Unity in defeat

Far from driving them apart, the Rajya Sabha polls have brought the SP and the BSP closer

Elections to the Rajya Sabha would have been dull, predictable affairs if not for stories of intrigue and betrayal. In this round of biennial elections to the Upper House of Parliament, the element of drama was provided by the 10th seat from Uttar Pradesh, eventually won by the Bharatiya Janata Party over the Bahujan Samaj Party through a combination of cross-voting and last-minute switch of loyalties. BSP legislator Anil Kumar Singh was open about his rebellion, and his support for the BJP candidate. Independent member Raghuraj Pratap Singh, who is close to the SP, helped the BJP's cause too. The battle for the 10th seat, which the BJP could not have won on its own, supposedly held long-term implications for the political churn that U.P. is now witnessing. The BJP saw it as a test of the new bonding between the SP and the BSP, which won for the SP two Lok Sabha by-elections recently. Chief Minister Yogi Adityanath sought to paint the result less as a satisfying win for his party and more as a disturbing result for the BSP, saying the SP took votes from others but did not return them. More than getting an additional seat, the BJP was hoping that the outcome would sow the seeds of distrust between the SP and the BSP. Although clearly unhappy with the defeat, BSP leader Mayawati was unwilling to let it jeopardise the nascent understanding with the SP, and said the loss would not affect her party's growing proximity to the SP. Indeed, she saw it as a consequence of what she claimed was the BJP's strategy to drive a wedge between the two parties. Instead of driving them apart, the result seems to have brought the SP and the BSP closer.

Despite its success in the polls in U.P., the BJP is no closer to undermining the opposition in the Rajya Sabha. The Telugu Desam Party has quickly made the transition from a disenchanted ally to a fierce opponent. The Telangana Rashtra Samiti, even while trying to maintain good equations between its government and the Centre, is working towards a federal front opposed to both the Congress and the BJP. The 29 seats (out of 58) that the BJP won in this round will not alter the balance in the Rajya Sabha, at least not immediately. If in U.P. the election brought two opposition parties closer, in West Bengal it created more differences between the Left and the Congress. The Trinamool Congress's support may have been for Abhishek Manu Singhvi as an individual, and not for his party, the Congress, but the net effect was that the Left was unhappy with the Congress and its candidate. The elections to the Rajya Sabha are not a reflection of the strengths of the parties on the ground, but they can alter political equations and have a bearing on direct elections in the near future.

After the emergency

Repairing ties with the Maldives will test Indian diplomacy

The Maldivian government's decision to lift the state of emergency after 45 days, just ahead of the expiry of its second self-imposed deadline, comes as cold comfort for those concerned about the turn of events in the islands over the past couple of months. In a statement India said the withdrawal of the emergency is but "one step", and much more must be done to restore democracy in the Maldives. The opposition, mostly in exile and led by former President Mohamad Nasheed, says the emergency was lifted only because President Abdulla Yameen has established total control over the judiciary and parliament since the February 1 court verdict that cancelled the sentencing of 12 opposition leaders and ordered their release. In a dramatic turn of events Mr. Yameen had then ordered the arrest of two judges, as well as hundreds of activists and politicians including former President Abdul Gayoom, and imposed a state of emergency. The remaining judges overturned the February 1 release order, under what is seen to be coercion by the security forces, which had locked down the Majlis (parliament) and court buildings. Therefore, lifting the emergency does not automatically amount to *status quo ante*.

Repairing India-Maldives ties, that have taken an equally sharp dip since February 1, will be a tall order. Male has reacted sharply to India's public statements on the emergency, as well as now to the statement welcoming the lifting of the emergency, saying that the events of the past couple of months were "internal political matters", and India's statements of disapproval were "not helpful at all". The pushback from the Yameen government is in stark contrast to its desire over the past few years to work with India, and it isn't hard to see why. Bolstered by a close relationship with China, Mr. Yameen has in a matter of months gone from declaring an 'India first' policy to disregarding its concerns. With military exchanges, a free trade agreement with China and a slew of Chinese infrastructure investments in place, the Yameen government clearly considers itself sufficiently insulated from any counter-moves by India or the U.S. During the current crisis, China placed its diplomatic might behind Mr. Yameen, and even offered to broker talks between the government and the opposition, a role that India would have been naturally expected to play in the past. It is important to note that a military intervention by India was never a possibility, and comparisons made to India's actions in 1988 are pointless. India has been wise to keep its counsel and not over-react to the recent events. But going ahead, its challenge is tougher: to demonstrate its relevance to the Maldives as the biggest power in the South Asian region, while helping steer Mr. Yameen to a more reasonable and inclusive democratic course ahead of the presidential election later this year.

Controlling the machine

Europe's new data protection regime offers a sound basis for India to craft its own legislation

APAR GUPTA

During the throes of India's independence struggle, an image of Mahatma Gandhi spinning khadi symbolised not only economic and political autonomy but to its critics an insular withdrawal from industrialisation and technology. This tension is gingerly revealed in a letter from Jawaharlal Nehru to Aldous Huxley, as a partial defence of the Mahatma's position, when he writes, "I believe in the machine and would have it spread in India, but I also believe in the social control of it." While dialogues of the past do seem distant to the rapid advances in the fields of big data, algorithms and artificial intelligence, they undergird deeper truths and surface visibly in debates over the formation of a privacy and data protection framework.

It's all connected

At present India has the second highest number of Internet users in the world, and is an important market for many global companies that have staked dominance within distinct silos of digital services. While Facebook enjoys sway over social networking, Google has completely taken over online search and email, and Amazon continues a growing capture of online commerce. This is further supplemented by a maturing, home-grown technology sector which learns not only its business models and operational strategies but even its corporate culture from such companies. Though there is friction between these global and local firms, they are united in a singular attempt to collect, store and analyse the online behaviour of millions of Indians. It is immaterial whether customers pay for digital services, for the business model of most firms always factors in a premium for personal data.

Another layer for the extraction of information is added by the government. India has the unique distinction of being one of the few countries that gathers vast amounts of personal data through its compulsory national biometric ID scheme, Aadhaar. Its wide pervasive use goes well beyond public entitlements or regulated services to sundry services such as online matrimonial portals. It almost seems data is not the new oil – it is air itself.

The European template

Though digital technology is finely threaded with the fabric of our lives, India maintains a curious omission of a comprehensive, enforceable data protection law. The limited protections which do exist are under the Information Technology Act, 2000, and its subordinate regulations remain substantially deficient and practically unenforceable. This stands in stark contrast to the European Union which has taken time to develop an advanced data protection framework, the General Data Protection Regulation (GDPR), that goes into effect in a few months. There is good reason to look toward Europe. Graham Greenleaf,

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professor of law and information systems at the University of New South Wales, Australia, who has studied more than 50 countries in the Asia-Pacific region, notes the pre-existing presence of elements of European law within their national laws, with most needing to update them and enact a comprehensive statute. Even as a text, the GDPR is a progressive instrument. The very preamble of the GDPR, reflects an attempt to protect the rights of individuals through a data protection law, treating the requirements of industry and state as limited exceptions. It is this exercise of balance which Nehru adverts to in his letter to Huxley, stating that cottage industry is not to the exclusion of the power loom.

Such search for balance comes from a recognition of the principled protection of the right to privacy within the text of a data protection law and then proceeds to exceptions which are determined under the legal doctrines of necessity and proportionality. Necessity is a threshold evaluation requiring objective evidence that is matched against a proportionality exam in which the advantages due to limiting the privacy right are weighed against the disadvantages. Such principles find legal articulation within the GDPR which makes them practically enforceable. These include a transparent system of data processing which makes users practically aware of what is happening with their personal information at all times. A user's knowledge is raised to the level of control, where necessity and proportionality are placed both as exceptions and as positive obligations on companies and governments. For instance, they are allowed to use data only for the original purpose under which they were gathered and only to the extent and amount as necessary for performing the function as specified by a user.

The sister doctrines of necessity and proportionality are not strangers to our own constitutional law. Even prior to their express recognition and linking to data protection by the Supreme Court last August, when it reaffirmed the fundamental right to privacy, they have found passing references through the decades. For instance, the Supreme Court has applied proportionality to strike down a law in the 1950s which completely prohibited the manufacture of tobacco bidis. Since the basis of law was to ensure adequate labour to work in the agricultural seasons, a blanket prohibition for all months was held to be disproportionate. Though further precedent exists which limits the sweep of state action, and further support has recently come from the Supreme Court, many rights advocates hold that a balancing exercise for these doctrines may become an unequal bargain between privacy and the demands of big data and the bigger state. There is a credible basis for such fears as often our courts have wavered from the principle of protecting fundamental rights to permitting an expansion of limitations placed on them, with the exceptions gradually swallowing up the rule.

Challenge ahead

This sets up a credible challenge to the future of India's data protection framework, with sufficient powers for the regulatory body and the courts which will function to enforce it and hold powerful corporations and governments to account. While we must learn and draw from the data protection principles of Europe, we must also focus efforts to ensure their effective enforcement. This will naturally be an effort in not only ensuring desirable legal language within the text of a law but also a larger environment of compliance and respect for privacy. Opportunity for positive outcomes exists in the domain of technology as India has already taken a global lead in enacting a progressive net neutrality regulation. But due to a lack of partnership between civil society and the government, there is a sense of cynicism overcast by the lack of a user-oriented data protection law. Many today wonder about their online safety and express a loss of control. In this there is an important lesson from decades past – to continue our belief in the benefits of technology, we must continue to believe in its social control.

Apar Gupta practises law in New Delhi

The need for 'special' attention

It is assumed that special courts are a panacea for judicial efficiency, with hardly any evidence to suggest that

ARIJEET GHOSH & RAUNAQ CHANDRASHEKAR

Last December, the Supreme Court greenlit the Centre's proposal to set up 12 fast-track courts to adjudicate and speedily dispose of 1,581 cases against Members of Parliament and Legislative Assemblies. Apart from uncertainties about the adequacy of such a measure, a more glaring issue is that the order conflates two distinct judicial features by using them interchangeably: special courts and fast-track courts.

Special courts, which have existed in the subordinate judiciary since before Independence, are set up under a statute meant to address specific disputes falling within that statute. Over 25 special courts were set up between 1950 and 2015 through various Central and State legislations. However, despite being an old means of addressing the specificities of certain statutes and judicial backlog, there seems to be little if any evaluation of how this system works. Nearly four decades ago, a Bench of the Supreme Court gave its judgment in a decision, titled *In Re: The Special Courts Bill, 1978* (Special Courts Case), pertaining to special courts and meant to deal with excesses during the Emergency. Here, the court opined on the constitutionality of and the legislative competence with which Parliament could establish special courts. Based on the discussion on special courts in the judgment, a prima facie definition of a special court can be: A Court which was established under a statute, to deal with special types of cases under a shortened and simplified procedure.

Fast track courts were the result of recommendations made by the 11th Finance Commission which advised the creation of 1,734 such courts to deal with the judicial backlog. They were actualised though an executive scheme (as opposed to a statute of the legislature) and were meant to be set up by State governments in consultation with the respective high courts. Though meant to be wound up in 2005, the scheme was extended till 2011. Since then, six such courts have been set up in Delhi to take up rape cases.

Inconsistent drafting

While there is sufficient discussion around fast track courts and tribunals, the same cannot be said about special courts. This vacuum in research and analysis with respect to special courts has led to inconsistencies in legislation and operation. While opinions may differ anecdotally, there is no doubt that this is best demonstrated by Parliament. A look at 28 pieces of Central legislation such as the Special Criminal Courts (Jurisdiction) Act, 1950 to the Prevention of Money Laundering (Amendment) Act, 2012 leaves one with a dizzying set of varied provisions to enact such courts. The Special Courts case clearly uses the phrase "established under statute", which, in most cases, should imply the creation or establishment of a new court. However, all of two statutes use the term "establish", while four use "constitute", two use "create", eight use "designate", two use "notify", and one uses "appoint". Even the Protection of Children from Sexual Offences Act, 2012 uses the words "establish" and "designate" in different places. The unifying thread in these statutes is that these terms have not been defined or procedurally explained. For States and high courts, this leads to ambiguities in operation in setting up such courts. For example, do they require new buildings? Should more judicial officers be hired? If a judge is designated under a special statute, should those matters be added to or replace her roster? This could create confusion with respect to appointments, budgetary allocation, infrastructure, and listing practices.

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What purpose do these courts serve? On a secondary level, 13 pieces of legislation state that the government "may" set up special courts, while 15 say the government "shall". However, going by the definition, the answer as to whether a law requires a special court or not is a binary: yes or no. In such a situation, leaving options such as "may", add to the ambiguities. It is also unclear what the legislature intends to accomplish by creating special courts. For instance, there seem to be more special courts under the Prevention of Corruption Act, 1988 as compared to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 despite data showing the former having a tenth of the number of registered cases as the latter (2015). This points to unclear legislative intent while drafting such provisions. If a special court is meant to address the volume of cases under a statute, then why use "may" as the enabling provision instead of "shall"? When combined with the question of how exactly such courts must be set up, a range of possibilities confront the judiciary and the government, with little to no clarity on how these decisions are made.

The status quo

Apart from the Supreme Court addressing their constitutional status, policy questions pertaining to the need and efficiency of special courts have seldom been analysed. As of October 2017, as many as 71 out of Delhi's 441 judges in civil and sessions court (or 17% of Delhi's subordinate judiciary) were designated as special courts under 12 statutes. More recently, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 drafts contain a provision for special courts. Therefore, special courts continue to be ubiquitous, despite being under-analysed.

There are over 2.8 crore cases in the subordinate judiciary, which is the most out of the three tiers of the judiciary – subordinate, high courts and the Supreme Court. Parameters such as the frequency and number of effective hearings and calculating the number of pending cases need to be developed to study the workings of special courts. Without such inquiries, their number continues to grow. Both organs of state continue to believe that special courts are a panacea for judicial efficiency, despite there being virtually no evidence to support this assumption. Finally, it is important to ask questions and determine whether or not this special courts system is in fact helpful in addressing the judicial backlog.

Arijeet Ghosh and Raunaq Chandrashekar are Research Fellows with the Judicial Reforms Initiative at the Vidhi Centre for Legal Policy. With inputs from Neha Singhal, Senior Resident Fellow, Vidhi Centre for Legal Policy

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.

Jail term and fine

The corrupt deserve severe punishment. Now that Rashtriya Janata Dal chief Lalu Prasad has been sentenced to 14 years in prison and also has to pay a steep fine, people who initially empathised with him are bound to be convinced of his wrong doing. Even his caste constituency will throw up an alternative leadership. Though not all our politicians are corrupt, a few bad apples are enough to tarnish the image of our democracy ("Lalu gets 14 years in 4th fodder case", March 25).

VINOD C. DIXIT,
Ahmedabad

Web of exploitation

The story of Rajini, an Adivasi girl, just one of many caught in the web of sex trade and trafficking, is tragic ('Ground Zero' page - "Araku Valley's dark secret", March 24). The root cause for all such sad happenings can be traced to a lack of education. If girls are made aware of their rights, they are sure to be equipped with the wherewithal to shun middle men who seem to be promising them the moon. There was a time in the 1980s, when many young women from the composite Andhra Pradesh State used to land up in Chennai in search of greener pastures in the Tamil film industry. As far as the trafficking of Araku Valley tribal women is concerned, one needs to find out whether it is in connivance with the police. It is also a pity that women who were victims themselves now come back to "lure" other young girls. If Andhra Pradesh Chief Minister Chandrababu Naidu is keen about enhancing Special Category Status for his State, he should save Adivasi women there from a dark future.

A. JAINULABDEEN,
Chennai

■ The colonial legacy of trafficking in women is not just deplorable but also points to the utter failure of our society in saving those in difficulty. The Right to Education doesn't seem to have taken its 'fundamental' role in these hamlets. Equipping all girls with intellectual development and the means to seek skilled employment cannot wait any more. Bringing the middle men to book demands strong political will. The administration and civil society have equal responsibility in ending this practice.

ANJALI B.,
Thiruvananthapuram

Strike a chord again?

To tackle graft in a country soaked in corruption needs humongous mass support ("Anna Hazare on hunger strike again", March 24). Indians are either corrupt or conditioned to accept corruption. Ours is a society that is systemically corrupt, with corruption embedded in every transaction, big or small. We believe that even entitlements do not come without illegal gratification. That being the case, it is a million-dollar question as to what extent fair-minded people will support Mr. Hazare this time even as they are prepared to take the bull by the horns.
Last time, the idea was novel and captured the imagination of the masses. But the initial wave of support fizzled out.

V. LAKSHMANAN,
Tirupur, Tamil Nadu

Data breach

While the Congress and the BJP are busy trading charges about alleged links with Cambridge Analytica, lakhs of social media users in India are deeply concerned that their personal data could have been stolen, misused or even compromised. Whatever explanation Facebook might now be offering about the data breach, it cannot conceal the fact that its control systems are weak. It has failed to honour the deep trust reposed in it by millions of its users. It is also alarming that data can be used to try to subvert electoral systems and processes in large democracies. If at all some of our local political parties or vested interests had indeed hired the 'services' of such 'data dacoits', stringent action needs to be taken against them.

A. MOHAN,
Chennai

Tarnished

Steve Smith and his team have defamed not only Australian cricket but also the entire game ('Sport' page - "Smith, Bancroft admit to ball-tampering", March 25). As one of the game's most brilliant teams, Australia is feared and respected across the cricketing world for its exploits on the field. Severe punishment would deter those who nurse hopes of resorting to illegal and unfair play. There also needs to be stringent vigil over sledging. Cricket seems to losing its beautiful tag of being a gentleman's game.

BALASUBRAMANIAM PAVANI,
Secunderabad

■ The serious incident would never have come to light had it not been for the cameras. It is regrettable that such an experienced and senior Australian cricket team had even thought of resorting to such an underhand method in order to gain unfair advantage over its opponent. The ICC should go ahead with penal action against all those found guilty after a thorough investigation. The fair game of cricket has been sullied by a handful of cricketers who thought nothing about adopting dubious methods, unlawful under the rules.

D.B.N. MURTHY,
Bengaluru

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