was no change in India's stand that it should have "the same obligations, responsibilities and prerogatives as the existing permanent members of the Security Council." India seemed unaware that it had, together with the others in G-4 (Brazil, Germany and Japan), conceded that veto should not be an issue, at least for the present.

What is the U.S. stand?

In March, Ms. Haley had candidly admitted that she did not know much about Security Council reform. In June, she seemed more informed, but not fully. "We have told all members of the UN that we are in support of Security Council reform, as long as they don't take our veto away," she told members of the House Foreign Affairs Committee during a Congressional hearing. If the only issue was protecting the veto of the U.S., the expansion could have taken place long ago, as no one had ever suggested that veto of the permanent members should be taken away. The new candidates were only demanding the same veto power for themselves, and the U.S. and other permanent members were firm in rejecting such demands.

Ms. Haley's latest comment was even more specific about the veto: "So, the key to getting India on the Security Council would have to be not to touch the veto." She said the U.S. was already on board, but there was need to focus on Russia and China, the two permanent members of the Security Council who do not want to see any changes.

If Ms. Haley's statements indicate the present thinking of the Trump administration, it is a definite advance in the U.S. position. When India put forward the proposal for an expansion of the non-permanent membership of the Security Council in 1979, the U.S. opposed it vehemently. But after the end of the Cold War, when the pressure mounted for expansion of permanent membership, the U.S. took the position that it could live with "one or two" additions to permanent membership, without identifying the countries.

Between the two options that then Secretary General Kofi Annan had given in his report, "In Larger Freedom" in 2005, the permanent members had supported "Model B", which did not envisage any kind of expansion of permanent membership. It provided for no new permanent seats but created a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas. "Model A" was placed in the report at the insistence of the Indian representative, Gen. Satish Nambiar. It provided for six new permanent seats without the veto, and three new two-year term non-permanent seats, divided among the major regional areas.

During his visit to India in 2010, President Barack Obama had said he looked "forward to a reformed UN Security Council that includes India as a permanent member." This gladdened India, but the U.S. delegation did not take any follow-up action at the UN.

The compilation of the views of member states, published two years ago, clearly indicated that the U.S. merely favoured a "modest expansion", without supporting any formula under consideration and no alteration or expansion of the veto. Unlike France and the U.K., the U.S. made no mention of support to India as a permanent member. Among the permanent members, the opinion of France was closest to India's in the sense that it supported the addition of five new permanent members, including India, without any objection to veto being extended to them. The U.K. supported the G-4 without the power of veto. Russia, an old supporter of India, was non-committal and China indicated that the time had not come for any serious negotiations on the subject.

The way ahead

Ms. Haley's statement opens up the possibility of permanent membership for India without veto. A draft resolution circulated by the candidates had already conceded that they would not expect to have the veto at least for 15 years. Thus a meeting point has emerged between the U.S. and G-4. But since it appeared that she had framed her comment for the consumption of Indian Americans, it looks like a PR exercise, nothing more.India should pursue the lead Ms. Haley has given. If nothing else, the present impasse in negotiations will end and there will be new vigour in Security Council reform.