



In his own cause

The Chief Justice of India shows how not to deal with a sexual harassment complaint

The manner in which the Supreme Court responded on the judicial side to allegations of sexual harassment made by a former employee against the Chief Justice of India is a textbook example of how not to deal with such a complaint. An issue that squarely fell within the domain of an internal process was taken up by a special Bench constituted by CJI Ranjan Gogoi, comprising himself, Justice Arun Mishra and Justice Sanjiv Khanna. On a ‘mention’ by the Solicitor-General, it was listed as ‘Re: Matter of Great Public Importance Touching upon the Independence of the Judiciary’. The decision to hold an open court hearing is questionable. A complaint of this nature requires an institutional response on the administrative side. There is an internal process to initiate an inquiry mandated by the law regarding sexual harassment at the workplace. The Supreme Court itself has an internal sub-committee under its Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Guidelines, 2015. There is a separate ‘in-house procedure’ to deal with complaints against judges, under which their judicial peers, and not outsiders, will examine them. It is not known if the complaint will be probed under an internal process, but it is clear that the CJI ought not to have presided over the special Bench that took up the matter that concerned himself. The onslaught on the complainant’s credibility and the references made to her alleged criminal record when she was not a party to the proceedings are deplorable.

Justice Gogoi was one of the four judges who spoke out against the manner in which his predecessor as CJI, Dipak Misra, managed the roster. It is ironical that as one who was aggrieved that senior-most judges were kept out of Benches handling major cases, he went on to form a Bench that included himself but not the two senior-most judges after him. Nor was there a woman judge on the Bench. CJI Gogoi’s anguish is understandable, if indeed the complaint is baseless and false, as he contended from the Bench. But then, the court’s Secretary General has sent a denial to the online news organisations that carried details of the complaint. The complainant, a former junior court assistant, had made her charge in the form of an affidavit, supported by purported evidence, and sent it to 22 judges of the court. It referred to likely witnesses to the alleged sexual harassment and victimisation. This is a serious matter that requires careful processing. It is possible even now to send the complaint to an independent committee. That is the only reasonable and fair means of establishing the innocence the CJI has asserted. Pronouncements and protestations from the Bench to a captive audience of acquiescent law officers and lawyers are not the way.

Rough road

The U.S. President’s legal troubles over his campaign are not over with the Mueller report

The investigation report of Special Counsel Robert Mueller is unlikely to end the scandal around Russian interference in the 2016 U.S. presidential election that has rocked American politics for the last two and a half years. The redacted version that has been released confirms what U.S. Attorney General William Barr had said last month when he released a summary – Mr. Mueller neither indicts nor exonerates President Donald Trump. Mr. Mueller concluded that Russia interfered in the election in a “sweeping and systematic fashion”. The Russians carried out an information campaign on the Internet against Democratic presidential candidate Hillary Clinton and in favour of Mr. Trump, while Russian hackers hacked into the Democratic National Committee systems as well as Ms. Clinton’s campaign chief’s email account, and dumped the files on the Internet. While there were contacts between the Russians and Trump campaign members, the investigation doesn’t establish that “members of the Trump campaign conspired or coordinated with the Russian government”. But on the question on obstruction of justice, the Special Counsel was less emphatic.

The report has damning details on how Mr. Trump tried to undermine the investigation. He wanted to fire Mr. Mueller, and when his then-Attorney General Jeff Sessions failed to do so, he wanted him to shut the probe. Mr. Trump didn’t succeed as his staff resisted the orders. In one such instance, White House attorney Donald McGahn preferred to resign rather than carry out Mr. Trump’s order to fire Mr. Mueller. The report also confirms that the President had asked FBI Director James Comey to go easy on Micheal Flynn, Mr. Trump’s original pick for National Security Adviser. Mr. Comey was fired later. What Mr. Mueller has effectively done is to state the facts of Mr. Trump’s efforts to obstruct the probe, while leaving unanswered the question of whether he obstructed justice. He has left the issue for Congress to decide, saying the legislature “has authority to prohibit a President’s corrupt use of his authority in order to protect the integrity of the administration of justice”. As soon as the report was out, Mr. Trump had claimed victory by tweeting: “For the haters and the radical left Democrats – Game over.” But the House Judiciary Committee chair has issued a subpoena to the Justice Department to hand over the full report. Senator Elizabeth Warren, who is running for the Democratic presidential ticket, has called for impeachment proceedings against Mr. Trump. The President’s legal troubles are also not over. A Senate Intelligence Committee investigation into the Russian interference scandal is still on. The Trump campaign is also being probed for alleged campaign finance violations. All this suggests a tough road is ahead for Mr. Trump, though Mr. Mueller stopped short of indicting him.

Being fair and transparent

After these elections, the Election Commission needs to take stock of several issues, including campaign funding



NAVIN B. CHAWLA

Two phases of the 2019 general election have been completed. Polling has finished in 186 out of 543 parliamentary constituencies. Polling in Vellore, Tamil Nadu, has been cancelled for corrupt practices. Five phases still remain till counting is comprehensively undertaken for all the seven phases of the election, on May 23. The reason to complete all the phases is that the result of any one phase should not influence the choices that electors may make.

Having served the Election Commission of India (EC) for five-and-a-half years during which I conducted the 2009 general election, I have an insider’s view, but of course am not privy to the inputs that the EC has and on which its decisions are made.

Dark points

As I have argued in my recent book, *Every Vote Counts*, several negative features of our electoral scene have worsened. Since the Model Code of Conduct came into effect, in just the first two phases this time, money power has so reared its ugly head that seizures made of unaccounted cash, liquor, bullion and drugs amounting to ₹2,600 crore have already surpassed the entire seizures made in the nine phases of the general election in 2014. Most depressingly, this includes huge hauls of drugs, the vast majority smuggled into Gujarat. Uttar Pradesh is awash with liquor. Tamil Nadu has

seen the largest seizures of illicit cash – over ₹514 crore.

These vast sums intended to bribe or influence voters prove several things. The first is that these sums almost certainly represent only a fraction of current illegal spending, a tip of the iceberg as it were. They have been detected by the EC’s machinery acting on the basis of tip-offs, or else by the vigilance of electoral officials in the States. Unfortunately, the bulk of illegal tranches of money, liquor or freebies would have reached their destination. Second, political players have refined their methods in being many steps ahead of the EC’s observers and their vigilance teams by moving their funds to their destinations even before the elections are announced.

Does this not make a mockery of the statutory limit of ₹70 lakh that each Lok Sabha candidate has as his poll expenditure limit?

Difficult questions

As a country we need to ask ourselves some hard questions. When every rule in the book is being broken, when there is no transparency on how political parties collect or spend their funds, when limits of candidate spending are exceeded in every single case, then the time has come to debate whether we need to re-examine our rule book. In order to supervise the matches in play, the EC has had to deploy over 2,000 Central observers for the entire duration, drawing them out from their ministries and departments at the cost of their normal work at the Centre and in the States. Thousands of vigilance squads are set up and must act on the information they receive, which is why the current level of seizures have already made this India’s most expensive general



SUSHIL KUMAR VERMA

election yet. An intelligent guess may lead us to a final tally of spending in excess of ₹50,000 crore, the bulk of which is made up of illicit funding and spending.

It is by now clear as daylight that electoral bonds, far from enabling a legitimate and transparent means of political funding, have proved to be the reverse. The EC, in its own affidavit before the Supreme Court, has admitted as much. The Supreme Court’s order has made sure that full disclosure, albeit to the EC, has already effectively killed further funding along this route. Nothing is a better disinfectant for camouflaged funding than sunlight itself.

With my experience this compels me to say that any serious reform with regard to funding must come from the EC itself, for it is very unlikely that any government will take an initiative in this direction. The EC must take stock after this election is over. It should convene a conference of all stakeholders, including of course all recognised political parties, both Central and State. But this should not be exclusively confined to them, for they will tend to support the status quo or they will be unable to reach consensus. The list of stakeholders must also include the best constitutional and legal minds in our country.

In my book I have also raised the twin problem of candidates

fielded with criminal antecedents. The 16th Lok Sabha that has now passed into history, saw almost 30% of its members declaring, in their compulsory self-sworn affidavits, the list of criminal cases registered against them. They are also legally obliged to declare their wealth and their educational qualifications. This is the result of two vital orders passed by the Supreme Court in 2002-2003, the result of a battle that the Association for Democratic Reforms fought tenaciously. Unfortunately, in the first phase of this election, 12% of the candidates perforce declared that they had heinous cases pending, while in the second phase the figure was 11%. It may be noted that these cases include murder, attempt to murder, dacoity, kidnapping and rape. Have we forgotten Nirbhaya and 2012 already?

Giving it teeth

The matter of the Model Code of Conduct and its administration by the EC has been the most frequently reported single issue in this election. For those of a certain generation, the 10th Chief Election Commissioner (CEC), T.N. Seshan – he once famously declared that “he ate politicians for breakfast” – was the man who made the country sit up and take note when he decided to level the playing field as never before. There is little doubt that he reminded the EC that it had powers inherently enshrined in Article 324 of the Constitution – powers so great that there is arguably no other electoral management body with similar powers.

I learned this during my years as Election Commissioner, and these are the powers I exercised during the course of the 15th general election in 2009; I was successfully able to confront three

Congress-ruled State governments and one Congress ally too. One of them even convened a special press conference to declare that his government would move the Supreme Court against the EC’s “arbitrariness”, but I personally had no doubt about its outcome. As it happened, he chose not to in the end.

The point I seek to make, by virtue of my own experience, is that the powers of the EC are so enormous and so all-encompassing that they exceed the powers of the executive in all election-related issues during the course of the election period. Of course, these must be exercised judiciously, fairly and equitably, not least because every decision is analysed in every “adda”, every home, every street corner and every “dhaba” across the country, where the EC’s decisions must be seen to be fair and transparent. During the years precedent to becoming CEC, I was fortunate that Mr. Seshan advised me whenever I called on him. As a result I never felt any need to make reference to government or court, once the process was under way.

Words into action

If there is anything for me to applaud thus far in this election, it is the decision made by two political parties which have selected over 33% women candidates – Mamata Banerjee’s Trinamool Congress (41% for 42 Lok Sabha seats) and Naveen Patnaik’s Biju Janata Dal (33% for 21 Lok Sabha seats). After years of patriarchy or at best lip service, these parties have taken a vital step towards empowering women politically.

Navin B. Chawla is a former Chief Election Commissioner and is the author of ‘Every Vote Counts’



TABISH KHAIR

The Mexican border was closed for hours on November 25, 2018 at the San Ysidro Port of Entry to the U.S., after a group of migrants, including children and women, in Tijuana reportedly stormed the area. This prompted the U.S. Border Patrol to fire tear gas at the group. Among the hand-made placards carried by the migrants was this one: “We are international workers. We are not criminals.”

Xenophobic assertion

It was a revealing placard, and one that commented on a major change in global economic and political thinking: since the 1990s, not just international but even interregional workers have slowly been pushed into the rubric of ‘criminals’. U.S. President Donald Trump is a prime example of this: his victory was largely founded on his ability to depict international workers, particularly those crossing the U.S.-Mexico border, as ‘criminals’. With elections coming up in the U.S. once again, he has returned, with renewed vigour, to this discourse. The fact that such a sweeping xenophobic assertion – though often it was in the form of

pointed innuendoes – does not make him a ‘loser’ (in his language) highlights the fact that many voters now think of certain kinds of workers as basically criminals.

This tendency is present, though in less obvious versions, in almost all developed and developing countries, including the social welfare democracies of Europe. It is also present within nations, as we in India witnessed in the recent ‘Gujarati’ backlash against workers from Uttar Pradesh and Bihar. Now, it is true that ‘foreigners’ have been looked at with suspicion by some ‘natives’ in the past too, but what we are talking about is a bit different.

This is because no one really denies that most of these people who want to enter a country do so in order to find work. Also, all but the most rabid of hate-mongers are fully aware that, say, most Biharis in Gujarat or Mexicans in the U.S. are law-abiding and often needy workers. And yet politicians can garner extra votes by implicitly or explicitly equating international/interregional ‘workers’ with ‘criminals’, and states can openly devise blatantly differential treatment for them – as the children ripped away from their parents and the workers tear-gassed at the U.S. border can testify. This marks a significant development in recent years.

In short, we have to ask the question: what is it that enables many to characterise international



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and even interregional workers as criminals, even as we know that most of them are crossing a border simply to seek work? No, the answer is not that there are more ‘criminals’ crossing over in the guise of workers now than there were in the past. There has been no difference in this regard. Most immigrants crossing a border are law-abiding and industrious workers, not ‘criminals’ – this remains the case today, as it was in the past.

The answer lies not with the workers crossing over or even with those citizens who brand them ‘criminals’. The answer lies in the nature of capitalism, which no longer needs workers as much as it did in the past. Financial speculation has increasingly dwarfed international trade from the 1990s onwards. More than that, much of financial speculation is based on factors other than the productivity of a sector. When market speculators bend over their computer screens watching numbers flash by, they are not looking at the performance graphs of industries: they are just speculating with numbers. A world dominated by fi-

nancial speculation does not need workers in two ways: financial speculators are not workers, no matter what they think of their ‘work’, and financial speculation does not depend on the production of workers. Capital transactions are no longer tied predominantly to industry, productivity or trade of goods – and hence, to workers.

Post-human future

There are other aspects to this snowballing change. In academia, for instance, there is the trend to talk about ‘post-humanism’. Post-humanism has a respectable heritage. In fields like animal studies, it is often meant to suggest a world in which human beings do not occupy the centre. This is an interesting and necessary concept, for the earth has suffered much from our narcissism as a species and our inability to think of other animals as having biological rights too. But ‘post-humanism’ is mostly used in other ways: it is used to suggest a world after human beings, a world run by artificial intelligence.

Inevitably, for those in power – either in terms of a monopoly on wealth or a monopoly on knowledge – a world of financial speculation leads to a ‘post-human’ world run by artificial intelligence. Once workers become redundant and numbers are sufficient, then, inevitably, one can think complacently of replacing human intelligence with artificial intelligence.

In some ways, of course, much of financial speculation depends on exactly this: a kind of artificial intelligence, not human labour.

The reduction of workers to criminals is part of this change, and interestingly the solution is not just to insist on the right to work locally or even nationally. The insistence has to be ‘universal’ and global. Global political action is needed to ensure international working rights, linked to human status and not the caprice of state or capital.

Otherwise, as the right to work can currently be ensured only by national governments, it will always be used to define other – ‘foreign’ – workers as actual or potential criminals, as Mr. Trump and his putative wall have set out to do. The right to work has become a selective right; today it is controlled by governments in tandem with corporations. Soon it might well become the monopoly of corporations. It is basically being used to criminalise those workers who are not allowed – by nation-states or neoliberal capitalism or both – the legitimate identity of a worker.

And as this is a shrinking identity – there are fewer and fewer active workers under the impact of rampant financial speculation – it simply adds to the official metamorphosis of more workers into ‘criminals’.

Tabish Khair is an Indian novelist and academic who teaches in Denmark

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

CJI and allegation

I believe the Chief Justice of India has the full right to place his side of the facts before the public (Page 1, “Former staff writes to SC judges, alleges sexual harassment by CJI”, April 21). The incident also highlights how even the office of the CJI can easily be tarnished by a mere allegation, the authenticity of which is yet to be ascertained. This has not only blotted the image of the judiciary but also impacted the image of the country. I think a thorough investigation is the need of the hour. What if it exonerates the CJI? Who will restore the judiciary’s loss of reputation?

NAGARAJAMANI M.V.,
Hyderabad

■ What is at stake is the well-earned reputation of the

Supreme Court as a place of high talent and immaculate integrity. There are two ways of looking at this case. One, there is no smoke without fire and this is another instance of human frailty. Two, one has to agree with the CJI’s view of some large force waiting to “deactivate the office of the CJI”.

C.G. SIVAKUMARAN,
Chennai

■ It was very inappropriate for the CJI to be a part of the “extraordinary session” to reject the allegations. He has violated the cardinal principle of ‘no man shall be a judge in his own cause’. Even worse were his critical remarks, imputing motive, violating another rule of natural justice. Since the in-house procedure for dealing with such complaints is silent on the procedure to be followed in such cases, the most appropriate thing for

him to do would be to completely disassociate himself from the matter. With great respect to the CJI, he does not seem to have set the right precedent.

S.K. CHOUDHURY,
Bengaluru

New camp

The grand old party still lacks the art of managing good party members (“Priyanka Chaturvedi quits Cong., joins Shiv Sena”, April 20). Its former spokesperson, Priyanka Chaturvedi, was one of its most articulate. By allowing her to exit, the Congress has given more ammunition to the NDA. Ms. Chaturvedi did talk tough against political opponents and may turn out to be a misfit in her new party. One hopes that in her case, it is not a case of out of the frying pan into the fire.

N. NAGARAJAN,
Secunderabad

Master chronicler

With the passing of writer, journalist and teacher S. Muthiah, good old Madras has lost its favourite son. His weekly column in *The Hindu*, about the past of this great city, was an eye-opener. His minute detailing made understanding the history of Madras a joy.

T. ANAND RAJ,
Chennai

■ We have lost a great historian and one who successfully campaigned for the restoration of heritage buildings in Chennai. I once told him that he was a one-man army in his chosen field, and he just smiled. There was aesthetic excellence in his descriptions, and his documentation of Chennai’s history will remain unparalleled. Once during ‘Madras Week’, I remember the film critic, Randor Guy,

saying that he had to be careful about names or else he was sure to have S. Muthiah question him.

R. SOUNDARARAJAN,
Nagapattinam, Tamil Nadu

■ There is now a deep void in the chronicling of the city’s heritage. While preparing for a ‘Madras Day’ quiz during my school days, I visited his home to get my copy of *Madras Rediscovered* autographed. He took keen interest if youngsters wanted to learn their local history. His legacy will never fade.

ADRIAN DAVID,
Chennai

■ The sights and smells of the vibrant city of Madras always came alive in the writings of

S. Muthiah, who was a chronicler par excellence and one of the very few who knew the city’s hoary history like the back of his hand. His writings covered a wide canvas and were noted for deep-rooted research. *The Hindu* provided a perfect platform for the writer.

C.V. ARAVIND,
Bengaluru

■ It is a great loss especially for lovers of history, of Madras city and of cricket. Perhaps the University of Madras should create a chair in history in S. Muthiah’s name.

Dr. M.B. PRANESH,
Coimbatore

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CORRECTIONS & CLARIFICATIONS:

The report, “Pragya breaks down at BJP meeting” (April 19, 2019), incorrectly translated dharmayuddh as religious war. It should have been war of righteousness.

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