



Prisoner of procedure

The in-house panel resorted to its power at the cost of fairness to the complainant

It was a test of great import that one of India's great institutions failed. The main question was whether the Supreme Court would live up to the standards of fairness it expects of all authorities while inquiring into a former woman employee's complaint of sexual harassment and victimisation against the Chief Justice of India, Ranjan Gogoi. An *ad hoc* committee, following an informal procedure, has concluded that the allegations have "no substance", but the findings will not be made public. The report cannot be reviewed judicially. No one else, not even the complainant, knows what evidence was examined and who else testified apart from herself. All that is known is that she was heard, and questioned, at two sittings. She later withdrew from the inquiry, saying she was denied the help of a lawyer or a representative, that she found the questions from a panel of three sitting Supreme Court judges quite intimidating, and that she was not clear how her testimony was being recorded. There is no doubt that the committee remained impervious to the power imbalance in the situation. Perhaps she ought not to have pulled out from the probe, despite these grievances. The panel's conclusion would have been even starker had she been present to hear how Justice Gogoi defended himself; and who among the court officials, if any, answered her specific and documented charges about the administrative harassment she was put through following the alleged incident of sexual harassment. The most relevant parts of the complaint were the transfer orders and disciplinary inquiry against her, the role of the court administration in dismissing her, and that of the Delhi Police in arresting her on a complaint of alleged bribery and initiating disciplinary action against her husband and his brother, both police personnel. It is not known if any of these officials were examined.

The manner in which the court dealt with the complaint on the administrative side has been less than fair. It is true that the in-house procedure devised in 1999 envisages only a committee of three judges to deal with allegations against serving Supreme Court judges. The fact that a special law to deal with sexual harassment at the workplace is in force since 2013 appears to have made no difference. The court could not bring itself, even in the interest of appearing fair, to adopt a formal procedure or allow the complainant to have legal representation. For all its judicial homilies on fairness, when it comes to dealing with its own the Supreme Court has come across as a prisoner of procedure and displayed an alarming propensity to mix up its institutional reputation with an individual's interest. "The abuse of greatness is when it disjoins remorse from power," wrote Shakespeare. The decision by the 'in-house committee' is an egregious instance of a hallowed institution abusing its own greatness by letting its power speak, and not the compassion for which it is renowned.

Now there are two

As the poll process enters the home stretch, desperation and exhaustion are evident

In the fifth phase of the Lok Sabha elections, just 51 seats across seven States went to the polls, but its outcome could be critical to the fortunes of the BJP. It had won 39 of these seats in 2014, and its allies two. In fact, the BJP's hopes of retaining power at the Centre, and therefore the Opposition's hopes of defeating it, hinge a lot on their respective performances in the fifth and the next two phases. As with the previous four phases, the voter turnout was similar to that in 2014; initial estimates were that the cumulative turnout for the 51 seats was 63.26% on Monday, compared to 61.75% in 2014. One of Indian democracy's big successes has been the high number of registered voters who exercise their franchise; and as turnouts remain healthy, old theories about the incumbency or anti-incumbency potential of such turnouts have crumbled. What, however, continues to be the hallmark of Election 2019 is the sustained attempt by the BJP to prevent the campaign from being about its own record of five years in office. In an unseemly and controversial statement ahead of the fifth phase, Prime Minister Narendra Modi raked up the Bofors controversy with an uncharitable reference to former Prime Minister Rajiv Gandhi. He followed it up with a challenge to Congress president Rahul Gandhi to debate Rajiv Gandhi's term in office, three decades ago. Mr. Modi also used the campaigner's pulpit to liken cross-border military operations undertaken by Indian forces during the Congress regime to "video games". In turn, the Congress charged Mr. Modi with double standards as he had earlier sought to place the armed forces beyond scrutiny and accused those who raised questions on their performance of being unpatriotic.

Politicians, dead and living, are legitimate subjects of public scrutiny as much as armed forces and the security establishment, particularly during elections. But such debates must be conducted in a civil tenor and within limits – and in a manner that informs pressing matters of governance. It is unclear whether Mr. Modi's statements would have helped the Congress in Amethi and Rae Bareilly, constituencies from which Mr. Gandhi and his mother Sonia Gandhi, respectively, are contesting and which went to the polls in the fifth phase. Mr. Modi has also tried to create a wedge in the Opposition by repeatedly stating that Bahujan Samaj Party chief Mayawati was the victim of a conspiracy between her alliance partner and Samajwadi Party chief, Akhilesh Yadav, and the Congress. The BJP's resistance to any focus on issues of livelihood and liberty has put the burden on the Opposition parties to pull public discourse back towards policy, something they have managed with varying and often dismal degrees of success.

All for one, none for all

The marginalisation of Muslims has been appropriated to serve the BJP's nationalism outreach



HILAL AHMED

The attitude of the Bharatiya Janata Party (BJP) towards Muslim communities in the last five years is seen in two very different ways. The rhetoric of 'sabka saath, sabka vikas' (with everyone, everyone's progress) is often invoked, particularly by pro-BJP commentators, to argue that questions related to Muslim marginalisation/representation should not be raised at all. The government is committed to 'development of all and appeasement of none' and it will take care of Muslim concerns as well. This argument is used extensively to justify every form of lawlessness, including the lynching of Muslims in the name of Hindu reaction.

The background

On the other hand, there is an equally straightforward secular narrative of Muslim victimhood, which reminds us that the BJP is a communal Hindutva party controlled by the Rashtriya Swayamsevak Sangh (RSS). The landslide victory of the BJP in 2014, the argument goes, has given the RSS an opportunity to target Muslims simply to create a Hindu Rashtra. Establishing a link between violence against Muslims and declining number of Muslim MPs and MLAs, we are told that the Narendra Modi government is primarily anti-Muslim.

No one can deny the fact that we live in a communally polarised environment, in which Hindu victimhood is systematically nurtured by invoking anti-Muslim feelings in the name of nationalism. However, there is a serious need to go beyond this polarisation so as to systematically analyse the contours of the BJP's nationalism with regard to Muslim communities.

One may unpack the contemporary moment of Hindutva at two levels: the Narendra Modi go-

vernment's formal official response towards Muslim backwardness, especially with regard to the Sachar Committee Report; and the nature of the BJP's informal anti-Muslim discourse, which in a way constitutes the basis for its own version of nationalism.

Minority welfare

The BJP's 2014 poll manifesto recognised Muslim backwardness as an important political issue. It argued that it would take care of Muslim concerns – such as modernisation of madarasas, protection of Urdu and streamlining of the Waqf Boards. Most importantly, it was promised that the party would 'ensure a peaceful and secure environment, where there is no place for either the perpetrators or exploiters of fear'.

Although there was no mention of the Sachar Report in the 2014 manifesto, the Ministry of Minority Affairs accepted it as an important reference point for all its schemes and programmes. The government also went ahead with the post-Sachar Evaluation Committee and persuaded it to submit its report in September 2014.

The Ministry still recognises the 15 Point Programme introduced by former Prime Minister Manmohan Singh for the welfare of minorities as guiding principles to deal with the exclusion of minorities, including Muslims. In fact, a study was commissioned by the Modi government in 2016 to evaluate the impact of these 15 points on minority communities.

These technical-procedural aspects of governance, however, should not be exaggerated. The 'Action taken Report' submitted by the Ministry to Parliament with regard to the implementation of the Sachar Report in 2018 categorically rejects a few crucial and politically sensitive recommendations.

For example, the Action Taken Report does not accept the inclusion of Arzal (Dalit) Muslims into the Scheduled Castes (SC) list. It also refuses to create the proposed all-India cadre of officers for the State Waqf Boards and Central Waqf Council. However, the other 'non-controversial' recommenda-



tions of the Sachar Report are acknowledged.

This selective treatment of the Sachar Report by the BJP is not surprising. The BJP has never been interested in the Sachar Report, especially on the question of the inclusion of Muslim and Christian Dalits in the SC category. However, despite this highly critical position, the Modi government not only recognised the Sachar Report but also submitted a fully worked-out Action Taken Report.

Does it mean that the Modi government is also involved in what BJP leaders, including Mr. Modi, often call 'Muslim appeasement'?

Link to nationalism discourse

The government's delicate position on Muslims as a marginalised/underrepresented community is inextricably linked to the media-driven discourse of nationalism which has been carefully produced in the last five years.

This nationalism has two core elements. First, it aims to recreate a new collective self-perception of Indianness. Evoking the old European-style 'one-language, one culture, one nation' framework, it is established that celebrating Hindutva (not Hinduism) in public life must be treated as a precondition for patriotism and Indianness. Since Hindus have been the main addressees of this project, Muslims are nowhere in the picture. However, this strange absence of Muslims is used to create an impression that the patriotism of Muslims needs to be probed.

RSS chief Mohan Bhagwat's three lectures on Hindutva delivered in September 2018 are a good example. Despite claiming that 'Hindutva without Muslims is meaningless', he did not deviate

from the RSS's rather known position on Muslims. He relied heavily on the controversial distinction between 'Indian religions' and the religions that originated outside to define Indianness in strict Hindu terms.

This inside/outside binary is actually linked to the second core element of contemporary nationalism: 'territorial security'. The pro-BJP media reconfigured the old rhetoric of 'foreign enemy' so as to legitimise its elusive search for internal 'enemies'. Terms like 'jihadists' for Muslims, 'urban Naxals' for human rights activists and 'sickular' for secularists were employed simply to re-establish the hegemony of the Hindutva version of nationalism.

Use of marginalisation

The demands posed by this exclusionary nationalism for Muslims, however, can also be read rather differently. In the last five years, Hindutva forces have experimented with at least five issues that were directly related to Muslims: ghar wapsi, love jihad, cow protection, triple talaq and a Ram temple in Ayodhya. Despite launching a highly sustained and organised campaign on each of these issues, the Hindutva forces actually failed to provoke Muslim communities into any collective action/ reaction.

This failure has forced the BJP establishment to reorganise itself to produce a Hindutva-centric yet anti-Muslim discourse of nationalism. The Muslim underrepresentation in various fields actually becomes an important point of reference in this schema.

It is important here to remember that the term 'Muslim' has emerged as a legitimate political category in the last two decades. This process began in 1993 when the National Commission for Minorities defined Muslims (and other religious minorities) as a national minority. This move, in a way, strengthened the already worked out idea of a 'Hindu majority'. It had now become easier for the Hindutva essentialists to argue that the minorities, especially Muslims, are appeased and pam-

pered at the national level. This argument evolved as political rhetoric in the mid-1990s to underline Hindu subjugation.

The Modi government, it seems, has rediscovered the idea of Muslim marginalisation for a radically different purpose. Unlike the Congress/United Progressive Alliance, the BJP government does not show any interest in highlighting the achievements of the Ministry of Minority Affairs. Nor does the party overplay the 'Muslim support' card. It simply keeps the issue of Muslim underrepresentation alive for three possible political strategies.

First, the party often invokes Muslim marginalisation to legitimise its inclusiveness and accommodating approach. After all, Sabka Saath is still a slogan of the party, which has been recently rephrased as "development with dignity" in the 2019 poll manifesto.

Second, Muslim marginalisation is also appropriated to demonstrate Hindu benevolence and generosity. BJP leaders have used this strategy during the National Register of Citizens (NRC) and the Citizenship (Amendment) Bill debates to make a case for privileging Hindus and other non-Muslim minorities living in the neighbouring country. In a sense, it is a conscious attempt to produce a grand Hindu identity at least in South Asia.

Finally, the relationship between Muslim marginalisation and underrepresentation is exploited to evoke the fear of Muslim separatism. This is exactly what the BJP has been doing with regard to the debates on Article 370. The attempt of the party to polarise the Jammu and Kashmir regions on religious lines is a revealing example.

It would be interesting to observe how this relationship between nationalism and Muslim marginalisation survives after the 2019 general election.

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On the political fringes

The exclusion of migrants from the electoral process reveals the caste- and class-driven nature of mainstream politics



MANISH K. JHA & AJEET KUMAR PANKAJ

While political commentators have been busy analysing voter preferences in the general election 2019, one segment, namely migrants, continues to be overlooked.

The Election Commission of India (EC), on February 21, clarified that NRI voters cannot cast votes online, and that an NRI who holds an Indian passport can vote in his/her hometown after registering as an overseas voter. But the roughly 60 million people moving across the country as migrant workers find it difficult to cast their votes because their voting rights are mostly at the place from where they migrate. The scale of lost votes due to migration is large. It may not be an exaggeration to say that there seems to be a general agreement to let the votes of domestic migrants go missing in the electoral process. Migrants remain a political issue despite their poverty, vulnerability and insecurity.

Yet, we know very little about the way migrants engage with politics, especially in elections. How do migrants ensure that they remain politically relevant in the villages they leave behind? What roles do caste and identity play in their voting preferences?

At the receiving end

Despite it being a significant contribution to the growth and development of cities, migration is perceived as a problematic phenomenon. Poor migrants often find themselves at the receiving end of 'nativist' politics. They are projected as a 'problem' for the local population around issues of employment and unemployment, use of place and space, identity and political affiliation. The physical threat and verbal abuse that migrants experience can be gauged in the numerous statements of leaders of various political parties. References to migrants often include terms and phrases such as 'infiltrators', of those who 'need to possess a permit for work' and 'lacking in values, culture and decency'. Such allusions are in contradiction to the provisions in the Indian Constitution that allow freedom of movement by ensuring the right to reside and settle in any part of India.



The process of 'othering' of migrants produces heightened anxieties, and this 'manufactured anxiety' is deployed for political gains.

In the city

Mostly working in the unorganised sector and drawing meagre wages, migrants often find it difficult to visit their home States to cast their vote. In cities, they find it challenging to make their presence felt during elections. For example, a group of NGOs (Aajeevika Bureau and its partners) found that as one moves from panchayat to Vidhan Sabha to the Lok Sabha elections, the participation rate comes down by 10.5% at each step. Unlike the family and kinship association in a panchayat election, caste and community affiliations are the driving force in Assembly and Lok Sabha elections. While candidates

or their affiliates mostly meet the travel expenditure for upper caste and other backward caste migrants, Dalit migrants are motivated to travel at their own expense and participate aggressively with the clarity of caste identity and political affiliation.

In a city, migrants rely on support from relatives, friends and fellow migrants for accommodation, employment and to negotiate wages. Through these interactions, migrants build social networks and political connections. Region, religion, village and the caste identity of migrants play a crucial role in these processes. These elements of 'identity' contribute to the mobilisation of migrants in the city to tackle hostility as well as participation in politics. For example, migrants from Uttar Pradesh and Bihar form various social organisations, such as the Uttar Bhartiya Mahasangh, the Uttar Bhartiya Mahapanchayat and the Jaiswar Vikas Sangh, to deal with migrant issues. Of these, the Jaiswar Vikas Sangh is exclusively initiated by Dalit migrants and confined mainly to the issues of Dalit migrants in Mumbai.

Key issues

Contrary to received wisdom, migrants seldom bother about civic

problems such as water and sanitation. Rather, their primary concern revolves around macro-issues such as employment, inflation and poverty. Dalit migrants are troubled by caste-based discrimination, exclusion, atrocities and reservation, which in turn determine their political choices. They often say, "we shall align with those who speak for us", which conveys their preference. Many of them are candid about their support for the Bahujan Samaj Party. One has often heard the line, "Yadavs stay with the Samajwadi Party and the Rajput aligns with the BJP; as we are exploited we cannot go with them and hence our place is with the BSP".

The manifested political articulation of migrants often makes mainstream political parties uncomfortable, which then label them outsiders as obstacles for development and let their votes drop in the electoral process. The exclusion of migrants from the electoral process, in a way, reveals the caste- and class-driven nature of mainstream politics.

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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.

Election and the EC

While the jury is still out on who the victor will be in the general election of 2019, the loser is, without much thought, the Election Commission of India (OpEd page, "The Election Commission must act tough", May 7). In the eyes of the people, its credibility as a neutral umpire in the respected exercise of elections has been dented, largely due to its own making. While it deserves to be appreciated for carrying out the humongous task of conducting elections efficiently, its lenient approach in checking the excesses of political parties, especially those of the ruling party, is

unacceptable. It did not move to take note of the explicit oversteps of the ruling party until it was rapped on the knuckles by the Supreme Court. Even after being reminded of its own powers, it did not find it fit to act. The Model Code of Conduct exists only on paper. The EC should reinvent its role.

Dr. D.V.G. SANKARARAO, Nellimarla, Andhra Pradesh

Blows to the frame

It is cause for concern that there are negative reports about highly respected constitutional bodies such as the Election Commission, the Comptroller and the Auditor General, and the Central Bureau of

Investigation, to name a few. But what is worrying is a recent addition to the list – the judiciary (Editorial page, "A miscarriage of justice", and OpEd page, "The Supreme Court belongs to everyone", both May 7). Never could one have imagined in one's wildest dreams that there would be a complaint of sexual harassment against the Chief Justice of India. At a time when most political leaders and the executive have fallen from grace, the only bastion of hope is the judiciary. It is frightening to think of the pillars of democracy crumbling one after the other. If democracy is to survive, all the wings should display exemplary behaviour and

respectful conduct. The fourth pillar too should do likewise by keeping its moral standards above reproach.

A. MICHAEL DHANARAJ, Coimbatore

■ The very serious charge levelled against the Chief Justice of India is a case in which the institution itself was on trial and which demanded the highest standards of fairness. An ex-parte inquiry, after denying the woman employee legal assistance, has belied the expectations of the people. To top it all, making the procedure opaque by not releasing the findings of the committee raises questions about the right to information. There is

a real danger that the top court may no longer claim to be the sentinel *qui vive*.

D. NAGASAILA, RAM SIDDHARTHA, Chennai

Cricket and a nation

The photograph (Standalone picture, 'Sport' page, "Reliving the golden moment", May 5), of Kapil Dev posing with the 1983 World Cup Trophy during his recent visit to Lord's, instantly brought back fond memories of the unforgettable image of June

25, 1983. The striking picture still finds a place in sports publications and television documentaries, as a new era was born in Indian cricket that day. There are only a few moments in history when sport spills into cultural and political life. One thinks of how the rainbow nation was born out of the 1995 Rugby World Cup. In a sense, the 1983 win was a moment of equal magnitude for India.

R. SIVAKUMAR, Chennai

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CORRECTIONS & CLARIFICATIONS:

Editing error: In the Business Review page interview, "We expect prices to rise over time" – with Dipak Haksar, CEO of ITC Hotels - (May 6, 2019), the second deck headline erroneously referred to him as MD.

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