



Eyes wide shut

The killings in Upper Assam point to the polarisation in the State

It would be facile to see the gunning down of five Bengali men in Bisonimukh-Kherbari, near Tinsukia in Upper Assam, on November 1 as an isolated act of violence or even another of the periodic eruptions against non-Assamese people in the State. The context is crucial here. The killings both symptomise and deepen the fault lines between the Assamese and Bengali communities because of the ongoing exercise to update the National Register of Citizens as well as the Centre's plan to secure parliamentary passage for the Citizenship (Amendment) Bill, 2016. At the heart of the schism is the fate of those eventually left out by the updated NRC. Four million didn't make it to the final draft published in July, and while the final numbers will be known only when the elaborate process of claims, objections and verification draws to a close, there are certain known knowns at this point already. The 'illegal' Muslim immigrant unfortunately has few speaking on her behalf. But her Hindu counterpart is the battleground, with ethnic Assamese nativist groups advocating an even-handed approach while the ruling BJP governments in Delhi and Dispur are keen to cast the protective cover of the Citizenship Bill on grounds of persecution in her country of origin. Groups claiming to represent Assamese and Bengali interests have observed shutdowns and counter-shutdowns. And while a party with a core ethnic Assamese kernel such as the Asom Gana Parishad could unequivocally oppose absorbing 'illegal' Bengali Hindu immigrants, those with a broader vote base have had to hedge through innovative strategies. These include speaking in different voices (the Congress in the Assamese-dominated Brahmaputra and Bengali-dominated Barak valleys) or arguing that the burden of absorption is not only Assam's to bear (the BJP). The politics ensuing over this has left the State polarised.

The shrill rhetoric has spilled over to civil society, with calls for a separate State emanating from the Barak valley, and stray instances of Bengali speakers being harassed in Lower Assam towns, including Guwahati. Thursday's tragedy should serve as a grim warning to the powers that be of potentially darker times ahead if the surcharged rhetoric is left unchecked. While the ULFA (Independent) denies responsibility, investigations thus far suggest it was the group's handiwork. It had earlier claimed responsibility for a low-intensity bomb blast in Guwahati on October 13, saying it was a warning to those who support the Citizenship Bill. Meanwhile, on Thursday too, the Supreme Court Bench that is monitoring the NRC exercise signalled an accommodative stance by agreeing to allow the use of five more documents by those left out of the NRC final draft. That spirit of accommodation, towards long-time residents, of whatever religion or ethnicity, needs to permeate the political leadership and civil society in Assam now.

Mob rule

Pakistan has empowered extremists by capitulating over Asia Bibi's acquittal

The Pakistan Supreme Court's judgment acquitting Asia Bibi, a Christian woman on death row for blasphemy, was an opportunity for the government to start debating the need to reform the regressive blasphemy laws. Instead, Prime Minister Imran Khan's administration has capitulated to pressure from extremists, who blocked roads in Islamabad for three days, demanding a reversal of Wednesday's verdict. On Friday, protesters led by Khadim Hussain Rizvi, a fire-brand cleric and chairman of the Islamist party, Tehreek-e-Labbaik, decided to end the sit-ins after striking a deal with the government. According to the agreement, the government will not oppose the filing of a review petition in the Supreme Court against Ms. Bibi's acquittal. It has also promised the protesters that Ms. Bibi would be prevented from leaving Pakistan. All protesters arrested since Wednesday are being released. This is the second time the Pakistani government is surrendering before the pressure protests by Mr. Rizvi and his co-Islamists. Last year, he led a weeks-long sit-in in the outskirts of Islamabad against a change in the electoral laws. Protesters claimed that the change in the wording of the oath taken by candidates amounted to blasphemy. After three weeks of protests, the previous government and the military struck a deal with the Islamists to end the crisis. The earlier version of the oath was restored and the Law Minister fired.

The question is, how long can the Pakistani government allow extremist mobs to dictate policies, and erode the state's authority? In the case of Ms. Bibi, Pakistan has already seen much bloodshed. She was arrested in 2009 on charges that she insulted Islam and the Prophet Mohammed in an argument with her Muslim co-workers. In 2010, she was convicted of blasphemy and sentenced to death. The country has faced widespread international condemnation ever since about the blasphemy laws, which are perceived as being used to persecute religious minorities. Salman Taseer, the outspoken and secular Governor of Punjab who had campaigned for Ms. Bibi's release, was shot dead in 2011 by his own bodyguard. Shahbaz Bhatti, then Minister for Minorities, was assassinated in the same year after he called for amendments to the law. By acquitting Ms. Bibi, the Supreme Court actually offered fresh energy to those who campaign against the controversial legislation. The government initially tried to rein in the protests. But by capitulating to the extremists as it did subsequently, the government has not only done her a disservice, but further emboldened extremist sections in Pakistan.

Failing to lead by example

Kerala's success in education is hard to reconcile with the palpable tension that the Sabarimala verdict has caused



KRISHNA KUMAR

Politics alone cannot explain the aftermath of the Supreme Court's verdict in the Sabarimala case. This is because for the rest of India, Kerala has served as a model of progress guided by a long-sustained pursuit of welfare policies, especially in health and education. Kerala also has a history of social movements that mobilised people to let go of the grip of custom and ritual. Some of these movements were aimed specifically at propagating reason and knowledge. If the regime of modernity got a fair test anywhere in South Asia, surely it was in Kerala.

A patriarchal ethos

These common impressions are hard to reconcile with the discomfort and palpable tension that the Sabarimala verdict has caused. Conflict and the threat of violence can, and perhaps, should be attributed to political rivalry and administrative ineptitude. But there seems to be a wider unease with the verdict.

In a phone-in programme of the Hindi service of the BBC, a senior woman journalist, who knows Kerala socially, said that the verdict is ahead of the times, that it will take one or two more generations for people to accept the entry of women of all ages in the Sabarimala temple. That sober prognosis left me wondering about the value and meaning of Kerala's achievement



C. RATHEESH KUMAR

in public literacy and children's education. Was it wrong to imagine that the spread of education would cause a deep enough dent in all forms of gender inequality? Persistence of dowry certainly suggests that. So does the acceptance of misogynist humour I have myself witnessed in the middle of serious discussion.

Apart from its failure to dilute a patriarchal ethos, education has also performed rather poorly in widening the space available for dialogue between contending positions. This is one reason why both the state and society are finding it difficult to appreciate a civic solution to a faith-related practice.

Promise of education

Education tends to arouse many expectations, both in the individual and the social mind. First, there are economic expectations. They are so strong that the educated do not mind enduring long stretches of unemployment. Equally complex is the political expectation association with education. It is widely believed that education nourishes democratic values and behaviours. But historical evidence suggests that education can nurture democracy as well as dictatorship. It depends on

what is taught and how. If schools and colleges are intellectually exciting places, and if the curriculum encourages critical inquiry, we can expect education to strengthen democracy. If schooling stifles curiosity by regimenting the body and the mind at an early age, education can nourish authoritarianism.

Similarly, if language and literature are taught to train young minds for participation in open-ended dialogue, we can expect education to sustain an ethos where freedom to differ without fear is guaranteed and dissent is tolerated. The opposite may happen if language and literature are marginalised in the curriculum or subjected to mechanical testing and other means of oppression. Similar things can be said about the teaching of the subjects that constitute the social sciences. They can either be used for indoctrination or to encourage reflection.

Subject to regime change

The question why education has not improved Kerala's capacity to sustain a culture of dialogue is not difficult to answer. Education did spread widely, but efforts to reform its inner world – curriculum and pedagogy – remained weak

The ghosts of laws past

Communication about judicial decisions remains at the mercy of initiatives by diligent officers



APAR GUPTA & ABHINAV SEKHRI

In 2015, the Supreme Court struck down Section 66A of the Information Technology (IT) Act, 2000, as unconstitutional. That decision, *Shreya Singhal v. Union of India*, was heaped with praise by domestic and foreign media alike.

But none of this stopped the police in Muzaffarnagar, Uttar Pradesh, from arresting and detaining 18-year-old Zakir Ali Tyagi in October 2017, for allegedly committing a crime under Section 66A – for posting some comments on Facebook. Mr. Tyagi's case is not alone. Media outlets have reported other instances where Section 66A has been invoked by the police, all of which points to an obvious, and serious, concern: what is the point of that landmark decision if the police still jail persons under unconstitutional laws?

We decided to dig deeper and investigate how Section 66A and other legal zombies have a tendency to inhabit the Indian legal system after their legal deaths.

Widespread malaise

Media reports on the continued application of Section 66A lend themselves to a narrative: the oft-

maligned police are abusing their power in hamlets to commit the most obvious wrongs. But the facts show that this is far from the truth. From police stations, to trial courts, and all the way up to the High Courts, we found Section 66A was still in vogue throughout the legal system.

Equally disturbing was the discovery that this issue of applying unconstitutional penal laws long preceded *Shreya Singhal* and Section 66A. Before the recent decisions that held provisions in the Indian Penal Code as unconstitutional (in whole or in part), the Supreme Court had famously done this, in 1983, by striking down Section 303 of the Indian Penal Code in *Mithu v. State of Punjab*. In 2012, years after Section 303 had been struck down, the Rajasthan High Court intervened to save a person from being hanged for being convicted under that offence.

The weakest branch?

Since we did not subscribe to a narrative of wanton abuse by the authorities in their applying unconstitutional laws, we examined why such instances would keep recurring. Notwithstanding other causes, we argue that a primary reason for poor enforcement of judicial declarations of unconstitutionality is signal failures between different branches of government.

Today, the work of the Supreme Court has firmly placed it within the public consciousness in India. It is common to read reports about

the court asking States and other litigants for updates about compliance with its orders (an example being orders in mob lynching petitions). While this monitoring function is one that the court can perform while a litigation is pending, it cannot do so after finally deciding a case, even after directions for compliance are issued. Instead, it needs help from the legislature and executive to ensure its final decisions are enforced. This was one of the reasons why Alexander Hamilton famously labelled the judiciary as "the least dangerous branch".

Commonly, in this context one thinks of active non-compliance that can undermine the work of courts – for instance, the aftermath of the Sabarimala verdict. But these publicised acts of defiance have hidden what is a systemic problem within the Indian legal system: there exists no official method for sharing information about such decisions, even those of constitutional import such as *Shreya Singhal*.

Identifying signal failures

For any bureaucratic structure to survive, it needs working communication channels for sharing information. The same analogy applies here. The probability of decisions taken at the highest echelons of a system being faithfully applied at the lowest rungs greatly depends on how efficiently word gets to the ground. At present, even getting information



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across about court decisions is an area where the judiciary needs help.

So, unless Parliament amends a statute to remove the provision declared unconstitutional, that provision continues to remain on the statute book. This is why both Sections 66A and 303 are still a part of both the official version of statutes published on India Code and commercially published copies. And while the commercially published versions at least put an asterisk to mention the court decision, no such information is provided in the official India Code version.

Besides reading statutes, what else might government officials consult while applying the laws? Notifications and circulars issued by relevant Ministries. These notifications are another official method to share information about judgments declaring a provision unconstitutional. But as nothing mandates issuance of these notifications, there is no means to ensure that they are issued.

What about the judiciary? We found that there is no formal system on information sharing in the hierarchical set-up of the Indian

that they do not fully understand it or its significance.

Moreover, not everyone believes/wants education to disturb established social patterns. In fact, many people feel unsure about the introduction of critical pedagogy in schools. Why Kerala disappoints us today is because it had fostered the hope of being different. It probably is, but not to the extent one had assumed. Its system of education is just as bureaucratised and compartmentalised as anywhere else. Complacent attitudes also block vision and direction. A common meaning of progress now is to secede from the local board and join the Central Board of Secondary Education (CBSE) or its private counterpart. Kerala set the benchmark for total literacy and implementation of the Right to Education Act. Looking ahead, Kerala could have sorted out the tenacious points of confusion such as the crucial role of language, both in children's growth and in enhancing society's capacity for dialogue. The social incoherence one sees in Kerala gains strength from poor teaching of language and related fields of knowledge.

The Sabarimala prism

It is true of many other parts of India, but Kerala's case hurts because a sound basis for putting in place a sophisticated system of education existed there. Had its early advantages been used with greater focus and commitment, we might have witnessed a somewhat smoother transition in Sabarimala.

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judiciary. However, we found that some High Courts and district judges for specific districts did issue circulars bringing important decisions to the notice of other members in the judiciary.

Thus, if the official text of the IT Act still retains Section 66A, and there is no government notification informing officers about it having been declared unconstitutional, is it really unimaginable to hear about the continued application of this legal zombie?

Justice for all

There is a pressing need to move from a system where communication about judicial decisions is at the mercy of initiatives by scrupulous officers, to a method not contingent on human error to the greatest possible extent. The urgency cannot be overstated. Enforcing unconstitutional laws is sheer wastage of public money. But more importantly, until this basic flaw within is addressed, certain persons will remain exposed to denial of their right to life and personal liberty in the worst possible way imaginable. They will suffer the indignity of lawless arrest and detention, for no reason other than their poverty and ignorance, and inability to demand their rights.

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Sanctions waiver

The Donald Trump administration's 'special consideration' to India by including it in a group of eight countries that will be granted exemption and "weeks longer to wind down" their trade with Iran once sanctions against Teheran kick in would be a cause célèbre-of-sorts for New Delhi. But the fact is that this must be taken with a pinch of salt as the White House functions solely on the whims and fancies of Mr. Trump ("Iran oil: India to get U.S sanctions waiver", November 3). Going by the Trump administration's distinctly yo-yo foreign policy *vis-à-vis* North Korea and considering the fact that Mr. Trump is already speaking about being open to a new deal with Iran, New Delhi should diplomatically stand its ground. It should safeguard its

interests, especially as after the lifting of earlier sanctions against Iran it has invested heavily in the Chabahar port and a railway network to carry out trade in Central Asia by bypassing hostile Pakistan. If India could withstand stringent international post-nuclear test punitive sanctions and come out the stronger for it, it can weather this storm too.

NALINI VIJAYARAGHAVAN, Thiruvananthapuram

Tigress Avni

The report about the circumstances under which Avni, a tigress in Yavatmal, Maharashtra, was shot dead by a team of Forest Department officials and a civilian hunter is shocking (Page 1, "Late night encounter ends reign of Avni" and "Wildlife activists condemn Avni killing", November 4). There is more to this than meets the eye. With wildlife activists

having fought desperately to save her life, it is sad that this ended in a violent manner.

One wonders what the fate of the orphaned tiger cubs will be. Let us hope that a similar fate does not befall Sundari, another tigress, that is being pursued in Odisha.

MONITA SUTHERSON, Nagercoil, Tamil Nadu

■ Humans encroached on the tigress's turf and she reacted using her claws and teeth. The footage provided by the officials makes it clear that if they could shoot the tigress from such a close distance, they could as well have tranquillised her with ease. The whole argument about the team reacting in "self-defence" after she charged at them sounds fictitious. We should not forget that nature has her own ways of showing us where mankind stands.

ARJUN VEKARIYA, Mumbai

■ I wonder whether forest officials in India have read the *Living Planet Report - 2018: Aiming Higher*, by the WWF, which details threats to the planet and its biodiversity. The elimination of Avni smacks of scant regard for conserving wildlife. The officials should have strained every sinew to tranquillise the tigress and her cubs and find a suitable refuge for them rather than kill the adult so savagely.

M.P. MURALIDHARAN, Bengaluru

Native crackers

While many puzzle over what a 'green cracker' is, not many may be aware of 'native crackers' ('Ground Zero' page - "Green crackers make Sivakasi see red", November 3). Even before industrially-produced crackers made inroads, villagers were adept at manufacturing native crackers. Down south, the

*ola padakku* (leaf cracker) was a hit. It was made by folding dried palm fronds into small fill-pad to which a pinch of explosive powder was added alongwith a wick. The 'cracker' burst when the wick was lit. Then there was the *mula vedi*, or bamboo burst. Here, three holes were drilled into a bamboo stem which was then filled with kerosene. Smoke was then blown into this tank using a leaf torch. Finally two holes were sealed and a burning wick introduced near the open hole. There would be a series of bursts with the holes being opened or resealed to let air in. A series of bursting *mula vedis* was a visual treat. There was also the *erri vedi* (hurl cracker), made of sand, glass dust and a pinch of explosive powder, that was rolled into a ball and which burst when hurled at a wall or stone. There may be many more such crackers which were inexpensive to make

and also more environment-friendly.

C. JOHN ROSE, Arumanai, Tamil Nadu

Stubble use

A waste which cannot be disposed of easily must be used in some way and exhausted without a trace. In the pre-World War II days, automobiles were run with charcoal gas engines. These were IC engines but used inspite of their low efficiencies. Small community charcoal gas plants can be manufactured by the government and supplied to villages in Punjab at subsidised rates so that the paddy stubble accumulated as waste can be converted to useful fuel for use in cooking and in automobiles. Tractor manufacturers should come up with suitable types of engines for this purpose.

C. ANANTHARAMAN, Chennai

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