

8 EDITORIAL



An open field

Constituency-level issues and national meta-narratives hold the key in U.P.

The Election Commission announced the Lok Sabha poll schedule on Sunday, and there is little doubt that the final outcome will be determined in great part by the vote in Uttar Pradesh. By including 11 candidates for U.P. in its first list last week, the Congress has reiterated its inclination to contest alone in the critical State in the absence of a deal with the Samajwadi Party and the Bahujan Samaj Party. Though the Congress decision does not entirely shut the doors on a joint front of anti-BJP parties in U.P., the chances of such a formation are turning bleaker. There is no way of discerning the likely impact of a multi-cornered contest in the State, but in 2014 the scattering of the anti-BJP vote in the State helped Prime Minister Narendra Modi get 71 of the 80 seats, vital to gaining an absolute majority in the Lok Sabha. An equally sweeping victory for the BJP in the 2017 Assembly election initially appeared to reinforce Mr. Modi's aura of invincibility, but this soon turned out to be the trigger for a series of developments that cumulatively pose a challenge to his bid for a second term at the Centre. Facing irrelevance, regional parties such as the SP, the BSP and the Rashtriya Lok Dal felt compelled to bury the hatchet and form a front against the Hindutva challenge. This reconfiguration appeared to make an emphatic turn in the State's politics, and the BJP lost all the three Lok Sabha by-elections that followed. It is in this landscape that the Congress is trying to resolve its indecisiveness about going it alone.

Yet, there is uncertainty at the granular level. Aspirants are being shunned by each party, resulting in a pool of disgruntled local actors now scurrying for shelter in other parties. The SP and the BSP will be contesting less than half their usual number of seats; the BJP is certain to replace a large number of its sitting MPs to reduce anti-incumbency at the constituency level. The Congress, though without an organisational base in the State, has the claim to be the national challenger to Mr. Modi. It might be tempted to rope in some of these dissidents from other parties, while remaining open to the possibility of an alliance. The shifting loyalties of individual leaders will have an impact on the caste coalitions that all parties factor into their calculations. An overarching social coalition of Dalits, backwards and Muslims in U.P. blocking the Hindutva advancement in 2019 is a possibility, but only one of several. Mr. Modi's strategy in the midst of this realignment of social groups in the State will be to pull his own campaign above local factors, and make it into a Hindu nationalist meta-narrative. The ongoing tensions with Pakistan and the debate on Ayodhya provide him with enough rhetorical tools. The terrain of U.P. has been fertile for this kind of politics too, a politics that makes nonsense of the accretion of vote banks through seat adjustments.

Resolution, at last

Essar Steel case has clarified many aspects of the Insolvency and Bankruptcy Code process

The National Company Law Tribunal's approval of ArcelorMittal's bid for the insolvent Essar Steel Ltd. is significant for several reasons. First, the ₹42,000-crore bid will be the largest single recovery of debt under the fledgling Insolvency and Bankruptcy Code (IBC) enacted in 2016. Assuming that the original resolution plan submitted to the NCLT stands, the secured lenders will manage to recover about 85% of their dues. The 15% haircut that they will suffer should be seen against the extraordinarily high amount of over ₹49,000 crore that is due from Essar Steel. Second, the case, which took 583 days to resolve, compared to the 270 days provided under the Code, has tested several aspects of the law and set important precedents for the future. Among the aspects that have been clarified during the long resolution process for Essar Steel are the eligibility of those who have defaulted in repaying their borrowings elsewhere to bid, the time-limits for bidding and the place of unsecured, operational creditors under the resolution mechanism. Finally, this was seen as a marquee case for the IBC, given the high profile of the company and its promoters, and the amount at stake. The battle royal between multinational players to acquire the insolvent company was proof, if any were needed, of the quality and importance of the underlying asset. In the event, the successful culmination of the Essar Steel case will be a big leg-up for the insolvency resolution process that is less than three years old.

To be sure, though the NCLT has given the go-ahead, the last word on the subject may not have been heard as the existing promoters could go in appeal against the verdict. The Code provides for an appeal to the National Company Law Appellate Tribunal and then to the Supreme Court, and it is unlikely that the promoters, who bid a much higher ₹54,389 crore, will let go without a fight. The banks, though, will be hoping that the process ends in the next couple of weeks as they would want to account for the receipts from the resolution process within this financial year. After all, only four cases (excluding Essar Steel) out of the initial list of 12 big defaulters referred by the Reserve Bank of India for resolution back in June 2017 have been successfully resolved till now. Insolvency and Bankruptcy Board of India data also point to a pile-up of cases in the various benches of the NCLT. As many as 275 companies, representing 30% of the total of 898 undergoing resolution, have exceeded the 270-day limit set for resolution under the Code. This can be partly explained by the attempt of promoters to tie down the process through appeals at every stage, but the fact is that there is a need for more benches of the NCLT to clear the pile-up. The government would do well to look into this issue.

Bringing politics back in

It must not be evicted from the public sphere on issues of national security



HAPPYMON JACOB

In the wake of the Pulwama terror attack last month, politicians and opinion makers made impassioned pleas that 'terror attacks should not be politicised'. There was also a strong popular sentiment for disassociating politics with what happened post-Pulwama. Unsurprisingly, the demand for dialling down politics was proportional to the demands for increased militarisation. The trust in politicians was replaced with an abiding belief that the men in uniform would save the day for India. When questions were raised about the basis of the Bharatiya Janata Party's statement that over 250 terrorists were killed in the attack on Balakot – an increasingly suspect claim – it was argued that such questioning would weaken the morale of the armed forces and help the Pakistani narrative. For a proudly and deeply democratic country such as India, this scorn for politics is both perplexing and worrying.

Politicising terrorism?

The calls for refraining from politicising acts of terror also apply to most matters of national security. The strong belief, often convincingly articulated by leading thought leaders, that national security must be divorced from politics is so entrenched in popular narratives that any attempt at discussing national security through the lens of politics is immediately discredited: "How can someone politicise something as important as national security?"

What is puzzling about such assertions is that most serious analysts and thoughtful politicians in-

tuively recognise that, at the end of the day, political solutions are the best answer to conflicts. And yet de-politicisation comes handy for the government since "do not politicise" also means "do not ask difficult questions", a convenient way out of a tricky situation. For the general public, this results in weariness over how the political class has managed national security problems. In that sense, then, the aversion towards politics, especially in times of crisis, is essentially a function of the failure of the way in which politics and political debates are practised, not a negation of politics per se. The solution is to offer better political reasoning, and not replace political formulations with military ones, which is often seen as the easy way out.

Popular narratives about solutions to our contemporary security problems demand the adoption of militaristic or securitised solutions as if the military has some superior capability for conflict resolution that politics doesn't. The problem with privileging military solutions over political ones while dealing with conflict resolution is that the former use a specific set of tools, discourses and methods to resolve conflicts unlike the toolkit politics uses for conflict resolution. Consider an example. Post-Pulwama, the Government of India began a security crackdown in the Kashmir Valley and airlifted around 100 companies of paramilitary forces to enforce it, a typical and time-tested military solution to the unrest in the State of Jammu and Kashmir. A political solution would have been what the then United Progressive Alliance government adopted to deal with the widespread anger in the Valley in late 2010, wherein it sent a team of interlocutors to talk to the protesting Kashmiris. The interlocutors were able to bring about a sense of normalcy almost immediately, whereas the influx of more armed



men into the Valley is unlikely to achieve that.

Militarised methods and narratives also lead to de-politicisation, or the dismissal of normal politics from the public sphere, ushering in what could be called 'temporary emergencies'. Here's an example. In the immediate aftermath of the Pulwama attack, a leading Indian actress tweeted: "Anyone who lectures about non-violence and peace at this time should be painted black, put on a donkey and slapped by everyone on the streets." Put differently, she advocated that the practice of normal politics (criticism of the establishment lies at the heart of normal politics) be suspended and be replaced by a depoliticised and securitised discourse. And that those who violate such 'emergency' should be punished. When such short spells of emergency are normalised, it opens the door for more permanent securitised spaces and narratives. Kashmir, more or less reeling under spells of temporary emergencies for close to three decades now, is a perfect example.

Privileging militarisation over politicisation for conflict resolution is indeed unwise and counterproductive, an insight enshrined in the Clausewitzian dictum that war is the "continuation of politics by other means". When divorced from their underlying political intent, militarised approaches can lead to mindless violence – something democratic societies should unconditionally resist. Military means to deal with conflicts do have their limited utility, but

they must be politically guided.

'Freedom to the military'

Another reflection of depoliticising security matters is the tendency to argue that the armed forces should be given complete autonomy to deal with security problems. In the immediate aftermath of Pulwama, Prime Minister Narendra Modi, for instance, declared that the "armed forces have been given complete freedom to take action", a statement that was well received by the general public. However, giving complete freedom to the military is replete with several complications, not the least of which is the indirect acknowledgement that the political class has failed to resolve the problem. For one, telling the armed forces that they are free to deal with the problem as they wish is a dangerous abdication of political responsibility which was entrusted to them through a democratic process.

Second, 'giving complete freedom to the military' is an open invitation to use military solutions to deal with what are essentially political problems. Third, and even more important, 'complete freedom' lies in the face of political control that should be the hallmark of a mature democracy. It is one thing for the general public to nurture romantic notions about military solutions, but it is dangerous for the political class to actually enshrine that in policy guidance. Popular fetishes about military force are the stuff for feel-good fiction, not policy making.

One direct implication of depoliticised conflict resolution is that it typically leads to more violence. Surprisingly, however, more violence doesn't normally lead to an introspection about the utility of militaristic tools of conflict resolution – on the contrary, it further strengthens the belief in its uses. When men in uniform die, their loss becomes a rallying cry for more violence which then

leads to even more casualties – the cycle goes on until political solutions are brought in. Take any militarised conflict, and you will see this point. The fact is that every death due to violence must be avoidable, and that can only happen if statesmen and women are willing to climb down from the cycle of violence. But for that to happen, there must be a decidedly political approach to conflict resolution.

Root cause theories

There is also an entrenched popular aversion to using 'root cause theories' to explain conflicts around us. Not only are those attempting to explain conflicts by examining its root causes routinely shunned by impatient commentators, they are routinely viewed as apologists of non-state violence. While this antipathy towards root cause theorists is a function of depoliticised conflict narratives, it leads to further depoliticisation of conflicts. Depoliticised narratives aim to treat the symptoms, ignoring what gives rise to those symptoms – the latter is difficult, requires introspection and mending ways, while the former expects that military force can be used to end violence or resolve the problem at hand. Militarily framed responses to conflicts also deny justice since they can only be used to reinstate the state's 'monopoly over power', not to provide justice to the aggrieved parties in a conflict.

Let's not forget that conflicts are a function of differing political values and expectations, and the only way sustainable conflict resolution can be achieved is by bringing politics back to negotiate those differences.

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The flawed unit of academic quotas

Much more needs to be done to improve faculty diversity on university campuses



FAIZAN MUSTAFA

In the history of reservations in India, Parliament has sometimes had to resort to even constitutional amendments to overturn some court rulings that have the effect of protecting the interests of 'general candidates'. The 77th constitutional amendment of 1995, which was recently extended to Kashmir, restored reservation in promotions as a nine-judge bench of the Supreme Court in *Indra Sawhney* (1992) while upholding Other Backward Classes reservation based on Mandal Commission recommendations had prohibited Scheduled Caste/Scheduled Tribe (SC/ST) reservation in promotions.

Ordinance and after

The 81st constitutional amendment was made to overturn the Supreme Court's decision against the 'carrying forward' rule, which permitted the filling of unfilled reserved seats in subsequent years. Similarly, the 85th constitutional amendment was passed in 2001 to restore consequential seniority to promotee SC/ST employees as a 'catch-up' rule introduced by the court in *Ajit Singh* (1999) was causing hardship to SC/ST employees.

Last week, the Narendra Modi government promulgated an ordinance to undo the Allahabad High Court's judgment in *Vivekanand Tiwari* (2017) which had relied on a number of other High Courts and a few apex court judgments such as *Suresh Chandra Verma* (1990), *Dina Nath Shukla* (1997) and *K. Govindappa* (2009) that had made 'department' rather than 'university' as the unit of reservation in universities.

In *Vivekanand Tiwari*, an advertisement of the Banaras Hindu University (BHU) for teaching positions was challenged. The BHU, like other Central universities, was following the University Grants Commission policy of treating 'university' as the unit for the purposes of reservation. Due to judicial discipline, Justice Vikram Nath, who authored the judgment, did not have much of choice. But then Justice Nath himself did not seem to be a votary of reservations. In the beginning, he has said, "It is not a mandate but liberty given to the state. It is an enabling provision." Thus, according to him, the government may not provide for reservation.

The importance of 'shall'

Technically speaking, he is right. But then we cannot ignore that Article 335 categorically says that "claims" of SC/STs to posts in Centre and the States 'shall' be taken into consideration. As opposed to 'may' or 'will', the use of the word 'shall', in law, means



mandatory. While the judgment ended at page 29, Justice Nath devoted several additional pages to make out a case for the re-examination of the reservation policy by the government though there were no pleadings on this issue. He asked it to examine whether reservation at all is needed in university teaching posts.

Our courts have used the differences between 'cadre', 'service' and 'post' to arrive at the conclusion that 'department' should be unit of reservation. So though lecturers, readers and professors in a university have the same scale and allowances in their respective cadres, they cannot be clubbed together. Since there is no scope for interchangeability of posts in different disciplines, each single post in a particular discipline is be counted as a separate post. On the face of it this seems to be perfectly logical. But the reality of the working of our universities is different. Every university spends lot of time in deciding reservation and tries to balance the competitive interests and needs of various departments.

Even with the 'university' as the unit, in over 40 Central universities we have huge under-representation of SCs and STs especially at the level of professor and associate professor. If 'department' was allowed to be taken as a unit, these numbers would have been far less.

In its review petition, the government did share with the Supreme Court the BHU's example of the adverse effect of using 'department' as the unit. For example, there were 1,930 faculty posts on May 12, 2017. If the BHU were to implement reservation based on using 'university' as the unit of reservation, 289 posts would have had to be reserved for SCs, 143 for STs and 310 for OBCs. Under the new formula of using 'department' as the unit, the number of reserved positions would go down to 119 for SCs, 29 for STs and 220 for OBCs.

Beginning of an end

Implementation of the department-wise reservation policy would have had a disastrous effect on other universities as well.

A study of 20 Central universities by the Central government has shown that reserved posts will come down from 2,662 to 1,241 in a year. The number of posts of professor would have reduced from 134 to just 4 for SCs; from 59 to zero for STs, and from 11 to zero for OBCs. But number of unreserved or general posts would have drastically increased, from 732 to 932. At the level of associate professor, for

SCs it will have reduced from 264 to 48, for STs from 131 to 6, and for OBCS from 29 to 14. But here again the number of general posts would have increased from 732 to 932. In the case of assistant professor, the number of reserved posts would have reduced from 650 to 275 in STs, from 323 to 72 for SCs, and from 1,167 to 876 for OBCs. But the number of unreserved or general posts would have gone up from 2,316 to 3,233. Thus department-wise reservation was a sophisticated beginning of an end of reservation. If SC/ST candidates do not become professors, they cannot become vice-chancellors as only a professor with 10-year experience is eligible for this. In 2018, out of some 496 vice-chancellors of Central and State universities, there were just six SC, six ST and 48 OBC vice-chancellors.

The government deserves appreciation for the ordinance, though brought in belatedly on the eve of the elections to garner Dalit votes. But we need to do more to improve diversity on our campuses with more SCs, STs, OBCs, Muslims, persons with disabilities and sexual minorities being recruited as faculty as our campuses do not reflect social diversity despite the university being a unit for reservation. Let the score on the diversity index be a major criterion in giving grants to universities.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, Hyderabad. The views expressed are personal

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.

The general election

Now that the schedule for the mammoth general election has been announced, the Election Commission should further specify regulations, like the use of social media, that must be implemented before the election. The challenge is to tackle the menace of fake news on social media. Further, the Election Commission should also look into implementing a strategy to ensure the continuation of people-centric projects, if any, during the model code of conduct.

VARUN S.D.,
Bengaluru

■ The election date for Tamil Nadu is April 18, Maundy Thursday. It is a holy day for

Christians and falls right in the middle of the Holy Week just before Good Friday and Easter Sunday. Not long ago, there was a move to observe Christmas as Good Governance Day. I do hope the present election date is just a coincidence.

SANJAY PINTO,
Chennai

Nirav extradition

The national media, in one voice, excitedly reports that "Nirav Modi, wanted by the Indian authorities in connection with the ₹13,578 crore Punjab National Bank fraud case, is in London, living in a luxury apartment complex by Oxford Street". As expected, the Congress and the BJP have latched on to the subject as a weapon in their election campaign with

the predictable face-off. Nirav Modi could not have done what he did without the active connivance of top officials. Believe me, he will be forgotten after the general election.

C.V. VENUGOPALAN,
Palakkad

Ayodhya mediation

The Supreme Court's attempt at mediation in the Ayodhya dispute provides a ray of hope. Some thought appears to have gone into forming this committee. Moreover, the choice of eminent mediators gives hope for a more unbiased decision. However, the non-participation of expert women in this settlement committee is a bit upsetting.

MEHAR SINGH,
New Delhi

Now, gamekeepers

The report, "Vidyal heralds a new dawn: poachers turn protectors in Vidyal" (March 4), took me down memory lane, having been involved in the reformation of poachers. As the then circle inspector of Gudalur, I lent support to the Kerala Forest Ranger, Raju Francis, in holding multiple parleys with poachers to surrender and accept their reformation programme. When we reached the goal and a "surrender ceremony" was organised in Thekkady, all went well till the point when the poachers refused to board the forest vehicle apprehending arrest in Kerala. It took me a while to convince them and vouch for their safe return. I even accompanied them to the

ceremony. There were some hiccups following recidivism noticed among a few members. But, overall, the scheme is worth emulation by all forest departments.

M.X.B. STANLEY,
Madurai

Having a 'Parley'

The introduction of a new segment, "Parley" (OpEd, March 8), is sure to help readers get a wider view of expert opinion on current

CORRECTIONS & CLARIFICATIONS:

The reference to *socialist* democratic SLFP should be corrected to read as *social* democratic SLFP in the report titled "An old party looking for a new lease of life" (Despatches, Magazine section, March 10, 2019).

It was not Hardik Patel: It was cricketer Hardik Pandya – along with his brother Krunal Pandya – who attended the wedding of Akash Ambani. The report, "Akash Ambani ties the knot with Shloka Mehta" (March 10, 2019), got the name wrong.

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