

The aftermath of a nasty election

The time has come for civil society to forge corrective action and strengthen institutions



R. SESHASAYEE

The devastation caused by a vicious electoral campaign for the 17th Lok Sabha has cast a troublesome shadow on India's future. Citizens who have witnessed 10 or more elections in free India would readily agree that electoral politics has never sunk so low in the past as it has now. Truth and national interest were victims while destruction of the political enemy became the sole purpose of fighting the election. Yet there is one very bright side that needs celebration.

The redeeming feature has been the integrity of the election process and the mechanics of registering the choice of the voter. While the overall electoral turnout in this general election has been put at a tentative 67.11%, making it a historic one, there have been no proven instances of booth capture. Most importantly, there has been no credible evidence of any material failure of electronic voting machine (EVM) technology. But this is evaluating democracy against a low bar.

While the body of democracy might still be reasonably healthy, what must trouble every citizen is the deep corruption of the soul of democracy.

Fissures

What is the damage done to the future of India?

First, the credibility and effectiveness of Parliament, the very institution that we have so painstakingly sent our representatives to, is set to experience a further erosion. The culture of aggressive disruption by the Opposition might get chronic, given that there has been no evidence that political parties will place the nation ahead of their political interests. Parliament can discharge its responsibility of law-making, only if parliamentarians rise above partisan interests.

Second, while Indian foreign policy has remained somewhat underwhelming and defensive (with the exception of the liberation of



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Bangladesh, and the Balakot attack), the growing nexus between a rogue neighbour and an ascendant superpower in the region has highlighted the radical need for an assertive policy within the framework of non-aggrandisement. That requires a risk-taking ability within a narrow space for manoeuvrability. It needs the government and the Opposition to stand as one. However, the behaviour of both national parties does little to inspire confidence in this direction.

An economic script

Third, by all indications, the Indian economy will face strong headwinds. Consumption-led demand is slowing down and the rural economy continues to be in distress. The 'twin balance sheet' problem is constraining new investments while the banking sector is in disarray. Yet, India can achieve at least a high single-digit growth. This will, however, depend on the government executing the next round of reforms in land and labour markets, further pruning unproductive subsidies, devising policies to attract foreign and private investments in infrastructure, and incentivising business to produce and service the world. The new government will have to sell to the public the necessity for some short-term pain for long-term gain. It will have to take bold financial decisions while being accountable and transparent. Election rhetoric and pre-election actions instead focussed on the opposite: doles, which are short-term gains; non-transparency in and witch hunting of procurement deals;

and a systematic alienation of private enterprise. This is not the canvas on which a bold turnaround plan for the economy can be scripted.

Fourth, the nation has not only been sharply polarised but the elections have pushed it to react emotionally rather than rationally. Social media has unleashed raw emotions. In election season, every social issue has been viewed through the prism of political ideology.

Need for constructive discourse

Despite our glorious history of advanced thinking, realisation of our constitutional aspirations of equality and liberty has been stymied by inherited societal backwardness. Social reforms can happen only in an atmosphere of constructive debate and dissent and a shared vision of modernity. The discourse has to move away as much as possible from ideology to constitutional rights.

Fifth, democracy has to be anchored in the system of checks and balances among autonomous institutions, the judiciary, the defence forces and the Election Commission of India as well as an independent media and civil society. Despite the mutinous situation in some of these institutions and the disturbing circumstances in this election, there is no great fear that institutions have been permanently damaged. That cannot be said of the media, especially the visual and social media. The polarisation of the media on political lines and the loss of neutrality appear almost complete.

Does this mean that we have collectively failed to safeguard our fu-

ture? No, there is hope and we have to act quickly and responsibly.

Role for civil society

The time has come for civil society to offer that hope and shoulder the responsibility for corrective action. Participative democracy has to be kept alive through a vigilant and demanding civil society that ensures restoration of the primacy of national interests. India has a very active and vast civil society that has several exemplars in the fields of advocacy, citizen rights, environment and philanthropy. There is a need and space for robust and credible civil organisations that act as bridges between the elected and the electorate.

Leaders from different vocations such as business, arts and administration have to render public service through civil organisations. Indifferent silence and armchair commentaries are not responsible options. Second, relevant organisations have to come together to demand a proper and orderly functioning of Parliament and State legislatures. A worthwhile experiment would be having citizen organisations at the constituency level that act as monitors of elected representatives.

Third, industry and trade organisations must demonstrate spine and pursue a vocal agenda of advocacy based on broader national interests and beyond narrow corporate gains.

Fourth, India has had a long history of socially committed organisations leading societal transformation from the front. While Parliament might enact laws when it comes to closing the gap between legislative intent and social practices, much falls on the shoulders of a socially conscious citizenry. Civil society needs to rise to meet this challenge.

Fifth, civil society should rise in force to safeguard the integrity and independence of autonomous institutions, should they face a threat.

Perhaps, the political class and our elected representatives will morph into butterflies and surprise us citizens with responsible behaviour. There is little doubt that the very presence of organised and active civil society would only serve to hasten such a splendid metamorphosis.

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The IBSA task list

Why this unique grouping of India, Brazil and South Africa must be revitalised



RAJIV BHATIA

Even as two member-states (India and South Africa) of the IBSA Dialogue Forum have been busy with national elections and the third (Brazil) is settling down after its recent presidential elections, their foreign policy mandarins met in Kochi, May 3-5. The central goal was to develop a blueprint to rejuvenate IBSA, widely viewed as a unique voice for the Global South. Will this endeavour succeed?

Rise, fall and rise

First, some candour and recall are needed to trace the past trajectory. The idea of creating a grouping composed of major democracies of three continents, Asia, Africa and South America, emerged from the disarray at the end of the 20th century, and the perceived need for developing countries to forge decisive leadership. IBSA was launched through the Brasilia Declaration in 2003. Its summits, between 2006 and 2011, gave it a special global profile.

But, 2011 onwards, BRICS, the larger group comprising IBSA countries, China and Russia, started to overshadow IBSA. IBSA has been unable, until now, to hold its sixth summit. Nevertheless, a series of events marking its 15th anniversary, held during 2018-19, have imparted new momentum to the endeavour to revitalise IBSA.

Throughout the period of its marginalisation by BRICS, a strong body of officials and experts in the three countries has held the view that IBSA is the true inheritor of solidarity among developing countries, which was nurtured from the Bandung Conference (1955) through UNCTAD and G-77 to the BAPA+40 Declaration (2018). It is the champion of South-South Cooperation, and the advocate of a coordinated response by developing economies to secure the Sustainable Development Goals (SDGs). The glue that binds IBSA countries together is their faith in democracy, diversity, plurality, inclusivity, human rights and rule of law. This was reiterated through the IBSA Declaration on South-South Cooperation, issued in Pretoria in June 2018.

Notably IBSA remains determined to "step up advocacy for reforms of global governance institutions in multilateral fora". In particular, it is strongly committed to the expansion of the UN Security Council. As Foreign Minister Sushma Swaraj put it, "We

three have to ensure that our collective voice is heard clearly in BRICS and other groups on UN Security Council reforms, since if we do not speak for our own interests, no one else will."

Kochi parleys

Against this backdrop, IBSA Sherpas and senior officials of the three countries held detailed deliberations on all aspects of the grouping. The IBSA Academic Forum, comprising independent experts, held its sixth session in Kochi after a hiatus of over seven years. This forum hosted a candid and comprehensive exchange of views on the continuing relevance of IBSA; the need for a strategy to secure SDGs and cement South-South Cooperation; expanding trade cooperation; and the shared goal of enhancing academic collaboration on issues relating directly to the needs of democratic societies.

In fact, IBSA has been notching up a number of quiet successes. First, the three Foreign Ministers have been meeting regularly to provide a coordinated leadership to the grouping. The last meeting of the Trilateral Ministerial Commission took place in New York in September 2018. Second, while the India, Brazil and South Africa Facility for Poverty and Hunger Alleviation (IBSA Fund) is small in monetary terms, it has succeeded in implementing 31 development projects in diverse countries: Burundi, Guinea-Bissau, State of Palestine, Cambodia and Vietnam, among others.

Third, India has been running an innovative IBSA Visiting Fellows Programme through the Delhi-based think tank, RIS or Research and Information System for Developing Countries. A strong case exists for expanding its reach. Both South Africa and Brazil should initiate their own editions of this programme, as an investment in building intellectual capital.

The idea of IBSA remains valid. The grouping has its tasks cut out. The special responsibilities it bears cannot be discharged by BRICS. In fact, strengthening IBSA could increase the effectiveness of BRICS and encourage it to follow a more balanced approach on key issues of interest to India, Brazil and South Africa.

Hence, the current endeavours to infuse greater dynamism in IBSA are well-timed. They would need buy-in by the government that comes to power in India. Support by Brazil's President Jair Bolsonaro and South Africa's Cyril Ramaphosa, who has just won re-election as President, would be crucial. An early convening of the next summit is the pressing priority.

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SINGLE FILE

The problem with judicial legislation

Courts should be restrained and follow positivist jurisprudence

MARKANDEY KATJU & ADITYA MANUBARWALA



GETTY IMAGES/STOCKPHOTO

Several southern states of the United States – Georgia, Alabama and Missouri – have passed pieces of legislation banning abortion, though with some differences. These laws are inconsistent with the judgments of the U.S. Supreme Court in *Roe v. Wade*, which laid down a trimester test, and

Planned Parenthood v. Casey, which laid down the undue burden and viability tests. The constitutional validity of these legislations will almost certainly be challenged in the U.S. Supreme Court, which will have to examine whether *Roe* and *Casey* were correctly decided. It is our submission that they were not.

The sheet anchor of *Roe* (and of *Casey*, which followed *Roe* in invalidating the ban on abortion, though with different directions) is the decision in *Grissold v. Connecticut*, in which the U.S. Supreme Court created a new constitutional right – the right to privacy.

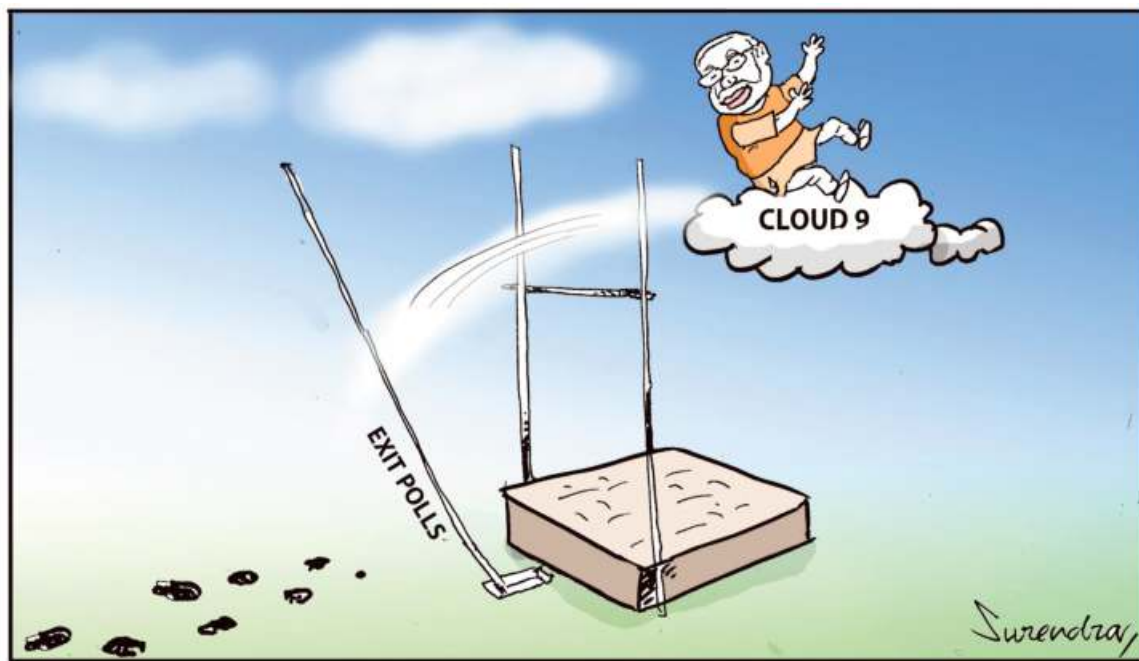
The Bill of Rights in the U.S. Constitution talks of freedom of speech and of the press, liberty and equality, but it nowhere mentions any right to privacy. So, by a judicial verdict, a right was created which in our submission was wrong, since according to the principle of separation of powers in the Constitution, only the legislature can create a right.

We regret to say that both the U.S. as well as the Indian Supreme Courts have not been observing the judicial restraint expected of judges of superior courts and have been encroaching on to the domain of the other two organs of the state, the legislature and the executive. Some examples.

In *State of Tamilnadu v. K. Balu*, the Supreme Court banned liquor shops within 500 m of highways, which was a legislative order. In *K. Puttaswamy v. Union of India*, it created a right to privacy, which is nowhere mentioned in the fundamental rights laid down in the Constitution. In *Subhash Kashinath Mahajan* it amended the SC/ST Act. In the NCT, Delhi, Sabarimala and LGBT cases it laid down the 'constitutional morality' test. In other decisions, the court fixed timings for bursting crackers on Deepavali, directed interlinking rivers and laid down regulations for the Board of Control for Cricket in India. In the Judges cases it created the collegium system for judicial appointments.

We submit that this judicial activism requires reconsideration, for it entails unpredictability in the law apart from violating the principle of separation of powers. It entitles each judge to lay down the law according to his own subjective notions. We submit that courts should be restrained and follow positivist jurisprudence, which advocates judicial restraint, and in which the centre of gravity of the legal system is statutory law, rather than sociological jurisprudence, which advocates judicial activism and shifts the centre of gravity in the legal system to judge-made law. In our view, judicial legislation is an oxymoron.

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DATA POINT

Dubious distinctions

Nearly 20% of the 7,000-odd Lok Sabha candidates studied by the ADR* had criminal cases against them. The RJD, followed by the BJP, had the most criminal cases per candidate on average. Candidates in Kerala had the highest average in the country. By Varun B. Krishnan

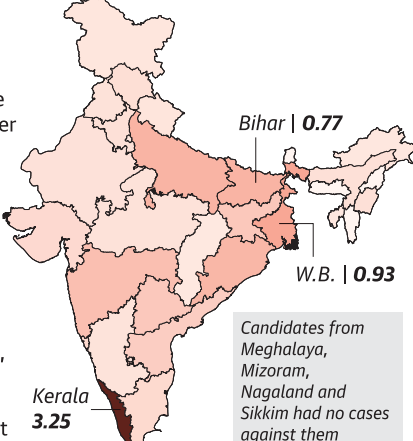
Case file
BJP and INC candidates figured in equal numbers among the top 10 with the highest no. of criminal cases against them

Candidate	Constituency	State	Criminal cases
K. Surendran (BJP)	Pathanamthitta	Kerala	240
Dean Kuriakose (INC)	Idukki	Kerala	204
Ateek Ahmad (IND)	Varanasi	U.P.	59
Soyam Babu Rao (BJP)	Adilabad	Telangana	52
Anumula Revanth Reddy (INC)	Malkajgiri	Telangana	42
George Tirkey (INC)	Sundargarh	Odisha	41
Sobha Surendran (BJP)	Attingal	Kerala	40
Saritha S. Nair (IND)	Amethi	U.P.	34
Oli Mohammad Mallick (CPI M-L RS)	Barasat	W.B.	32
Rajesh Ranjan (JAP L)	Madhepura	Bihar	31

BJP: Bharatiya Janata Party;
INC: Indian National Congress;
RJD: Rashtriya Janata Dal;
SP: Samajwadi Party;
SS: Shiv Sena; **BSP:** Bahujan Samaj Party;
CPI M-L RS: Communist Party of India (Marxist-Leninist) Red Star
JAP (L): Jan Adhikar Party (Loktantrik)
IND: Independent

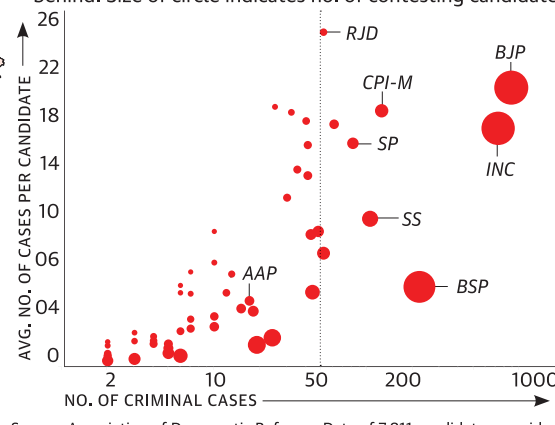
State of crime

On average, Kerala had the highest number of criminal cases per MP candidate, while West Bengal and Bihar were also on top. In absolute numbers, U.P., Kerala and Maharashtra topped the list



Party split

On average, the RJD had the highest no. of criminal charges per candidate. The BJP followed, while the INC was not far behind. Size of circle indicates no. of contesting candidates



Source: Association of Democratic Reforms, Data of 7,811 candidates considered

FROM THE HINDU ARCHIVES

FIFTY YEARS AGO MAY 22, 1969

Telangana issue: Centre watching situation

The Union Government's latest assessment of the situation in Andhra Pradesh following the Telangana agitation is that the worst is over and that there are enough indications to show that the movement for a separate State is losing momentum slowly but steadily. The general expectation is that if the agitation continues for some more time, it would even become counter-productive. Already, some members of Parliament coming from Telangana have expressed surprise and reacted sharply to the reported demand of Dr. Chenna Reddi that there should be a referendum immediately to ascertain the views of the people of Telangana on the demand for a separate State. At least one M.P., said in an interview that it was a strange demand and if it was conceded, it was bound to have significant political repercussions in the rest of the country. The Centre is closely watching the situation but it is satisfied that so far the agitation is confined only to a few urban areas.

A HUNDRED YEARS AGO MAY 22, 1919.

Franchise for Indian Women.

(Letter to the Editor: An Excerpt)

Sir: On behalf of the members of the 46 Branches of the Women's Indian Association, all of which have signed requisitions in favour of women suffrage, I protest vigorously against the decision of the Southborough Committee that the franchise shall not be extended to women because, forsooth, "the social conditions of India make it premature". Is this handful of men better able to judge of these conditions than were the thousands of Indian delegates to the Bombay and Delhi Congresses? These latter were the fathers, husbands, brothers and sons of the women concerned and knowing at first hand their social conditions, with full understanding of what the necessary steps to women's voting would be, they voted enthusiastically for the removal of the sex disqualification in all the terms of the Reform Scheme; as also did the men in many Provincial and District Conferences such as Madras and Bombay. Are the considered opinions of these representative bodies of Indian men and women to be flouted by these few Committee members, some of the Englishmen already known to be opposed to the grant of the vote even to their own Englishwomen and who are thus dated as behind the times?

— Margaret M. Cousins, Acting Secretary, Brookhampton, Ooty.

POLL CALL

Strongroom

At the end of voting, the electronic voting machines (along with VVPATs) are kept in designated strongrooms, which are sealed with double locks. This process is done in the presence of candidates and observers of the Election Commission of India. CCTVs are installed in the strongrooms and they are also guarded with security provided by the Central armed police forces round the clock. Candidates can send designated agents or present themselves at the strongroom for vigil as well.

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