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Chipko's Relevance

Present-day activists have much to learn from Sunderlal Bahuguna's life and Chipko

TOI Editorial

In November, UK and Italy will co-host a global climate conference called COP26. One of the goals of the meet is to persuade all countries to work towards reducing net emissions of greenhouse gases caused by human activity to zero by 2050. A pathway to the goal up for discussion revolves around ways to curtail deforestation. A global summit in 2021 which plans to discuss deforestation highlights how far ahead of its time was the Chipko movement, spearheaded by Sunderlal Bahuguna who passed away last week.

Chipko was a product of the restless 1970s, though the seeds were sown earlier. It's arguably the most impactful environment movement India has witnessed in recent memory. What makes it unique is that the call to action was not top down, catalysed by complex science. It was a grassroots movement in Uttarakhand where the forest became the focal point of both environment and livelihood issues. If Bahuguna and his associate Chandi Prasad Bhatt were the faces of the movement that began in March 1973, its durability and impact came from villagers in the Himalayas, particularly women. Lived experience of villagers was the motive force of the Chipko movement.

The environmental damage wrought by deforestation in the Himalayas is not in question. But the lessons continue to be ignored. Bahuguna, who was noted for his aphorisms, observed "ecology is permanent economy". The increasing incidence of extreme climate events is extracting an escalating economic cost. Development versus environment is a false argument. They are intertwined. As the global movement towards leaving behind this false binary gains momentum, India needs to revisit the lessons of the Chipko movement. So should representatives at COP26. Chipko had an impact because the environmental home truths overwhelmed political differences. Progress in the fight against climate change needs the same spirit.

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The logjam need not be

A list of administrative means for reducing India's painful judicial pendency

Raghav Chandra, [Former Secretary, GOI]

It was reassuring to note that recently the head of the apex judicial institution, the outgoing Chief Justice of India had himself acknowledged the huge pendency of 3 crore cases in various courts. Indeed a recent study of judicial pendency commissioned by the Department of Justice through the Administrative Staff College has revealed some very glaring facts. The average waiting period for trial in lower courts is around 10 years and 2-5

years in HCs. While a detailed review of judicial processes is indeed necessary, here are a few other administrative suggestions to reduce judicial pendency.

One, SC should mandate summary disposal of all ‘hibernating’ PILs – those pending for more than 10 years before HCs – if they do not concern a question of significant public policy or law. There are writs pending before HCs couched in the garb of matters of public concern, seeking to undo a specific decision of a government body. Close scrutiny would however reveal that they are aimed at settling personal scores and are sustained by vested interests with deep pockets and an uncanny familiarity with the judicial system in that state. If the chief justice of a HC is hesitant to dispose such cases summarily, these cases should be automatically transferred to another HC to ensure that they are handled objectively and within a mandated time limit of six months.

Two, it should be mandated that all commercial litigation will be entertained only if there is an affidavit from the petitioner that mediation and conciliation have been attempted and have failed. Three, penalties for mere procedural lapses under various commercial laws should be made compoundable; the level of penalty should be proportionate to the size of infraction and revisable from time to time through rule-making by the executive.

Four, government functionaries should be held accountable if their decision-making or the lack of it, is the cause of avoidable litigation. Where it is abundantly clear that the impact of a positive stance by government does not impinge adversely against the larger government policy framework, officials should be encouraged to choose the course that reduces private litigation.

Five, compliance with arbitral awards is another area where government and other commercial entities shirk from taking an affirmative position. Here again, officers in authority are usually afraid that their acceptance of arbitral awards will land them into trouble. So they choose a softer option – to appeal against the award to HC. Even when HC passes an order, they appeal against that to SC. This tendency must be curbed except for the rarest of cases.

The ASCI study examined Maharashtra in detail. It revealed that 30% of the pending cases in the subordinate courts on the criminal side were under the Negotiable Instruments Act, 1988, and on the civil side 35% were under the Motor Vehicles Act, 1988. Such is also the pattern across the other states. The average number of total cases with any subordinate judge is about 3,500 and the geographical area covered is 157 sq km. Clearly, the judges are overburdened with too many cases, some of which can be handled by others – so that they are free to focus on more rigorous cases which require detailed deliberation and adjudication. The ASCI study also mentions that the current gap between institution of new cases and disposal of pending ones is widening at an alarming pace.

Six, the speediest way of addressing this resource allocation and time deficit can be met by co-opting the current executive magistracy (DMs, ADMs, SDMs, almost 5,000 in strength) as a second line of defence to expedite the process of judicial disposal of cases. In the pre-1973 Criminal Procedure Code, executive magistrates were empowered to try criminal cases. However, post the 1973 amendment in CrPC all powers were withdrawn and left squarely with the judiciary as per separation of powers. This has been another key reason for the stupendous backlog of cases.

Executive magistrates even today approve preventive detention, impose prohibitory orders and order injunctions in land disputes under CrPC and the Land Revenue Codes. They also exercise quasi-judicial powers under laws such as the Arms Act, Cinematography Act and Disaster Management Act. Clearly, their services can be utilised for disposal of cases under the MV Act and the Negotiable Instruments Act. They can also be given cases of legal metrology under the Consumer Protection Act, where violations concern product labelling

requirements, correct weights and measurements, compliances etc. Cases can also be handled outside the current judicial system for State Excise Acts.

This would no doubt entail additional legal training for executive magistrates through refresher courses in their training academies. New recruits should even be encouraged to obtain law degrees within the first few years of their induction – to ensure that they are always suitably equipped.

In conclusion, creation of provisions for compounding of offences in various commercial laws, encouraging and mandating mediation, discouragement and dismissal of frivolous PILs, reducing appeals against arbitral awards and crucially – inducting the executive magistracy as adjunct judicial officers – can be strong means for reducing the astronomically vast judicial pendency. This will also be beneficial in reducing the number of under-trials in Indian prisons (about 69% of detainees are under-trials against the global average of 27%, whence the charge that the criminal justice system in India is tipped against the underprivileged) and in boosting public opinion and faith in the judiciary. Another collateral will be that it will empower the executive magistracy to behave more judiciously in the larger interest of law and order management – that too is the need of the hour.

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Sustainable Strategy Honours Bahuguna

Editorial

The passing of Sunderlal Bahuguna, who made a spontaneous movement into a turning point for forest conservation, particularly in the Himalayan region, must become the starting point of a robust engagement of the development process with nature. The core of Bahuguna's ideas and work are recognition of the benefit that humans accrue from nature. That economic growth and development need not be at odds with environmental conservation and protection is rooted in science, economics and sociology.

For far too long, nature and development have been treated as competing forces. Bahuguna is remembered for the Chipko movement, but too little attention is paid to his idea of ecology as permanent economy. Human beings depend on nature for food, water, oxygen, and to make possible life on earth as we know it. Nature is an asset. It has economic and intrinsic value. Forests, for instance, provide services critical to sustaining human life such as protecting hydrological systems, arresting soil degradation and erosion, and serving as carbon sinks. They also contribute to our well-being, recreation and even spiritual beliefs. Therefore, as with manufactured and human assets, there is a need to account for nature's appreciation and depreciation. This would mean not turning away from developmental activities, be it building of roads, transmission lines, power projects or mineral mining, but to do so in a manner that does not squander the nation's asset base. The forest that might have to be cleared should be counted as asset depreciation while computing the costs and benefits of the project at hand.

Afghanistan 2.0

American troops are set to withdraw from the country by September 11 this year, but the shadow of re-engagement looms, raising security concerns beyond South Asia.

Anju Gupta, [The writer is an IPS officer]



The US-led global counter-terrorism (CT) campaign, a multi-theatre “war on terror” launched in response to 9/11, became unpopular due to the invasions of Iraq and Afghanistan. The US-led airstrikes removed the Taliban regime in Afghanistan in 2001 and the Saddam regime in Iraq in 2003. In both countries, the US helped create, train, equip and assist local security forces. Both countries wrote new democratic constitutions and invited UN missions.

The Iraq war ended in December 2011, but as the Islamic State in Iraq and Syria (ISIS) established a caliphate in 2014, US “re-engagement” in Iraq began with Iraq’s consent. The Iraq 2.0 campaign was designed as a US-led global coalition, relying on airstrikes and support to local allies — Iraqi and Kurdish forces in Iraq and Kurd-Arab alliance (SDF) in Syria.

The US has announced that the Afghan War will end by September 11, having seized the Doha agreement as an opportunity. While its withdrawal will exacerbate chaos and violence in Afghanistan and impact the wider region, there are enough indicators of a “re-engagement” by the US and NATO in the country (Afghanistan 2.0), implying that a shadow presence will remain.

Unlike the Iraqi forces, the earnest build-up of the Afghan forces started around 2009, when the Taliban posed a serious threat across Afghanistan. In the same year, the US declared a surge of troops and promised withdrawal by 2014. By January 2015, all security responsibilities were handed over to Afghan forces and US troops reduced to 10,000, but the war did not end. Afghan forces were still ill-experienced and ISIS was expanding its footprint across the globe. A NATO-led Train-Advise-Assist Mission commenced for Afghan forces, while the US CT mission also continued in partnership with Afghan Forces.

The US signed the Doha agreement in February 2020, dangling a “carrot” of full withdrawal, hoping the Taliban would agree to be part of an interim government. The flawed peace process, which offered a clear, early edge to the Taliban, caused a deadlock in the Doha process. Unlike Iraq, there was clear political support for the US forces to remain in Afghanistan. But the US chose to shed the “occupier” tag and distance itself from grievances against governance and harm to civilians over the past 20 years.

The US has correctly assessed that AQ in Afghanistan stands degraded and ISIS and AQ networks are scattered across the globe. For instance, the AQ-affiliate in Syria, Hayat Tahrir al Sham, has hundreds of fighters led by Khatiba Imam al Bukhari and Tawhid wal Jihad, active under the umbrella of the Taliban. Similarly, Central Asian ISIS fighters in Syria/Iraq and Europe maintain active links within Afghanistan. However, the threat of the caliphate is over and the threat of “genuine” ISIS taking root in Afghanistan has been warded off by the US-Afghan partnership. Over the last seven years, Afghan forces have evolved and are conducting most operations on their own.

The US intervention in Afghanistan after 9/11 was despite its reluctance to “occupy” a strategically unimportant country. However, current geopolitical compulsions, including the US-China competition, the China-Pakistan embrace, the China-Russia strategic partnership, and the China-Iran deal, have made Afghanistan strategically important. Thus, despite the withdrawal, the looming shadow of US-NATO will remain with a focus on preventing Afghanistan from becoming a safe haven. US-NATO have chosen Afghan forces, under a democratic government, as their local allies and have assured funding up to 2024.

The Afghanistan 2.0 engagement is unlikely to emerge with a “bang”. But a few points are clear — Afghanistan is part of the US-led Coalition against ISIS (the only country from South or Central Asia) and hence committed as a nation; the Afghan government can take a sovereign decision to ask for training or operational support; the US has sufficient resources in the Central Command theatre on land, sea, and air to provide immediate support on request; it has the option of drone strikes in Afghanistan and beyond; the Central Command is already considering active air surveillance missions; high-end technological and “signature reduction” options exist for remotely-controlled operations; and the US retains its soft power over Afghan institutions and personalities.

Afghanistan and the US have been making efforts for peace since 2010, culminating in the Doha talks. With newer players onboard, including Russia, China, Iran, Pakistan, and Qatar, the US made the smart move to approach the UN to broker peace. However, it appears unlikely that China, Russia, Pakistan, and Iran will send troops to fight the Taliban under a peacekeeping mission.

Due to the easing of UN restrictions for a few leaders and the freedom to operate from its Doha office, the Taliban continues to attend high-profile meetings in swanky hotels in Doha, while deadly attacks ravage Afghanistan. Vicious attacks on civilians, such as the killing of schoolgirls in Kabul on May 8, are conveniently blamed on Islamic State Khurasan Province (ISKP) by the Taliban. It is widely believed that the Pakistan army has infiltrated and is running the ISKP to “market” the Taliban as a “nationalist insurgent” group willing to fight “extremist” ISKP.

The UN-led peace process is expected to be slow. While US-NATO may focus on their specific objectives in Afghanistan 2.0, it is certain that the Taliban-ISKP-Pakistan combine will unleash much more violence. Groups like ISKP and al-Qaeda in Indian Subcontinent (AQIS) and their variants will be used for high-profile attacks in Afghanistan and in the region, including against Western targets, to deter deeper re-engagement in Afghanistan. The chaos would create more ungoverned spaces strengthening the terror infrastructure. Hence, the developments in Afghanistan will continue to raise security concerns, far beyond South Asia.

WhatsApp and its dubious claims

The claim that the new privacy policy is applicable to only the business version of the app is not comforting

Vikram Vincent, [Holds a PhD from IIT Bombay]



The learned senior advocates Kapil Sibal and Arvind Datar submitted to the Delhi High Court that WhatsApp’s contentious new privacy policy came into effect from May 15, 2021. Mr. Sibal raised the central question of national importance, “The question is, does India have a public policy for privacy? If a public policy of privacy is there in India, does it apply to WhatsApp policy?” This question acquires relevance due to the dominant market status of WhatsApp-Facebook-Instagram. In its affidavit to the Delhi High Court, WhatsApp defended its privacy policy and explicitly named Google, Microsoft, Zoom, Zomato, Republic World, Ola Cabs, Truecaller, Big Basket, Koo, and public companies such as Aarogya Setu, Bhim, Air India, Sandes, Government e-Marketplace, and the Indian Railway Catering and Tourism Corporation of having similar policies, of relying on collecting user data.

Advantages of WhatsApp

In the submission, WhatsApp suggested that users who did not agree to its terms and conditions could discontinue use of its service. Apps such as Signal and Telegram provide alternate reliable communication services. While this is a reasonable option for urban users of messaging apps, researchers working with rural and disenfranchised sections have pointed out the reliance on WhatsApp’s services due to the design of the app. WhatsApp has an inherent advantage with its messaging and audio-video calling even in low-bandwidth Internet areas. This has to be seen in conjunction with WhatsApp Pay which allows users to transfer money to others. Thus, a mass migration to more privacy-respecting services appears near-impossible due to vendor lock-in. The observation of the Competition Commission of India that WhatsApp is misusing its dominant status appears relevant here.

The claim that the new privacy policy is applicable to only the business version of the app is not comforting. This is because metadata from the non-business versions are already being exchanged with other services of the Facebook company. Profiling of individual users has already been well documented with the exposure of the Facebook-Cambridge Analytica scandal both internationally and in India. For businesses using WhatsApp, there would be a reasonable expectation that the services would be more secure than the normal version. Thus, diluting the privacy policy for the business version appears counterintuitive. Looking at the practices of large

monopoly businesses wherein smaller companies are bought out or innovative services are copied in order to increase the customer base provides an answer. Thus, one would have to surmise that it is possible to extract metadata from documents that are exchanged over a communication app with a diluted privacy policy. The lessons learned from the United States v. Microsoft Corporation antitrust case from early 2000 would appear relevant in this context.

Data protection

We would have to understand that a WhatsApp exception, as suggested by Mr. Sibal, would only open the floodgates to further privacy violations by both the state and private entities dealing with user data. There is the issue of potential violation of privacy of children through Ed-Tech apps due to the lack of both a comprehensive ethics policy and a data privacy law akin to the European General Data Protection Regulation (GDPR). In the context of services provided by the above-mentioned companies, the Personal Data Protection Bill of 2019 does not even attempt to provide a fig leaf of protection to users of services.

To ensure that the privacy of the Indian citizen is protected in the digital sphere, the data protection Bill needs to be reformulated to ensure that it focuses on user rights with an emphasis on user privacy. A privacy commission would have to be established to enforce these rights. The government would also have to respect the privacy of the citizens while strengthening the right to information. There is an overarching need for a strong data protection Bill.

 **जनसत्ता**

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नक्सली मंसूबे

संपादकीय

महाराष्ट्र के गढ़चिरौली में हुई ताजा नक्सली मुठभेड़ से एक बार फिर यह सवाल गाढ़ा हुआ है कि तमाम प्रयासों के बावजूद आखिर सरकारें इस समस्या से पार पाने में क्यों विफल साबित होती हैं। गनीमत है कि इस हमले में सुरक्षाबलों को कोई नुकसान नहीं हुआ। तेरह नक्सली मारे गए। इसे वहां की पुलिस अपनी बड़ी उपलब्धि मान रही है। दो साल पहले उसी इलाके में नक्सलियों ने पंद्रह पुलिसकर्मियों को घात लगा कर मार डाला था।

यह मुठभेड़ ऐसे समय में हुई जब राज्य के गृहमंत्री उस इलाके के दौरे पर थे। नक्सली ऐसे अवसरों की तलाश करते रहते हैं, जब सुरक्षाबलों पर हमला करके वे सरकारों को चुनौती दे सकें। पिछले ही महीने छत्तीसगढ़ के सुकमा में नक्सलियों ने सुरक्षाबलों पर हमला करके भारी नुकसान पहुंचाया था। तब भी उनकी रणनीतियों से पार पाने के उपायों पर जोर दिया गया था। जब भी ऐसे नक्सली हमले होते हैं, तो सरकारें अपनी कमजोरियों को दुरुस्त करने और नक्सलियों के मंसूबे तोड़ने के व्यावहारिक तरीके अपनाने का संकल्प करती हैं, पर वे विफल ही देखी जाती हैं। सुकमा की घटना के बाद शहीद सुरक्षाबलों को श्रद्धांजलि अर्पित करने केंद्रीय गृहमंत्री भी गए थे। तब भी उम्मीद की गई थी कि इस समस्या से पार पाने के लिए किसी नई रणनीति पर विचार होगा।

नक्सली समस्या पर काबू पाने के मकसद से पहले दोनों पक्षों के बीच वार्ताओं के कई दौर भी चले थे, मगर उसमें कोई नतीजा नहीं निकला। फिर सरकारों ने उन्हें हथियार के बल पर रोकने की रणनीति बनाई। अब कई सालों से बातचीत की कोई पहल भी नहीं होती। अनेक अंचलों में नक्सलियों के सफाए के लिए व्यापक अभियान चलाए गए, दावे किए गए कि अब उनकी कमर टूट चुकी है और वे फिर से सिर नहीं उठा सकेंगे, मगर वे दावे सच साबित नहीं हुए। नक्सली मुख्य रूप से देश के आदिवासी बहुल इलाकों में सक्रिय हैं और वे स्थानीय लोगों को इस तर्क पर अपने समर्थन में जोड़ लेते हैं कि सरकारें उनके जल, जंगल और जमीन पर कब्जा करना चाहती हैं। इस तरह उनका नैसर्गिक जीवन प्रभावित होगा। यह बात पूरी तरह गलत भी नहीं है।

कई जगह सरकारें खनिज और कल-कारखानों के लिए आदिवासी इलाकों की जमीन जबरन अधिग्रहीत करने का प्रयास भी करती देखी गई हैं। इससे उनमें स्वाभाविक रूप से असंतोष पनपा है। हालांकि आदिवासियों को समाज की मुख्यधारा से जोड़ने, उनके शिक्षा, स्वास्थ्य, रोजगार आदि के लिए योजनाएं चलाने और उनमें पनपी नाराजगी को दूर करने के भी प्रयास हुए हैं, मगर उन पर नक्सलियों का प्रभाव ही गहरा नजर आता है।

दरअसल, नक्सलियों की ताकत जंगलों के भीतर और पिछड़े इलाकों में रहने वाले लोग ही हैं, जिनसे उन्हें सहयोग मिलता है। सरकारें जब तक स्थानीय लोगों का विश्वास हासिल नहीं करतीं, तब तक नक्सलियों की ताकत कम कर पाना संभव नहीं है। इसके लिए अनेक बार प्रयास हुए, पर सफलता नहीं मिली तो उसमें कहीं न कहीं सरकारी रणनीति की कमजोरी है। जब तक अत्याधुनिक तकनीक के इस्तेमाल से नक्सली साजिशों का पता लगाने और उनके संसाधनों को खत्म करने का तंत्र मजबूत नहीं होता, तब तक नक्सलियों पर काबू पाना मुश्किल ही रहेगा। नक्सली भी अब जंगलों में कई तरह के धंधे चलाने लगे हैं, उन्होंने जगह-जगह अपना साम्राज्य बना लिया है। उस साम्राज्य को तोड़ने के लिए स्थानीय लोगों का समर्थन जरूरी है। जब तक सरकारें इस दिशा में नए ढंग से रणनीति नहीं बनातीं, नक्सलियों के मंसूबे शायद ही कमजोर हों।
