

# Credibility issue haunting judiciary

## REFLEX ACTION

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*The difference between a moral man and a man of honour is that the latter regrets a discreditable act even when it has no other and he has not been caught.*

## Rise of the parallel State

The raging controversy over Sanjay Leela Vanshali's film Padmavati seemed to have been given a quietus after he accepted the cuts in the film suggested by the Central Board of Film Certification. The name of the film was also changed from Padmavati to Padmavt. Whether the initial controversy that was stirred up was at all based on any cogent ground is a question that still needs to be debated and settled for future resolution of such contrived controversies. For the present, however, it was hoped that after the CBFC cleared the film, there would be no bar to its screening in public. But that hope has been belied. Those organizations which opposed the film still remain dead opposed to it even after the CBFC clearance.

These organizations have now declared that they would not allow the film to be screened in any State, that is, in States where they have the muscle power to enforce their decision. They thus threw a challenge to the authority of the Indian State. It was to be expected that the State would take steps so make it possible for the film to be screened in all public theatres across the country. This has not happened. On the contrary, four State Governments — Rajasthan, Gujarat, Haryana and Madhya Pradesh — have surrendered to these forces and announced their decision to ban screening of the film. All the four States are BJP-ruled and the fear of alienation of a large section of voters before the coming elections is believed to have influenced the concerned State Governments to surrender to the Right-wing organizations.

This is nothing but the abject surrender of democratically-elected and legitimately constituted State Governments to forces which are emerging as a State within a State, or a parallel State. Having succeeded in enforcing their diktat with the benign acquiescence of those who should have upheld the authority of the State, there is no doubt that these forces will be encouraged to intervene again and again whenever they think that things are not going the way they want. It is a matter of great concern to all those who want that the democratic polity of our country is not exposed to dangers posed by home-grown non-State actors. It is a pity that the present-day rulers with their myopic vision are unable to understand the subtle and sinister implications of Right-wing forces successfully setting at naught the decision taken by a government body.

- i. **Playing of National Anthem no longer mandatory in cinema halls:** The Supreme Court modified its earlier order of making the playing of national anthem mandatory in all cinema halls in the country, which was passed in November, 2016. The Court stated that playing of national anthem would no longer be mandatory, but optional, and if a theatre chose to play the national anthem, then everyone present would have to stand up to show respect, except those exempted owing to some for disability. The change in the Court's stand was owing to the Government's submission that they had set up a Committee to frame guidelines regarding the playing of national anthem and till the time the guidelines are finalised, it should not be made mandatory. (Shyam Narayan Chouksey vs. Union of India, Writ Petition (Civil) No. 855 of 2016, date of order: 09.01.2018)
- ii. **Demand for court monitored investigation in Kalburgi's Case:** The Supreme Court sought responses from the Central Government, three states of Maharashtra, Goa and Karnataka and from CBI and NIA on a petition seeking an independent court monitored investigation, through a Special Investigation Team ("SIT") into the horrific murder of late Professor M.M. Kalburgi in August, 2015 in Maharashtra. The petition, filed by the late professor's wife, Smt. Uma Kalburgi, highlighted the tardy progress made in the investigation in the last two years and the complete lack of coordination between CBI and the State Governments. (Smt. Umadevi Kalburgi vs. Union of India, Writ Petition (Criminal) No. 212 of 2017, date of order: 10.01.2018)
- iii. **Fresh investigation into 186 anti-Sikh riots cases by a new SIT:** The Supreme Court in a significant order directed fresh investigation into 186 anti-Sikh riots cases, which were closed before, to be carried out by a new SIT headed by a retired High Court judge. This order was passed pursuant to the report of the Committee set up by the Court to examine the report filed by the SIT set up by the NDA Government in 2015, which sought closure of almost 200 cases. The Court appointed Committee found that out of 241 cases, 186 cases were closed without investigation. The SIT will be headed by Justice S.N. Dhinra (Retd.) and one former IPS officer and one current IPS officer (S. Gurnad Singh Kahlon vs. Union of India, Writ Petition (Civil) No. 9 of 2017, date of order: 10.01.2018)

iv. **Rape and other sexual offence laws ought to be made gender neutral:** A petition has been filed in the Supreme Court challenging the validity of Sections 354, 354A, 354B, 354C, 354D and 375 of the Indian Penal Code on the basis that all these offences are gender specific, i.e., the accused is a man, while the victim is a woman. The petition contends that this constitutes discrimination on the ground of "sex", which is impermissible under Articles 14 and 15 of the Constitution. It further states that "the law does not and should not distinguish between criminals and every person who has committed an offence is liable to punishment under the Code". (Rishi Malhotra vs. Union of India, Writ Petition (Criminal) No. 7 of 2018)

v. **Patent working information is not confidential in nature:** The Delhi High Court directed that patent working information was not confidential and required to be filed by all patentees on a mandatory basis. The Court was hearing a petition highlighting major non-compliance with statutory requirements under the Patents Act, 1970. The law requires that all patentees have to submit information periodically to the Patent Controller about how their patents are working, in order to ensure that patents granted are utilised properly and not lying unused. (Shamnad Basheer vs. Union of India, Writ Petition (Civil) No. 5580 of 2015, date of order: 10.01.2018)

vi. **Himachal Pradesh's policy of prohibition on cannabis cultivation challenged:** The Himachal Pradesh High Court issued notice on the Centre and the State Government on a petition challenging the policy of total prohibition on cannabis cultivation and burning of cannabis plants. The petition sought to highlight the potential use of hemp for commercial and industrial purposes as well as for sustainable agriculture. It also noted the potential for medical use of cannabis, especially in case of cancer treatment and other diseases. It further

stated that the present policy of burning the cannabis plant not only causes environmental pollution, but also causes a great loss to bio-diversity and the eco-system, the plant is essential for maintaining the richness of the soil cover. (Deshinder Khanna v. State of H.P., Civil Writ Petition No. 83 of 2018, date of order: 08.01.2018)

vii. **Provision providing for attachment of properties under the money laundering law upheld:** The Delhi High Court upheld the validity of the law providing for attachment of 'any property of any person' under Section 5(1) of the Prevention of Money Laundering Act, 2002 ("PMLA") if the Authorities have reasons to believe that non-attachment would frustrate any proceeding under the Act. The Petitioners had challenged the provision as being 'manifestly arbitrary', and therefore violative of Article 14 of the Constitution. Rejecting the contention, the High Court held that there are sufficient procedural safeguards to ensure that the power to attach properties would not be abused or used in an arbitrary manner. (J. Sekar & Ors. v. Union of India, Writ Petition (Civil) No. 5329/2017, date of judgment: 11.01.2018)

viii. **Aadhaar made mandatory for bail sureties in Chhattisgarh:** The Chhattisgarh High Court has directed that all the trial courts to obtain copy of the Aadhaar card of the accused as well as of the surety, while examining surety papers submitted along with bail applications, in order to reduce instances of forged sureties for bail. The High Court also directed the trial courts to verify all revenue papers before releasing the accused on bail. This order is surprising, in light of the fact that constitutional validity of the Aadhaar Act itself is presently pending in the Supreme Court. (Ved Prakash Gupta vs. State of Chhattisgarh, MCRC No. 3867 of 2017, date of order: 05.01.2018)

**Other Legal Developments**

i. **Indu Malhotra, Senior Advocate, elevated as a judge on the Supreme Court:** In a first development, Indu Malhotra, Senior Advocate, has been recommended for elevation as a judge on the Supreme Court by the Supreme Court collegium from the Bar. Another recommendation was that Shri K.M. Thomas, Chief Justice of the Uttarakhand High Court, has also been recommended for elevation as Supreme Court judge. (IPA/Concluded)



Devotees raise figurines of the Santo Nino (Holy Child Jesus) as they receive blessings with holy water from the toy minister during the annual feast day of Santo Nino in Tondo city, metro Manila, Philippines

# West's talk of human rights

Last month news website Politico published an extraordinary document leaked US government document concerning US foreign policy. Written for Secretary of State Rex Tillerson by his senior policy adviser Brian Hook, the confidential May 2017 memo advises that "the US should use human rights as a club against its adversaries. Like Iran, China and North Korea, while giving a pass to repressive allies like the Philippines, Egypt and Saudi Arabia," Politico summarised. "Allies should be treated differently — and better — than adversaries. Otherwise, we end up with more adversaries, and fewer allies," argues Hook. He continues: "We should consider human rights as an important issue in regard to US relations with China, Russia, North Korea, and Iran. And this is not only because of moral concern for practices inside those countries. It is also because pressing those regimes on human rights is one way to impose costs, apply counter-pressure and regain the initiative from them strategically."

In addition to being a useful weapon to deploy against enemy states, the concept of human rights is also used to manipulate domestic public opinion. Speaking to US academic Dr James Davidson about the 2001 US-led invasion of Afghanistan, a senior British intelligence official noted: "It is always helpful for governments who want to get the

Guardian readers of the world on board to have a humanitarian logic." The US and British governments' selective concern for human rights is broadly mirrored by the mainstream media. Analysing the US media in their 1988 book Manufacturing Consent, Edward Herman and Noam Chomsky look at "paired examples." For instance, they consider the different quantity and quality of coverage given to priests killed in Soviet Union-era Poland compared with religious figures murdered by US-backed dictatorships in Latin America, and the mass killing in Cambodia compared with the mass killing carried out by US client Indonesia in East Timor. "A propaganda system will consistently portray people abused in enemy states as worthy victims, whereas those treated with equal or greater severity by its own government or clients will be unworthy," they conclude. Dr David Wearing, a teaching fellow in international relations at Royal Holloway, University of London, recently highlighted a similar relationship between British commentators and the ongoing war in Syria and Yemen. Speaking on the Media Democracy podcast, he notes that although the conflicts are not identical, there is a high level of similarity: both are brutal, complex civil wars with large amounts of indiscriminate killing, lots of internal and external actors, which has led to the

## FOCUS

Ian Sinclair

creation of huge humanitarian crises. In Syria, the evidence suggests the Assad government and its allies are responsible for the majority of non-combatant deaths. However, in Yemen — where "the cholera outbreak is probably the worst the world has ever seen," according to the UN's undersecretary-general and emergency relief co-ordinator — the main danger to civilians is from British ally Saudi Arabia, dropping British-made bombs from British-made warplanes. Wearing goes on to observe: "We know all about Syria because Syria is on the front page of every newspaper. Syria is at the top of news bulletins. Syria is the subject of one op-ed after another saying: 'Why don't we do something about this, we should intervene'." Turning to the conflict in the Gulf, he asks: "Where is the coverage of Yemen? It's not on the front pages, it's not at the top of the news bulletins. You'll struggle to find an opinion article about it in any of the major newspapers." Indeed, he notes: "The very opinion writers who will be urging us to intervene in Syria, the liberal interventionist types... [there is] not a word from people like that about Yemen." Searching David Aaronovitch's Twitter timeline, I found that since Saudi Arabia's intervention in Yemen commenced in March 2015, The Times columnist has mentioned the word "Syria" in 75 tweets (this figure, and all the subsequent figures I quote, excludes retweets). In contrast, I counted Aaronovitch had mentioned "Yemen" in a total of three tweets over the same period. To put this government-friendly focus in context, since March 2015 Aaronovitch has tweeted about The Archers BBC Radio 4 soap opera at least 26 times. In fact he seems to have tweeted about just one character, Ruth Archer, as much as he has tweeted about Yemen. Looking at the tweets of other commentators produces similar findings. When, in December 2017, I searched the Twitter feed of @bofbrockley, a relatively influential blogger and tweeter among liberal interventionist types, I found 22 tweets mentioning "Yemen" since March 2015, over two-and-a-half years before. However @bofbrockley had mentioned "Syria" 22 times on

### Conventional Crossword

1	2	3	4	5	6
7					
8		9		10	11
		12			
		13		14	15
16				17	
			18		19
20	21	22	23		
		24			
25				26	

- ACROSS**
- 1 Teacher
  - 5 Graciously
  - 6 Person under age
  - 8 Picturesque
  - 10 Laundry item
  - 12 Track
  - 13 Printers' measures
  - 14 Support
  - 15 Conceal
  - 17 Vegetable
  - 18 Destroy by fire
  - 20 Cleaning implement
  - 23 Escaped artfully
  - 24 Eels
  - 25 Fresh
  - 26 Pulpit discourse
- DOWN**
- 1 Nonsense
  - 2 Dozed
  - 3 Sends out
  - 4 Wexley
  - 5 Spinning toy
  - 6 Anger
  - 9 Designation
  - 11 Opening
  - 14 Country
  - 15 Shagard
  - 16 Bees' sound
  - 17 Measured beat
  - 18 Waggers
  - 19 Middle East port
  - 21 United
  - 22 Church seat

### SUDOKU: 2093

	6		2					
	9	3		8	6		2	
3			6	9	1			
	2		9	3	7			
	6					7		
		2	5	6		8		
	4	8	9					6
6	3	1		2	8			
			4	5				

### Yesterday's Solution 2092

8	1	2	5	9	3	6	4	7
4	9	5	8	7	6	2	3	1
7	3	6	1	2	4	9	5	8
2	8	1	7	3	9	5	6	4
3	5	4	6	1	8	7	9	2
6	7	9	4	5	2	8	1	3
1	2	7	3	6	5	4	8	9
9	6	8	2	4	1	3	7	5
5	4	3	9	8	7	1	2	6

### Yesterday's Cross Word Solution 101

E	A	R	S	A	F	A	R
X	A	C	T	P	O	S	E
A	L	T	O	C	E	A	S
L	E	R	G	O	L		
T	E	R	R	S	O	T	
S	P	A	E	A	T	A	
D	E	L	A	N	M		
A	C	O	R	N	C	A	R
C	U	B	A	A	I	M	E
E	D	E	N	T	E	A	R

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