



Collective assertion

The propriety of the Centre holding back names from the collegium's list is in question

It may no longer be possible for the Union government to delay Justice K.M. Joseph's elevation to the Supreme Court. The five-member collegium has unanimously agreed, in principle, to reiterate its recommendation to appoint the Chief Justice of the Uttarakhand High Court as a judge of the Supreme Court. When reiterated unanimously, the Centre is bound to act on the collegium resolution, going by the law laid down by the Supreme Court in the Third Judges Case of 1998. The Centre, which denies that its objection had anything to do with Justice Joseph's decision in 2016 to quash the imposition of President's Rule in Uttarakhand, ought not to delay his appointment once the reiteration is formally made. However, it is puzzling that the collegium didn't send its reiteration to the Centre immediately. It has decided that his name would be part of the next set of recommendations, which would include proposals to elevate the Chief Justices of some more high courts. One explanation for this could be that the collegium wants to address the concern the Centre has indirectly raised about the need for fair representation to all high courts. While objecting to Justice Joseph's appointment on the ground that he was not senior enough, the Centre spoke about 'excessive representation' that a relatively 'small' high court (the Kerala High Court) may get after his appointment.

While the unanimous reiteration may end the current controversy, there is a larger issue here: the propriety of the Centre holding back one or two names from a list of recommendations and clearing the rest. Justice Joseph's name was sent along with that of senior advocate Indu Malhotra in January, but the Centre took three months to act on it. It cleared her name alone, while seeking reconsideration of Justice Joseph's name. That it has a right to raise a particular judge's case is beyond question, but selectively approving some names from a batch of recommendations can make a difference to the seniority of the judges concerned – especially when seniority is the sole consideration for appointment of the Chief Justice as well as membership of the collegium. In a judge-recommended system of appointments, one that is peculiar to India, differences over particular candidates cannot be avoided, but it ought to be possible for the two sides to minimise these differences and act expeditiously. The onus is more on the government of the day to ensure it is not seen as blocking the appointment of anyone the judges themselves have found fit and deserving. It does not augur well for the institution if the present consultative process, admittedly not an ideal one for a diverse democracy, is seen to be vitiated by executive intransigence.

Hezbollah's grip

Parliamentary results sharpen divides in Lebanon, amid rising tensions in West Asia

Results of Lebanon's May 6 parliamentary election point to the mounting frustration among voters with the government of Prime Minister Saad Hariri. In recent years, Lebanon has had a host of administrative and regional challenges while the government remained largely ineffective in tackling them. There were protests in Beirut and elsewhere over a breakdown of waste management; there is an acute power shortage; the economy is in a shambles; and the inward flight of Syrian refugees over the past seven years has put public infrastructure under further strain. Regional tensions are high as Hezbollah, Lebanon's most powerful Shia movement that has been designated by the U.S. and Israel as a terrorist organisation, is involved in the Syrian civil war. In post-civil war Lebanon, the political class is largely divided into two blocs – the Iran-allied Shia bloc led by Hezbollah that has joined hands with Christian parties, and the Sunni bloc led by Mr. Hariri that has close ties with Saudi Arabia and the West. During the campaign, both sides whipped up this sectarian narrative – Mr. Hariri said Lebanon's Arab identity was being threatened by Hezbollah's Iran links, while the Hezbollah-allied parties targeted Saudi Arabia and the West besides attacking the government for its failures. In the event, Mr. Hariri's Future Movement suffered a big setback. Its strength in the 128-member parliament shrank from 33 to 21. While Hezbollah will retain the 13 seats it had in the outgoing legislature, its allies have gained. President Michel Aoun's Free Patriotic Movement gained six more, while the number of independent candidates linked to Hezbollah doubled to eight, making the alliance the largest parliamentary bloc.

Lebanon has a unique, confessional system in which the Prime Minister must be a Sunni, the President a Christian and the Parliament Speaker a Shia. Being the leader of the largest Sunni bloc, Mr. Hariri could retain his job as Prime Minister despite the electoral setback. But Hezbollah and its allies will have a greater say in government-formation. Hezbollah could also stall government measures that target its clout, a key demand from Mr. Hariri's regional allies. Mr. Hariri is in a tight spot. The Saudis are not happy with his inability to rein in Hezbollah. Last year Mr. Hariri was summoned to Riyadh, where he announced his resignation. Though he withdrew the resignation later, his ties with his Saudi patrons appear to be far from mended. With the regional fault lines between Iran and its rivals set to sharpen further after the U.S. withdrawal from the Iran nuclear deal and rising Tehran-Tel Aviv tensions, it is bound to reflect on Lebanese politics. Mr. Hariri has to find a balance between his domestic agenda and regional politics, provide basic services to the public, lift the economy and restore voters' faith in him – a tall ask given Lebanon's fractured polity and Mr. Hariri's own record.

The changing terms of endearment

The growing conflict between Dalits and Hindutva must be seen in the context of the paradigm shift in U.P. politics



ZOIA HASAN

Uttar Pradesh's pivotal importance to Indian politics is hard to exaggerate. Anyone who wishes to rule India must control this State. The Bhartiya Janata Party's (BJP)'s biggest win in 2014 came from U.P., which was instrumental in providing Narendra Modi with a clear majority in the Lok Sabha. The party won 73 (with its ally) of the State's 80 seats, while its nearest rivals, the Samajwadi Party (SP) and the Congress, got only five and two seats, respectively. The BJP repeated this performance in the 2017 Assembly election, winning 325 seats (with its ally) in the 403-member State Assembly, which is about 80% of the seats. No party has ever registered such a colossal tally, not even Indira Gandhi, whose party, the Congress, had won 309 seats in the then 425-member Assembly in 1980.

An alienation

But barely a year after its stunning victory the situation has changed significantly. The strongest sign of the changing public mood is the growing alienation of Dalits from the government. Even though many Dalits voted for the BJP in 2014, they feel excluded from access to power and the benefits it brings. Attacks on Dalits have not ceased even after the national furore over the Saharanpur violence in May 2017. A Dalit student of Allahabad University was lynched in February. Some of the BJP's Scheduled Caste MPs from U.P. wrote to the Prime Minister to express their anguish over these incidents. One of them accused the government of only paying lip service and not do-

ing anything for the benefit of the community. This unusual development had occurred just days after the BJP lost in its bastions, Gorakhpur and Phulpur (which is part of Allahabad district), to the SP-Bahujan Samaj Party (BSP) alliance in the by-elections pushing scores of Dalits towards the anti-BJP camp.

Elements of a strategy

The growing conflict between Dalits and Hindutva must be seen in the context of the paradigm shift in U.P.'s politics which is increasingly defined in narrow majoritarian terms, even as the BJP is seeking to co-opt the oppressed groups within its electoral umbrella. Two key elements of the BJP's electoral strategy are inclusion/visibility of Dalits and exclusion/invisibility of Muslims. It has shown that it can win elections without Muslims even though they constitute a fifth of the State's population, which is larger than the population of several Muslim-majority countries. By contrast, it has made every effort to demonstrate its love for Dalits. But they are unhappy with the terms of endearment since they want greater Dalit representation to address their concerns regarding social exclusion, food preferences, education, employment, housing, and so on.

The BJP has consistently used religious polarisation to trump the caste divide in U.P., but it hasn't succeeded; in fact, the divide has been exacerbated by the cold caste and sub-caste calculations of its top leadership to undercut old forms of caste mobilisation. Moreover, the attempts to assimilate Dalits within the fold by invoking the legacy of B.R. Ambedkar or the symbolism of communal inter-dining is not enough to cool tempers of Dalits who face discrimination and atrocities despite the stringent provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The instru-



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mental use of both gestures is obvious to everyone; not surprisingly, these gestures have failed to quell the growing tide of discontent, with many Dalit voters losing patience with the ruling dispensation.

Elusive development

Dalit inclusion will work when their core concerns are addressed and when there is overall development, which the State badly needs. Development and economic growth has, of course, been a constant leitmotif in the electoral campaigns of the BJP since 2014. But there is no evidence to show that Chief Minister Yogi Adityanath is the leader who can deliver development for the State. In fact, the very idea of development was sidelined by his controversial appointment. He was installed as Chief Minister to polarise public opinion on Hindu-Muslim lines, and not to promote integration through development. His elevation signalled a decisive shift from the dual strategy of combining Hindutva and development to a singular embrace of Hindutva which has been used as a weapon of mass mobilisation to offset the fissures of caste, class, language and culture. Asked about Opposition parties linking his speeches

and work to Hindutva and not development, the Chief Minister replied that "Hindutva and development are complementary to each other... Those who are opposing Hindutva are in fact opposing development and Bharatiyata". In other words, even the optics of development and the claims of taking everyone along through development will be sacrificed at the altar of Hindu nationalism ahead of the 2019 election.

Going by the policy decisions of his government, the cow appears to be the fulcrum of the U.P. model. It took centre stage in the government's budget with a record ₹233 crore allotted for the welfare of cow and dairy development. In a similar vein, social sector spending has been reduced while religious tourism is being given a boost. Mr. Adityanath made a plethora of promises such as building houses, toilets, laying roads and providing 24-hour electricity supply. But these promises are unlikely to be fulfilled, which is causing restlessness even among people who voted to bring the BJP to power in 2017. This is evident from several events in the past few months. In October 2017, sugarcane farmers burned their crop in front of the U.P. Assembly after the government increased the minimum support price by only ₹10; in January, farmers unhappy with the minimum support price for their potato harvest dumped the crop in front of the houses of VIPs in Lucknow; and the much-hyped farm loan waiver turned into a farce as many of the beneficiaries received waivers of amounts as small as ₹1 to ₹500. The employment situation remains grim, as large-scale government recruitments – the major source of public employment in the State – are not regular and even previously conducted exams, for instance, for clearing the backlog in police jobs have been cancelled. An extrava-

gant 'UP Investors Summit 2018' held in February to boost investment in the hope of creating employment cannot promote industrialisation and job creation unless the structural constraints of underdevelopment are removed.

Closing the gap

What seems to be working for the BJP is the disarray in the Opposition camp. However, this can change as political majorities are constituted and reconstituted in changing historical and political circumstances. Political majorities are contingent and do not last, at least in part because the Opposition parties make adjustments to capitalise on opportunities. The Mandal (caste) and Mandir (religion) interregnum of the early 1990s signified the arrival of identity politics, which upstaged religious politics that was catapulted by the Ayodhya movement to take centre stage. The ensuing upper caste-backward caste confrontation displaced the Congress from its position of dominance in U.P. and prevented the BJP from reinforcing its political clout despite unprecedented public support for Hindutva in north India for the first time since Independence. Twenty-five years later, in 2014, the BJP closed the gap between the economic and the political sphere with its mantra of development to secure a popular mandate. Currently, the Opposition is making tactical adjustments to counter the overarching narrative of Hindu nationalism. The by-election results demonstrate that if the two main Opposition parties combine, they can give the BJP a run for its money. If there is one State where Opposition unity can upset the BJP's plans for majority rule in 2019, it is U.P.

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An open letter to Finance Ministers

Political alignments should not come in the way of defending the fiscal rights of States



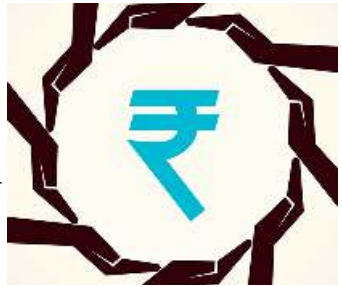
T.M. THOMAS ISAAC

My fellow Finance Ministers in the States, I hope you will agree that the award of the Finance Commission is vital to State finances. Some of us who met initially at Thiruvananthapuram, Kerala, and later at Amaravati, Andhra Pradesh, are worried about the implications of the terms of reference (ToR) of the Finance Commission determined by the Union government. The issues related to *inter se* distribution of resources are what have drawn attention and made headlines. But the issues at stake are much larger. What the ToR challenge are the federal values enshrined in the Constitution and the modicum of fiscal autonomy State governments enjoy. I am writing this open letter just in case you have misunderstood that our concerns are limited to a change in the population base year, from 1971 to 2011, which would in fact affect not only the southern States in general but also other States where population growth has de-

clined. We will certainly be making our legitimate claim not to be penalised for implementation of the national population policy. As has always been the case, in the memorandum we are to submit to the Finance Commission, we can agree to disagree as to what the best criteria for horizontal distribution are. But all of us in the Union of India have a common stake in the vertical distribution of resources between the Union government and the States as a whole.

I am afraid that for political reasons many of us are failing to undertake this national duty to defend the rights of States on the one hand and the fiscal federalism of the country on the other. I want to raise before you, in public, some of the issues in the ToR which are going to adversely affect the financial resources and fiscal autonomy of States. If any of my fellow Finance Ministers has a different opinion, please join me in a public debate. I fervently hope that at least some of you will do so.

First, is there any Finance Minister who will welcome a reduction in the share of taxes of the States from the 42% that was awarded by the 14th Finance Commission? This is precisely what the ToR propose to do. What else is the meaning of item 6(iv) in the



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ToR? Never before in India's history has the Finance Commission been asked to review the award of its predecessor. A reminder of certain facts: 32% of the 13th Finance Commission and 42% of the 14th Finance Commission are not comparable. The first refers to non-plan revenue expenditure and the second to total revenue expenditure. Plan grants have been terminated. Further, the Government of India has increased our share of Centrally sponsored schemes so that the overall devolution as a share of GDP has remained more or less the same. The goods and services tax (GST) has further worsened vertical devolution due to the 50:50 sharing of taxes. You just read the ToR with respect to the GST where it is made out that the GST is going to adversely affect Central resources. The whole argument of an asymmetric GST burden is a joke. Second, the idea of federalism

ensures that every citizen of India is provided comparable public services and taxation. It is for this purpose that the Constitution has provided for the provision of revenue deficit grant. No Finance Commission can review this. How is it then that item 5 in the ToR says, "The Commission may also examine whether revenue deficit grants be provided at all"? Don't you agree that this is an infringement on the constitutional rights given to States?

Borrowing rights

Third, the ToR want to curtail borrowing by States from the present 3% of Gross State Domestic Product (GSDP) to 1.7% if the Fiscal Responsibility and Budget Management Review Committee has its way with its recommendation.

We have just started exercising borrowing rights as recommended by the 14th Finance Commission. If this is reversed, this will severely curtail capital expenditure of States. Further, there is a mischievous angle to the ToR which has asked the Finance Commission to explore the conditions to be imposed on borrowing by States. So far, there has been no condition on the 3% of GSDP fiscal deficit ceiling. We have to reject outright this incursion into the fiscal freedom of States.

Fourth, the 14th Finance Commission directed its efforts to ensure that the discretionary element in the grant given by the Commission is totally eliminated. It is loud and clear from the ToR that the Union government is using the Finance Commission route to impose conditionalities through a plethora of conditional grants. Item 7 in the ToR talks about incentivising nine items and I am not against many of them. But the choice should be left to States. Equally unacceptable is the reference to populist schemes which are in the exclusive jurisdiction of elected State governments. Is this not undemocratic?

My appeal to everyone is to join hands to uphold the Constitution and the right of States and block the sinister move to undermine the basic tenets of fiscal federalism in India. On our differences over the criteria of *inter se* distribution we shall agree to disagree and approach the Fifteenth Finance Commission individually in our memorandum. I appeal to those who are in agreement to join us in this effort to protect the constitutional rights of States. Let political alignments not stand in the way of defending the rights of States.

T.M. Thomas Isaac is the Finance Minister of Kerala

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.

Over to the voter

The frenzied electoral battle in Karnataka is also one where we have to lament the steep erosion of political decency. The ugly tone of campaigning, with personal attacks, was a blot. The manifestos released by parties were sheets of exaggerated facts. The communal overtones were also visible with the leaders visiting religious establishments. Finally, the seizure of electoral ID cards in a constituency exposed the modus operandi of "cash for votes". The final result is beyond anybody's guess due to a possible polarisation of votes ("Karnataka turnout tops 70%; exit polls divided", May 13).

B. GURUMURTHY,
Madurai

■ Deviating from the Election Commission's guidelines seems to be the norm in

election after election, and Karnataka was no exception. The authorities concerned seemed to have no control, making a mockery of the whole process. Complaints of malpractices went unnoticed and unresolved, with the resultant lack of fear and concern, in turn emboldening political candidates to ignore the dictates of the Election Commission. The campaigning in Karnataka was ugly. The ball is in the court of voters.

O.K.R. SIVAGANANAM,
Perundurai, Tamil Nadu

A blot

It is a sad and troubling reflection of our times that there has been a series of cases of people being lynched in a socially progressive State such as Tamil Nadu. While the State police have taken steps to curb the misuse of social media to advance a

regressive culture and vigilantism, we cannot ignore the role played by the political leadership in maintaining an unexplainable silence on the issue. Such violence is also attributable to a gross neglect of constitutional values in our education system. One wonders whether those passing out from our schools and colleges have an understanding of and commitment to the basic values of humanism or justice. This deficiency is also exacerbated by a growing distrust in the fairness of the legal machinery and suspicion of being taken advantage of by a petty and sectarian polity.

FIROZ AHMAD,
New Delhi

■ Three innocent lives were brutally cut short through mindless mob frenzy in Tamil Nadu, with the body of

one of the victims hung from a bridge. Despite this, there was not one word from any of its otherwise loquacious political leaders, both in government and the Opposition, who can otherwise see phantoms where none exist. It would have been expected that in a civilised society, the so-called leaders appeal to the general public directly and through their cadres not to panic and take the law into their own hands. Unfortunately, that basic human touch has been found wanting.

K. BALAKESARI,
Chennai

Dangerous incursions

The entire focus of the non-elevation of Justice K.M. Joseph to the Supreme Court despite his name having been forwarded by the top court is ostensibly because of his judgment in the Uttarakhand case wherein he

quashed the Governor's decision to impose President's rule. This may be one reason but not the only one. The other reason is that he belongs to a minority community. The picture would be complete when one compares his case to that of N. Paul Vasanthakumar, retired Chief Justice of the Jammu and Kashmir High Court, who was denied a judgeship to the Supreme Court. His name was in the list forwarded by Chief Justice of India T.S. Thakur but dropped despite an impeccable record of service

CORRECTIONS & CLARIFICATIONS:

Misspellings: In the article, "Can the BJP wrest Karnataka from the Congress?" (Yes, No, It's Complicated" - OpEd page, May 11, 2018), the names of two Cabinet colleagues of B.S. Yeddyurappa had been misspelled. They should have read *Katta Subramanya Naidu* and *Hartal Halappa*.

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' Editor, The Hindu, Kasturji Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com