

THE IDEAS PAGE

Phantom Democracy

When democratically elected governments cease to be held accountable by a society weakened by poor health, low morale and joblessness, demagogues are prone to blindness and ineptitude



JOHN KEANE

HOW DO DEMOCRACIES die?

The old question has a new urgency because global surveys are everywhere reporting dipping confidence in democracy and marked jumps in citizens' frustrations with government corruption and incompetence. Young people are the least satisfied with democracy — much more disaffected than previous generations at the same age. Most worrying are the survey findings for India, which is fast developing a reputation as the world's largest failing democracy. In its Democracy Report 2020, Sweden's V-Dem Institute noted that India "has almost lost its status as a democracy". It ranked India below Sierra Leone, Guatemala and Hungary.

Things are serious. Not since the 1920s and 1930s has democracy faced so much trouble. That period saw the destruction of most parliamentary democracies. Only 11 survived. Since then, political scientists have pointed out, democracies have wilted in two connected ways. Some have suffered sudden death, in puffs of smoke and rat-a-tat gunfire. But death by cuts is more common.

Democide is usually a slow-motion and messy process. Wild rumours and talk of conspiracies flourish. Street protests and outbreaks of uncontrolled violence happen. Fears of civil unrest spread. The armed forces grow agitated. Emergency rule is declared but things eventually come to the boil. As the government totters, the army moves from its barracks onto the streets to quell unrest and take control. Democracy is finally buried in a grave it slowly dug for itself.

During the past generation, around three-quarters of democracies met their end in these ways. The military coup d'états against the elected governments of Egypt (2013), Thailand (2014), Myanmar and Tunisia (2021) are obvious examples.

Less obvious is the way democracies are destroyed by social emergencies. Think of things this way: Democracy is much more than pressing a button or marking a box on a ballot paper. It goes beyond the mathematical certitude of election results and majority rule. It's not reducible to lawful rule through independent courts or attending local public meetings and watching breaking news stories scrawled across a screen. Democracy is a whole way of life.

It is freedom from hunger, humiliation and violence. Democracy is public disgust for callous employers who mistreat workers paid a pittance for unblocking stinking sewers and scraping s**t from latrines. Democracy is saying no to every form of human and non-human indignity. It is respect for women, tenderness with children, and access to jobs that bring satisfaction and sufficient reward to live comfortably.

In a healthy democracy, citizens are not forced to travel in buses and trains like livestock, wade through dirty water from overflowing sewers, or breathe poisonous air. Democracy is public and private respect for different ways of living. It is humility: The willingness to admit that impermanence renders all life vulnerable, that in the end nobody is invincible, and that ordinary lives are never ordinary. Democracy is equal access to decent medical care and sympathy for those who have fallen behind. It's the rejection of the dogma that things can't be changed because they're "naturally" fixed in stone. Democracy is thus insub-



CR Sasikumar

ordination: The refusal to put up with everyday forms of snobbery and toad-eating, idolatry and lying, bulls**t and bullying.

Fine principles, you may say, but what happens to a democracy when successive governments allow their social footings to be damaged, or destroyed? The shortest answer: Democracy suffers a slow-motion social death.

Especially when a constitution promises its citizens justice, liberty and equality, the splintering and shattering of social life induce a sense of legal powerlessness among citizens. The judiciary becomes vulnerable to cynicism, political meddling and state capture. Massive imbalances of wealth, chronic violence, famine and unevenly distributed life chances also make a mockery of the ethical principle that in a democracy people can live as citizen partners of equal social worth. If democracy is the self-government of social equals who freely choose their representatives, then large-scale social suffering renders the democratic principle utterly utopian. Or it turns into a grotesque farce.

Domestic violence, rotten health care, widespread feelings of social unhappiness, and daily shortages of food and housing destroy people's dignity. Indignity is a form of generalised social violence. It kills the spirit and substance of democracy. When famished children cry themselves to sleep at night, when millions of women feel unsafe and multitudes of migrant workers living on slave wages are forced to flee for their lives in a medical emergency, the victims are unlikely to believe themselves worthy of rights, or capable as citizens of fighting for their own entitlements, or for the rights of others. Ground down by social indignity, the powerless are robbed of self-esteem.

No doubt, citizens' ability to strike back, to deliver millions of mutinies against the rich and powerful, is in principle never to be underestimated in a democracy. But the brute fact is social indignity undermines citizens' capacity to take an active interest in public affairs, and to check and humble and wallop the powerful. Citizens are forced to put up with state and corporate restrictions on basic public freedoms. They must get used to big money, surveillance, baton charges, preventive detentions, and police killings.

But the scandal doesn't end there. For when millions of citizens are daily victimised by social indignities, the powerful are granted a licence to rule arbitrarily. Millions of humiliated people become sitting targets. Some at the bottom and many in the middle and upper classes turn their backs on public affairs. They belly-

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ache in unison against politicians and politics. But the disaffected do nothing. Complacency and cynical indifference breed voluntary servitude. Or the disgruntled begin to yearn for political redeemers and steel-fisted government. The powerless and the privileged join hands to wish for a messiah who promises to defend the poor, protect the rich, drive out the demons of corruption and disorder, and purify the soul of "the people".

When this happens, demagoguery comes into season. Citizen disempowerment encourages boasting and bluster among powerful leaders who stop caring about the niceties of public integrity and power-sharing. They grow convinced they can turn lead into gold. But their hubris has costs. When democratically elected governments cease to be held accountable by a society weakened by poor health, low morale, and joblessness, demagogues are prone to blindness and ineptitude. They make careless, foolish, and incompetent decisions that reinforce social inequities. They license big market and government players — poligarchs — to decide things. Those who exercise power in government ministries, corporations, and public/private projects aren't subject to democratic rules of public accountability. Like weeds in an untended garden, corruption flourishes. Almost everybody must pay bribes to access basic public services. The powerful stop caring about the niceties of public integrity. Institutional democracy failure happens.

Finally, in the absence of redistributive public welfare policies that guarantee sufficient food, shelter, security, education, and health care to the downtrodden, democracy morphs into a mere façade. Elections still happen and there's abundant talk of "the people". But democracy begins to resemble a fancy mask worn by wealthy political predators. Self-government is killed. Strong-armed rule by rich and powerful poligarchs in the name of "the people" follows. Cheer-led by lapdog media, phantom democracy becomes a reality. Society is subordinated to the state. People are expected to behave as loyal subjects, or else suffer the consequences. A thoroughly 21st century type of top-down rule called despotism triumphs. Might this be how democracy dies in India?

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PRERNA PRABHAKAR

Grounded by bias

EU's vaccine travel pass is discriminatory, a barrier to trade in services

TRAVEL HAS BEEN badly hit due to the Covid-19 pandemic and the consequent restrictions on cross-border movement across the world. There has been a decline of 42-47 per cent in the world's total passengers in 2021 compared to 2019. For India, while the number of passengers travelling by air picked up after the first wave, it fell drastically when the second wave hit. For June 2021, the average daily departures were at 1,100, higher than 700 in June 2020, but still significantly lower than 2,000 in April 2021.

Travel becomes an important medium for trade in services, especially where consumers or firms make use of a service in another country. It is, therefore, necessary to revive travel and to provide conducive and safe conditions for it.

The introduction of Covid-19 vaccines has opened up opportunities to help revive travel. However, it is important to carefully design policies that help revive travel demand. In a recent guideline, the World Health Organisation (WHO) has recommended its member states do not seek proof of Covid-19 vaccination or recovery as a mandatory condition for entry to or exit from a country. As per the agency, vaccinated people can be exempted from testing and quarantine requirements. In this direction, many countries like China and Israel have introduced vaccine certificates that ease the process of entering and travelling across the destination country for vaccinated travellers.

Though these certificates can be looked at from the lens of trade facilitation, they can potentially act as a trade barrier if they encourage discriminatory treatment. The recent and the most contentious issue in this regard is the European Union's "Green Pass" scheme. Through this vaccine certificate, the European Commission intends to remove travel restrictions such as entry bans, quarantine obligations and testing. The EU has listed only four vaccines approved by the European Medicines Agency (EMA) for the pass: Pfizer-BioNTech's Comirnaty, Moderna's Spikevax, Oxford-AstraZeneca Vaxzevria and Johnson & Johnson's Janssen.

This approach creates a schism between low and high-income countries and the first source of this divide stems from the difference in the vaccination rates across the globe. Vaccine doses administered per 100 people is 1.4 for low-income countries as compared to 93.2 for high-income countries. This makes travellers from low-income countries ineligible to avail these certificates.

The second source of discrimination is based on the type of vaccines administered in a country. As the Green Pass scheme includes only four selected vaccines approved by the EMA, it makes travellers from countries administering alternate vaccines ineligible for certification. When it was launched, the policy did

not even allow AstraZeneca's Indian-manufactured vaccine, Covishield. Due to the immense pushback, 16 EU countries have now accepted Covishield. However, despite this inclusion, travel rules vary across the region and in some cases, are still discriminatory — for instance, travellers from India vaccinated with Covishield still need to quarantine in the Netherlands, as India is considered a high-risk country. The only relief for them is the removal of any possible restriction on their movement within the destination country.

This goes against the policy of COVAX, which has categorically stated that "any measure that only allows people protected by a subset of WHO-approved vaccines to benefit from the re-opening of travel into and with that region would effectively create a two-tier system... (and) would negatively impact the growth of economies that are already suffering the most".

As per estimates based on information from the WHO, countries not administering any of the EMA-approved vaccines account for at least 14 per cent of the vaccinated population. These lie mostly in low and middle-income countries, including India. Along with African and South Asian regions, this population also includes South East Asian countries. Nationals from many of these countries also serve in the hospitality industries in countries

across the world, including Europe. With this exclusion criteria, an indirect cost burden is put on their domestic service sectors that are already reeling due to the pandemic.

With such discriminatory intervention, the EU policy does not go well with the globalisation policy of collective welfare. To achieve the desired goal, countries need to cooperate on vaccine production to accelerate the global vaccination process. The Covid vaccine supply chain can involve more than 100 components and it is important to strengthen the global supply chain. This makes lifting trade barriers on raw materials for vaccine production critical.

There is some policy movement in this direction. Covid vaccine makers across the world have created a platform, led by the Coalition for Epidemic Preparedness Innovations, to connect with key raw material suppliers needed for boosting production. Also, in a recent declaration, WTO members have agreed to review and eliminate unnecessary export restrictions on essential medical goods needed to combat the pandemic. The two relevant bodies, WHO and WTO, should also work together to sort out such selective criteria for international movement.

The writer is an Associate Fellow at the National Council of Applied Economic Research (NCAER). Views are personal

WHAT THE OTHERS SAY

"Democracy is needed in the Arab world for good governance and for the checks and balances it brings. It also provides the least worst mechanism for power-sharing in complex plural societies"

— THE GUARDIAN

Hold-up on exit route

Cloud over Videocon resolution process points to larger weakness in IBC



ARUSH KHANNA

WITH THE NATIONAL Company Law Appellate Tribunal (NCLAT) staying the approval granted by the Mumbai bench of the National Company Law Tribunal (NCLT) to the resolution plan for the Videocon Group, the saga of India's first group insolvency proceeding continues.

On June 8, the NCLAT approved a resolution plan submitted by Twinstar Technologies, a wholly-owned subsidiary of the Vedanta Group. Twinstar's resolution plan provided for payment of Rs 2,962 crore — a mere 4.15 per cent of Videocon's total admitted debt of Rs 64,838 crore — raising several concerns, from confidentiality obligations of the resolution professional to the rights of dissenting creditors. The NCLAT, despite being constrained to approve and not interfere with the "commercial wisdom" of the Committee of Creditors (CoC), expressed its displeasure with the resolution process.

The displeasure is justifiable. Under the IBC (Section 30(2)(b)), the resolution plan must provide for payment of debts amongst creditors in a "fair and equitable" manner. In the plan submitted by Twinstar, unsecured assenting financial creditors and operational creditors are getting a paltry 0.62 per cent and 0.72 per cent of their admitted dues. Majority of the operational creditors are MSMEs. The NCLAT, even while approving the plan, requested Twinstar to increase its payout to the ailing MSMEs, who were themselves on the cusp of insolvency. Even the secured assenting and dissenting financial creditors had to settle for only 4.9 per cent and 4.56 per cent of their respective dues. Considering that lending by financial creditors entails public money, the concern over whether such resolutions are in line with the public policy of the country must not be overlooked. If an award passed in arbitration, where no public money is involved, can be set aside if it is contrary to the public policy of India, then why can't the same yardstick be made applicable to resolution plans? After all, the banks are repositories of public trust and money.

What is more startling than the 95.85 per cent haircut taken by the creditors is that Twinstar's bid of Rs 2,962 crore is uncannily close to the liquidation value of the Videocon Group estimated at Rs 2,568

crore, thereby raising legitimate suspicion and concern over the confidentiality of the resolution process. Regulations 35(2) and 35(3) of the I&B (Insolvency Resolution of Corporate Persons) Regulations, 2016 state that the resolution professional must maintain the confidentiality of the fair market value and liquidation value of the corporate debtor and can only disclose the same to the CoC members after the resolutions plan have been submitted. Whilst the CoC members must, on receipt of the information, issue an undertaking of confidentiality, no such obligation falls on the resolution professional. Further, Section 29(2) of the code provides that the resolution professional must disclose all "relevant information" to the resolution applicant and it is for the resolution applicant to ensure compliance with confidentiality obligations. Again, there is no such duty imposed on the resolution professional.

Even under Section 25 of the code, titled "Duties of resolution professional", the specific duty to maintain confidentiality of sensitive information that is likely to affect the valuation of the corporate debtor is conspicuously absent. Clearly, the confidentiality rules need to be revisited, especially qua the resolution professional. The current regime does not have much deterrence value so as to ensure solemn adherence to confidentiality.

It would not be an over-reach to suggest that it is largely due to these striking findings of the NCLAT that the NCLAT was compelled to stay the takeover bid. Status quo ante has been restored until the next date of hearing by which time more than three years would have passed since the Videocon group was admitted into insolvency proceedings. This is way beyond the statutory timeline of 330 days. In case the plan is sent back to the CoC for reconsideration, it may be quite a while before curtains are finally drawn on this case. If we factor in the likely prospect of this matter reaching the Supreme Court, the wait might just get longer.

The two primary objectives of enacting the IBC were: The conclusion of the insolvency resolution process in a "time-bound manner", and "maximisation of value of assets" of the corporate debtor. Videocon was one of the first test cases to examine the prospects of insolvency jurisprudence in India and the first one, for group insolvency proceedings. It was in the second list of the 26 defaulter companies referred for insolvency resolution proceedings by the RBL. However, almost four years and an 95 per cent haircut later, the call for an immediate course correction couldn't be louder.

The writer, a lawyer, is partner at Numen Law Offices

LETTERS TO THE EDITOR

WATCH THE WATCHMEN

THIS REFERS TO the article, 'The Pegasus nightmare' (IE, July 30). There is no doubt that the Pegasus software is only the latest in the range of tools honed for surveillance and curbing dissent, besides internet shutdowns. While formulating trans-national treaties may seem like a good idea, it is difficult to imagine governments across the globe adhering to them — the immense potential of spyware being attractive to all. The Indian government's response to Pegasus doesn't inspire confidence.

Ila Railkar, Mumbai

SAFETY NET

THIS REFERS TO the editorial, 'Banking on trust' (IE, July 30). It addresses an important lacuna in the Indian banking system, which makes depositors suffer the consequences of imprudent decisions of the bank management. The enhanced deposit insurance could help the depositor sleep without worrying about his money parked in the bank besides allowing the government to bring in bankruptcy law for financial institutions.

SS Paul, Nadia

UNHOLY NEXUS

THIS REFERS TO the article, 'Whither One Nation, One Police' (IE, July 30). The author has pointed out the reasons for the police system maladministration from a constitutional and legal point of view. Among the other reasons for denying police reforms is the nexus between crime and politics. Parliament and state legislatures have members who are either involved in criminal activities or have connections with criminals. This not only helps in making money but is also important for retaining their seat.

H Upadhyay, via email

WRONG STRATEGY

This refers to the editorial, 'Opposition & position' (IE, July 29). The Pegasus reve-

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lations revealed a blatant intrusion on people's privacy and the agitation of the Opposition on this count is justified. However, the disruption of Parliament proceedings to insist upon a discussion on this issue superseding all other issues of national importance is self-defeating. By doing so, it has allowed the government to manipulate law-making. It should reboot its strategy to let Parliament function properly so that all issues of importance are discussed.

Ravi Mathur, Noida

BLATANT HYPOCRISY

THIS REFERS TO the article, 'House under siege' (IE, July 30). The author omitted his own party's history of disruptions against the UPA government under PM Manmohan Singh. The then leader of Lok Sabha Sushma Swaraj declared that "not allowing Parliament to function is also a form of democracy, like any other form"; Rajya Sabha leader Arun Jaitley argued that "if parliamentary accountability is subverted and a debate is intended to be used merely to put a lid on parliamentary accountability" then disruption is a legitimate tactic because it is very important work itself. This is political hypocrisy and duplicity.

LR Murmu, Delhi