Principle & procedure

The court ruling on AAP MLAs is a scathing indictment of the EC's functioning

The Delhi High Court verdict setting aside the disqualification of 20 Aam Aadmi Party MLAs in Delhi is a searing indictment of the manner in which the Election Commission handled the complaint that they held offices of profit while serving as parliamentary secretaries. For a body vested with the crucial power to determine whether lawmakers have incurred disqualification in certain circumstances and advise the President or the Governor suitably, this is an embarrassing moment. The court has not reviewed its decision on merits. Rather, it has ruled that the EC violated the principles of natural justice while adjudicating a lawyer's complaint against the legislators. It failed to offer an oral hearing on the merits of the complaint and chose to hide under the specious argument that notices had been issued to the MLAs to respond to documents that the EC had summoned from the Delhi government. After saying in its order of June 2017 that it would fix a date for the next hearing, the commission issued two notices seeking replies but fixed no date; instead, it proceeded to give its decision on January 19, 2018. Further, Election Commissioner O.P. Rawat, who had recused himself at an earlier point, rejoined the process without intimation to the legislators. And another vitiating factor was that Election Commissioner Sunil Arora, who had not heard the matter and assumed office only in September 2017, had signed the order. It is a basic feature of judicial or quasi-judicial processes that someone who does not hear a matter does not decide on it.

The high court order scrupulously adheres to the core principles of judicial review of decisions made by a duly empowered adjudicatory body. Courts do not normally plunge into the merits of such a decision, but examine whether there has been any violation of natural justice, whether sufficient opportunity has been given to the parties and whether the proceedings were vitiated by bias, arbitrariness or any extraneous consideration. That a pre-eminent constitutional body should be found wanting in ensuring natural justice while answering a reference from the President is a sad comment on its functioning. It ought to have treated the matter with abundant caution, given the ease with which political parties tend to question the EC's impartiality. The EC has an opportunity to redeem its name by more carefully considering the same question that has now been remanded to it for fresh adjudication. It could appeal to the Supreme Court, but a better course would be to hold a fresh and fair hearing. The high court has acknowledged the EC's "latitude and liberty" in matters of procedure, but cautioned that any procedure should be sound, fair and just. In proceedings that may result in unseating elected representatives, fairness of procedure is no less important than finding an answer to the question whether they have incurred disqualification.

Scuff and buff

Australia needs to do a lot more to punish the 'ball-tampering' guilty

ricket is a sport, but it is also a code of honour. The phrase 'it's not cricket' refers to any act that is not fair. That it has been called 'a gentleman's game' suggests that it is held to high standards. Yet, like a few other things wrong with the game, ball-tampering remains one of its murkiest secrets. The seemingly innocuous application of saliva and sweat, and more interventionist acts such as pressing chewed lozenges, throwing the ball hard on the surface, the use of nails or abrasive dust from the turf, and in some cases the use of bottle openers have plunged a knife into the game's heart even as they enhanced many a fast bowler's ability to extract reverse-swing. This past weekend, Steve Smith's Australian team went one step further on that road to infamy, prompting its opening batsman Cameron Bancroft to scuff the ball with a yellow tape laden with dirt-granules from the pitch during the course of the third Test against hosts South Africa at Cape Town's Newlands Ground. The act, caught on camera, and the subsequent admission of guilt by the fielder and Smith have tarred them and their fellow accomplices in the leadership group, including vice-captain David Warner and coach Darren Lehmann. The entire episode has also raised questions about the manner in which a powerhouse such as Australia goes about playing its cricket.

The fracas highlights the perils of wanting to win at any cost, an unfortunate 'call-to-duty' that now finds favour in most cricketing units. In fact, ball-tampering has been attempted by most international teams. Responses from 'guilty' players have ranged from injuredinnocence to grudging acceptance of complicity. In this case, Cricket Australia moved fast, forcing Smith and Warner to step down from leadership roles. Australian Prime Minister Malcolm Turnbull publicly questioned the team's approach to the game. And Rajasthan Royals replaced Smith with Ajinkya Rahane as its captain for the forthcoming Indian Premier League season. The International Cricket Council, for its part, imposed a one-Test ban on Smith, and fined him 100% of his match fee. Bancroft got a 75% fine. But is this enough? Clearly no. Not surprisingly, the overwhelming feeling among the game's greats and the larger cricketing community is that these measures are no more than a gentle slap on the wrist. Bancroft's act wasn't a spur of the moment initiative; it was a pre-meditated action thought up during lunch break on Saturday. Smith, Bancroft, Warner, Lehmann and whoever else orchestrated this despicable move deserve firmer punishment. Sadly, a series which South Africa currently leads 2-1 will now be remembered for trash-talk and a nefarious attempt to alter the shape of the ball. Whatever this is, it's not cricket.

The non-politics of outrage

We need a white paper on the extensive data markets that currently exist in India



PARMINDER JEET SINGH

Te are witnessing mass outrage over certain ac-Facebook (FB) and a British political consulting firm, Cambridge Analytica (CA), regarding the use of personal data for political messaging during the U.S. presidential elections. But digging into the issue, it is difficult to see what is really novel in the current disclosures that was previously not known. It is also unclear why the facts that these disclosures centre on are more important than many other well-known facts about the underlying issue of data, digital controls and exploitation. It is not evident what the real concerns underlying the outrage are. And lastly, there is the important question of what it really means for countries such as India

CA's role in the U.S. elections has been known for quite some time. So now after a whistle-blower's account and an undercover investigation, if those responsible for data and digital policies behave as if any of this is news to them, it is either disingenuous or unacceptably naive and incompetent.

As FB has clarified, the only illegal element here is that a research company transferred data to CA against FB policies. But both the company concerned and FB itself could have legitimately used the same user data for the same purpose of psychometrics-based micro-targeted political messaging for any of their paying clients. What exactly do we then have a problem with? Just with violation of FB's policies, or with psychometrics-based political messaging and the collective national damage that it causes? Is it, for instance, al-

right if FB itself did similar things for its paying clients, which it has provisions for?

Digital controls

Meddling in elections is a most serious issue, but there are other equally important data-centric threats - from complete databased control over all activities and actors in a sector by platform companies (think Uber, but the process will soon reach as afar as agriculture and manufacturing) to that of actual informational warfare, by name, which can wreck countries. Interestingly, CA's parent company also offers data-intelligence services to militaries, and indeed countries such as the U.S. have extensive informational warfare projects based on social media and other micro-informational sources for various countries. Global digital companies such as Microsoft and Google are known to cooperate closely with the American establishment, and, when insisted upon, prioritise the latter's interests even over their own economic ones

Developing countries like India must realise that they do not have the kind of leverage that the U.S. or even the European Union (EU) have over global data giants, and will never have it, whatever be their boasts. A specific privacy shield arrangement with the U.S., for instance, ensures special protection just to EU data in the U.S. All data collected in India and transported abroad (data laws being nearly non-existent), on the other hand, remain largely out of our control or influence.

As this data gets converted into digitally-intelligent services in all sectors - from transport, commerce and tourism, to education and health, to agriculture and manufacturing, we are getting structurally sucked into foreign-controlled digital value chains from which any attempts to escape may soon become too difficult and



influence and control our elections, or economics, or culture, or internal and external security, manoeuvring space for resistance will be limited. All these data-based controls need to be seen as of one kind, and common strategies urgently devised for India to remain free - free not just in the muchvaunted "consumer choice" sense, which is mostly the Trojan Horse, but also free collectively, as a nation and a community.

It may sound rhetorical but such is the vastness and depth of new global digital controls that digital freedom from them is becoming close to being as important as freedom from physical and legal controls was in the middle of the 20th century.

Political response needed

First of all, we need to recognise the ignored collective aspects of data, and the potential of collective damage or gains from it, which the CA issue most clearly demonstrates - and focus on the related concepts of collective (not just personal) data protection and collective data rights and ownership. The current exercise by the Srikrishna Committee on data protection seems centred entirely on personal data rights, which is in-

Considering it of strategic value, India is currently devising regulation for digital geospatial data, putting many public interest checks on its various uses, including it being taken abroad. The problem is, even from a security point of view,

most strategic. Social data of various kinds and sectors may be of greater strategic value. Advanced militaries like in the U.S., Russia and China know this and are investing in large-scale informational warfare and insurgency projects. Evidently, all or much of Indian social data, in various sectors, including even granular data of consumer behaviour (which provides much detailed psychometric information with cross-sectoral application) need some protections, although of varying kinds taking into account legitimate economic and global integration is-

As with geospatial information, all critical data and digital intelligence about various sectors must be designated as collective national assets, and the collective rights to them instituted. This does not mean that all such data will necessarily be prevented from being taken abroad, or being used by foreign companies. It basically means an enabling cover of jurisprudence and political economy being thrown over such data, which ensures assertion of collective rights to it, and, where needed, the corresponding laws and

Platform companies such as FB, Amazon and Uber are key sites of data collection and expropriation, and its conversion into digital intelligence (to influence elections, or whatever else they wish to do). They form the intelligence infrastructures of the sectors concerned, acting like their "brains". Such platform companies, when exceeding certain data sizes, need to be closely regulated like utility companies.

Within such a cross-cutting framework of data laws, regulation and policies, specific sectors need their own regulation. In the case of election manipulation, for instance, rather than just giving notice to CA to explain matters, it will be much more appropriate to

dertaking a thorough assessment of the role of digital data in elections over the last few years in India, and presenting it to the

Forget CA and FB, an extensive data market with data brokers exists in India as everywhere else. and almost all important data of Indians can be bought in this market. Even in the case of CA and the U.S. elections, apparently only a seventh of the budget that CA spent on acquiring personal data was used for FB data that is currently under micro-examination. Where was the remaining 85% of the money spent? CA's chief executive officer has claimed that it had "profiled the personality of every adult in the United States of America - 220 million people" which is considerably more that the 50 million profiles being reported as harvested from FB in the current con-

Compulsory reporting

Is the Indian government willing to come up with a white paper on such extensive data markets that also exist in India? The U.S. is considering legislation for compulsory reporting of all social media-related spendings by political agencies, which is also a good area for India to explore.

A data-based digital society and economy are a completely new reality. The question is, are we as a nation ready to develop the needed political response to it? The biggest roadblock in this necessary direction is the same upper middle-class that is currently outraged on the CA issue, but resists due regulation of the digital sector because it threatens its hyper consumptive culture and runs counter to its anti-political biases. It still wants to savour for some more time the utopian dream that the Internet finally delivers them of

Parminder Jeet Singh is with the NGO, IT

Does Indian cricket need quotas?

South Africa provides a viable template on how to make the game more inclusive



NISSIM MANNATHUKKAREN

That do they know of **V** V cricket know?" C.L.R. James famously said. The spectacular rise of Lungisani Ngidi in South African cricket (in the recently concluded South Africa-India series) from the racially oppressed black African majority community is a lesson for other sporting nations characterised by racial and caste oppression. More importantly, the quota policy for the disadvantaged communities of South Africa shows a mirror to India whose marquee sport, cricket, reflects severe social inequities. The virtual absence of Dalits and Adivasis from the Indian playing XIs is there for all to see, even though they constitute around 25% of India's population.

An invisibility

In a nation where the word "reservation" can unleash violent emotions, it is nevertheless important to deliberate upon the advantages of reservation in sport. After years

of Independence, the sporting culture has thoroughly failed in equalising opportunities for the most disadvantaged sections of the pop-

In a country where the government school system is in tatters, one can only imagine the quality of its sporting facilities. Nevertheless, the vast majority of the Dalits and Adivasi children cannot afford anything more than these government schools.

Thus, the invisibility of Dalits and Adivasis in Indian cricket is both a result of voluntary and involuntary layers of socio-economic discrimination culminating in almost immovable structures of caste and class exclusion. Cricket, compared to hockey, the official national sport, and football, has been more an elite sport. From the 1950s to the 1990s the game was mostly upper-caste and Brahmindominated.

It was also big city-dominated. As Rajdeep Sardesai notes, in his book, Democracy's XI, in the first 50 years of Indian cricket, only seven cricketers hailed from rural areas. Therefore, it is not that Dalits and Adivasis cannot pick up cricketing skills. It is that they simply do not have the opportunities. Their better presence and glorious contributions in football, hockey and athletics show what is



possible with sufficient support.

Here, the quota policy Cricket South Africa (CSA) has adopted is a model worth considering. Without the policy, the cricketing world would have lost, among other black cricketers, a Hashim Amla – a South African of Indian descent one of the greatest batsmen of all time. There is no other way to resolve the massive social inequities such as caste and race in sport other than by tackling them head-on.

As Amla himself put it, "Other countries in the world just put racism and oppression under the carpet, like it doesn't exist and it never existed. This country [South Africa] puts it out there, that is why we are so sensitive to these things."

Hence the CSA's policy which lays out that of the 11 players fielded by the national team, a minimum of six players should be colour, and at least two players black African, has democratised the

game unimaginably. (This proportion need not be kept in each match, but it must hold as the average for a season.)

Issue of merit

But in India, there is an almost intractable tendency among the pridoes not exist. "Merit" has become a term which masks grievous historic exclusions and oppressions. What is merit when the Indian team, with the largest cricketing pool in the world, has consistently given disastrous foreign Test performances? Contrastingly, South Africa, even with its quota policy, has been one of the best Test performers in all conditions. Of course, the quota policy which led some white cricketers such as Kevin Pietersen to leave South Africa, has given rise to unpleasant race equations in the team. But in post-Apartheid South Africa, the quota policy had a larger historic mission which can only be understood if cricket is seen as a part of a social structure rather than in a vacuum.

Therefore, the time to discuss reservation and other measures to broaden diversity in Indian cricket and to demolish the myth of merit is definitely here. The contours of these policies need careful deliberation, which in any case cannot be imposed at the Test cricket level as a sledgehammer. But they must begin at the lowest levels, school and the domestic game.

Those who shudder at the very idea of reservation must realise that what the cash-rich Indian Premier League does is also a form of vileged to gloss over caste as if it reservation: limiting the number of foreign players and allowing a certain number of domestic uncapped players. And see the results: the unprecedented opportunity in the form of players who have not even played Ranji Trophy playing together with cricket legends has not only unearthed new talent but also spread the alreadycommercialised game further into rural and non-traditional areas for cricket. Yet, the social diversity deficit is huge.

> Of course, quota in cricket is not the most ideal resolution of the inequity problem. It is the last resort in a system which has completely failed in providing equal educational and social opportunities to most marginalised communities. When developed democracies are increasing diversity in every sphere, in India it remains an anathema.

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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.

Dealing with China

Union Defence Minister Nirmala Sitharaman's assurance that the government is ready for any eventuality in Doklam and that India's territorial integrity will be maintained only raises serious questions in the backdrop of Chinese President Xi Jinping's recent address to the Chinese Communist Party, where he threatened fierce war with nations having border disputes with China ("We're alert in Doklam, says Defence Minister", March 26). The question the common man asks is why is it that our diplomatic efforts at various for a have failed to defuse border hostilities? China's animosity towards India, which is reflected in its various anti-Indian stands such as opposition to India's legitimate bid for a

Security Council, cannot be glossed over. The Prime Minister's proposed visit to China in Iune must bear some concrete results which will benefit India in the form of peace not just at the India-China border but also in terms of a de-escalation of Pakistan's aggression in Kashmir too. Photo-ops are no longer needed. MAHENDRA B. JAIN, Belagavi, Karnataka

■ India must be cautious in dealing with China given its stand after the Doklam stand-off and its growing assertiveness in the Indian Ocean Region. It is increasingly moving from having just an economic role to adopting a more political one in the IOR. That it aims to subsume many South Asian countries should alert India. Although many of us are not aware of Mr. Modi's

itinerary during his visit to China, one hopes that there will be a bilateral summitlevel meeting. New Delhi should try to repair its ties with Beijing in a very nuanced manner. UTKARSH AGRAWAL,

■ Now that Chinese President Xi Jinping has consolidated his grip on power, there is a need for India to pursue avenues for rapprochement and get over the strains in ties. India should try to push for strong trade ties. With its economy in not too good a shape, India can't afford to antagonise China. A friendlier China can help India tackle a hawkish Pakistan. MITHILESH SAI,

Special courts The practice of setting up dedicated courts to try

certain types of cases has acquired an element of routineness over the years with the formation of more and more special courts. The underlying premise is that existing courts are incapable of efficient and quick resolution of cases. A sense of helplessness seems to have crept into the judiciary's thinking about reforming the dilatory and archaic systems and procedures that are followed in courtrooms. The inability and unwillingness of the judiciary to implement internal reforms to speed up justice delivery is the main reason why the mountain of pendency is growing. No matter how many new courts are set up and more judges posted, the pace of judicial functioning does not seem to improve. The government has no role in how the courts function. It is up to the

best when they are accountable (Editorial page, "The need for 'special' attention", March 26). V.N. MUKUNDARAJAN, Sullied

consuming protocols and,

more importantly, set for

itself higher standards of

working with time frames in

wrapping up a hearing and

pronouncing a verdict. Even

the wisest of judges work

accountability such as

While the malaise of "ball

tampering" has been in existence for quite a while now, it is only with the

advent of hi-tech "all-seeing" cameras that this illegal practice is now being "caught on camera". So it's not at all surprising when an old practitioner of reverse swing like Wagar Younis says: "Don't tell me this is happening for the first time." While comments like those of the Pakistani pacer may be tantamount to the pot calling the kettle black, they also bring to the fore that foul play has tainted the gentleman's game. SURESH MANOHARAN,

MORE LETTERS ONLINE:

CORRECTIONS & CLARIFICATIONS: readerseditor

The Open page piece titled "Why the patient's perspective matters" (March 25, 2018) was contributed by Soumya Swaminathan and not Chapal Mehra.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail:readerseditor@thehindu.co.in; Mail: Readers All communication must carry the full postal address and telephone number. No persona visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com

permanent seat in the UN

Hyderabad

judiciary to overhaul time-