

8 EDITORIAL



No sweeping change

The Swachh Bharat Mission needs a broader vision of what constitutes cleanliness

India's Swachh Bharat Mission is receiving global praise for attempting to close the sanitation gap of nearly 60% of the rural population not having access to a toilet at home in 2014. The NDA government invoked Mahatma Gandhi's vision of a clean and healthy country when it launched the ambitious programme. On the eve of Independence, Gandhi saw the lack of a "sense of national or social sanitation" as the root of all diseases among Indians. Prime Minister Narendra Modi announced a Swachh movement in 2014 to change that, and four years later the outcomes show that achieving social change is far from easy. For the BJP-led government at the Centre, the SBM enjoys arguably the highest priority, and a ₹16,400-crore fund was raised for it during 2015-17 when a special cess was in force. On Gandhi Jayanti this year, the SBM's Gramin wing declared it has constructed 86.7 million Individual Household Latrines and raised sanitation access to 94% in rural areas; 5,07,369 villages are now 'open defecation free'. On the face of it, this is big advance. But there is a need for a close audit of the outcomes. In some States, such as Rajasthan, independent verification shows that the social change that the SBM hopes to achieve remains elusive, and traditionally oppressed communities continue to manually remove filth from dry latrines used by the upper castes. There are reports of a similar situation prevailing in some parts of Uttar Pradesh and Madhya Pradesh too. What this shows is that the very evil that Gandhi wanted to see changed – of some castes condemned to do such work by others – persists.

Besides making sanitation a movement through the provision of well-designed toilets and behaviour change in rural India, the SBM should have a broader vision of what constitutes cleanliness. The Centre asserts that urban toilet coverage is now 87% of the target, and nearly three-fourths of the wards in the country have door-to-door collection of municipal waste, but the lived experience of the city-dweller, especially in the bigger metros, is different. Waste volumes continue to grow as economic growth spurs consumption. The laws on municipal solid waste, protection of water sources and pollution control are just not being enforced. The official machinery required to enforce legal provisions vigorously, and the infrastructure to manage waste scientifically are inadequate, making it unlikely that there will be significant public health outcomes flowing from high-profile cleaning campaigns. Without full commitment to these aspects of development, there is little chance of meaningfully achieving the Sustainable Development Goals on water and sanitation anytime soon. Besides ending manual scavenging, the Swachh Bharat Mission must ensure that the manual cleaning of septic tanks, which is killing so many workers each year, is stopped and that funds for rehabilitation reach them.

A populist haze

Brazil votes this week in an election charged by an anti-establishment campaign

The campaign for Sunday's elections in Brazil is beset by an anti-establishment mood, as in several democracies. Legislators at the state and national levels are being elected, but it is the contest for the President's post that has really polarised the campaign. The personalised nature of the contest owes to the lingering shadow of Operation Car Wash, a buzzword for the anti-corruption campaign that underpins the confrontation between the legislature and the judiciary. At the centre of the investigations into the multi-billion dollar distribution of patronage to political and bureaucratic bigwigs is Petrobras, the state-owned oil firm. The anti-graft developments have removed established leaders from the fray, including Luiz Inácio Lula da Silva, the former President from the left-wing Workers' Party (PT) now serving a 12-year jail sentence. His bid to run for a third term was quashed by the electoral court, following the dismissal of an appeal against his 2017 conviction. Under the watch of Mr. Lula's successor, Dilma Rousseff, Brazil plunged into its worst recession in a century. She was impeached, but more on technical grounds linked to fiscal mismanagement than any egregious violations. The outgoing President, Michel Temer, also came under the prosecution's scanner but he survived, thanks to Congressional intervention to prevent any ripple effects. The overall atmosphere in the run-up to the elections has thus got more murky.

Surging in several opinion polls in the five-corner presidential contest for the first round is the far-right frontrunner, Jair Bolsonaro, an ex-army captain often compared with autocratic leaders elsewhere. A stabbing incident at an election rally has forced Mr. Bolsonaro to campaign from his hospital bed, a sign of the sharp and often violent polarisation between political extremes. The firebrand politician's homophobic and misogynistic views triggered protests over the weekend by thousands of women. Mr. Bolsonaro's main challenger is the PT's Fernando Haddad, a former mayor of São Paulo, whose nomination was deferred until the verdict on Mr. Lula's candidacy. Mr. Haddad's prospects may have improved had the PT reconciled itself to the overturning of Mr. Lula's appeal in January. The party's best hope now is that the economist will convert the former President's popularity into votes for himself. There is concern among investors that the election of a populist may impede long overdue reforms to break the dominance of sectional interests in Brazil's economic policies. Such intervention is seen as crucial to restore investor confidence, stimulate infrastructure growth and reverse Brazil's recession. The expectation is that Sunday's vote will result in a run-off. That, many hope, will set the stage for a more sober lead-up to the final vote.

The scope of constitutional morality

Abolition of untouchability in all its forms, including scavenging, remains an unrealised constitutional right



KALPANA KANNABIRAN

The issue of the rights of sweepers and scavengers has never entered the mainstream legal consciousness in the country," wrote Upendra Baxi in *Law and Poverty: Critical Essays*. "Nor have the Bar and the Bench, and the mushrooming legal aid and advice programmes shown any awareness of the exploitative conditions of work imposed upon the scavengers and sweepers under the employment of municipal corporations or related local bodies... [T]he exploitative conditions of work constitute governmental defiance of the law and the Constitution, which can be best summed up as a crucial component of overall governmental lawlessness in the country since Independence."

Written in 1988, Prof. Baxi's lines remain disconcertingly relevant today. We struggle against the caricaturing of this extremely stigmatising, violently exploitative and degrading form of forced labour by a government and civil society that showcases empty rhetoric and ceremony around "cleanliness", while decimating an entire class of citizens through callous neglect with impunity.

There has been a steady rise in deaths of conservancy workers, and a steadier normalisation of the risks to life they bear on a daily basis. Why don't sewer deaths bring the country to a grinding halt, as they should? Will a general strike of all conservancy workers across

the country bring the country to its knees? Because then, it will not be a question of prime-time jingles on a clean India; the focus will shift on each of us to take the moral and physical responsibility of cleaning our own sewers and keeping ourselves free of the risk of toxic death.

Flouting laws

To return to Prof. Baxi's concerns on the place of law: Article 17 of the Constitution of India states: "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law." This is a fundamental right and therefore justiciable and enforceable by courts, which shall call governments to account.

In 2009, the Delhi High Court, in *Naz Foundation v. NCT of Delhi*, invoked Babasaheb Ambedkar's delineation of constitutional morality in asserting the urgency of decriminalising consensual sexual relations proscribed by Section 377 of the Indian Penal Code. The court cited a second provision as well: Article 15(2) which prohibits any form of horizontal discrimination drawing again from the experience of untouchability that obstructed the universal use of public places, restaurants, water sources, etc. We witnessed last month a triumphal return of constitutional morality as a guiding principle for constitutional interpretation. A five-judge bench of the Supreme Court of India, in *Navej Singh Johar v. Union of India*, deployed this framework to reaffirm the rights of LGBTQ and all gender non-conforming people to their dignity, life, liberty, and identity.



FILE PHOTO/K.R. DEEPAK

The genealogy of Ambedkar's signposting of constitutional morality may be traced to the strength of anti-caste resistance and the abolition of untouchability. It is from this context that constitutional wisdom was applied to analogous situations of oppressions based on sexuality. It is time to call the government to account through a recursive method that takes us to the original constitutional proscription of untouchability, armed with the wisdom of the Navtej Singh Johar case.

Judicial empathy

The first aspect is the importance of judicial empathy. In a violently exclusionary society, the application of the Constitution to lives as lived is an extremely emotional moment. We have people from India's most oppressed castes dying painful deaths without dignity in the sewers of the same city where the court sits. There is neither accountability nor due diligence on the part of the state. The time for the expression of judicial empathy is now. Justice Indu Malhotra's lines in *Johar* are apposite: "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries."

The creamy layer of social justice

The progression from poor to bourgeois to elite is a welcome evolution in nation-building — the apex court missed it



D. SHYAM BABU

As citizens, we expect two certainties from any verdict on public policy by a constitution bench of the Supreme Court. One, it must hold whether the underlying principle(s) is/are consistent with the Constitution of India. Two, such a verdict must end governance paralysis. Unfortunately, the court has accomplished neither objective in its recent verdict in *Jarnail Singh v. Lachhmi Narain Gupta*, wherein it held that the government need not collect quantifiable data to demonstrate backwardness of public employees belonging to the Scheduled Castes and the Scheduled Tribes (SC/STs) to provide reservations for them in promotions.

The core issue here was whether the 'creamy layer' among SC/STs should be barred from obtaining promotions through reservations. The court set aside the requirement to collect quantifiable data that was stipulated by its 2006 verdict in *M. Nagaraj v. Union of India* as it ignored the reasoning of a nine-judge bench in *Indra Sawhney* (1992) that any discussion on creamy layer "has no relevance" in the context of SC/STs.

The court has taken more than a decade to correct an anomaly in the Nagaraj case which brought in

a creamy layer filter for promotions for SC/ST employees. This resulted in thousands of employees being denied their due promotions.

Can one now treat the matter as settled, that the creamy layer is a non-issue with regard to job reservations for SC/STs? Not so. A two-judge bench of the top court is considering a public interest litigation (PIL) filed by the Samta Andolan Samiti that seeks the removal of creamy layer among the SC/STs in job reservations – a matter settled by a nine-judge Constitution Bench long ago and also a matter that has just been settled by a five-judge Constitution Bench.

In the verdict in *Jarnail Singh*, the court cites an 'admonition' to itself by a Constitution Bench in the Keshav Mills case in 1965: "It must be the constant endeavour and concern of this court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country." The court followed its own admonition more in breach insofar as it concerns litigation related to reservation.

Out of synchrony

The court merely removed the government's responsibility to collect quantifiable data on backwardness but reasoned that the creamy layer test would be consistent with the equality principle. The challenge it faced is of a secular nature. It did not question reservations in promotions for SC/ST employees, but grappled with a different question: Which section or class among the SC/STs is more



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entitled?

Some of the confusion in the debates over reservations since 1990 emanates in the context of reservations for the Other Backward Classes (OBCs). Sadly, the Supreme Court too relies on using arguments pertinent only in the case of OBCs to decide litigation on SC/ST quotas.

But a close reading of relevant constitutional provisions and the verdict in *Indra Sawhney* make it clear that the SC/STs are given job reservations not because they are poor but because they are excluded. The first part of Article 335 stipulates job reservations for SC/STs as a right of representation, not as a welfare measure. However, the creamy layer among SC/ST employees helps fulfil the second part of Article 335 that requires maintaining the "efficiency of administration".

One can in fact argue for public employment having welfare objectives to plead the case of those less privileged among SC/STs. But such logic would require the removal of the creamy layer also while recruiting employees in the open category.

The court could have addressed

an often ignored aspect of the matter – the right of the creamy layer among the community to opt out of reservations. At present, an SC/ST candidate does not have the right to reject reservations. She is merely required to state whether she belongs to the SC or the ST category and a response in affirmation automatically puts her in the queue for reservations. It is also a punishable offence to withhold one's caste status while seeking government employment. A simple administrative decision to allow SC/ST candidates to compete in the general category would have helped thousands to leave the space for the less privileged among them.

What is also not appreciated while debating the matter is that the presence of the creamy layer works as a safety valve. The rationale behind the demand to prohibit elite or privileged sections from accessing quota posts is that these sections are as well qualified as general candidates, if not more, and numerous enough to warrant their removal.

Herein lies the catch. A well-qualified and large SC/ST group having to compete as non-reserved candidates would corner a substantial number of open posts. At the same time, their less privileged cousins would fill the quota. Theoretically, SC/STs would end up garnering more posts than their proportion in population. This begs the question on the rationale behind the litigation.

The Indian state must be proud that its policies have created a creamy layer among the most dis-

advantaged that gel well with those in the general category. They also help projecting the community as normal Indians, which is a revolutionary ideal. The whole enterprise of seeking to introduce obstacles before them in employment and promotions will have pernicious consequences. Will it do any good that the government recruits general candidates from the elite sections and reserved candidates from the poorer strata?

Given the uneven educational opportunities across the divides of rich-poor and urban-rural, the poor or underprivileged access substandard education. We want our public servants to be well educated and smart. The point must not be treated as an affront to the less privileged. It is mere recognition of the fact that socio-economic progress moves by generations. Today's creamy layer is yesterday's underprivileged. In a 1970 memorandum to U.S. President Richard Nixon, Daniel P. Moynihan suggested that "the time may have come when the issue of race could benefit from a period of 'benign neglect'."

India badly needs such a period of 'benign neglect' in matters related to caste as well as the constitutional provisions aimed at getting rid of the rough edges of caste discrimination. The least one expects of the highest level in the judiciary is to accord "an element of certainty and continuity" on the subject.

Kalpna Kannabiran is Professor and Director, Council for Social Development, Hyderabad

LETTERS TO THE EDITOR

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Wardha call

Remembering Gandhiji on just one day in a year and then forgetting him for the rest is what almost every political party in India has been doing meticulously. Therefore, the resolution by the Congress Working Committee, which calls for people to follow his philosophy after systematically diluting his ideals over decades, is nothing but opportunistic politics with an eye on elections. Further, calling for a 'second freedom struggle', by equating it with the Quit India movement, to oust the Modi government after political parties of all hues have been responsible for slowly destroying the Gandhian fabric of secularism is nothing but a

desecration of the lofty ideals of Gandhiji.

K.R. SRINIVASAN,
Secunderabad

It is high time that the Congress realised the futility of Narendra Modi-bashing and theatrics in order to remain politically relevant. Instead, what are the concrete proposals or the alternative narratives the party has to offer to the people? If those in the Congress are ideal followers of the Mahatma, why did they not disband the party after Independence? It is now just a political outfit for one family to continue to be in politics. Nobody can deny the multifaceted progress that India has achieved in the last four years.

AKHILESH A.V.,
Bengaluru

The use of the word 'freedom struggle' by the Congress is inappropriate in today's context. The party is trying to relate it with the anti-imperialism struggle for independence. Gandhiji was able to unite a number of parties under one umbrella whereas today, the Congress stands alone. Political parties should chart out a model of ethics for the betterment of the country.

ASIF ALI,
New Delhi

Ground reality

In the 'Wednesday Interview', "Swachh Bharat has become a people's movement" (OpEd page, October 3), Drinking Water and Sanitation Secretary Parameswaran Iyer says that around 8.6 crore toilets have already been built,

representing an increase in coverage from 39% to 93%. Later he says that the focus on proper twin pit septic tanks has only just begun through advertisements by brand ambassadors and "masons are being trained". Therefore, it is safe to assume that most toilets would at best have been provided with only single pit septic tanks. These in turn would require frequent maintenance. The mindset change that is required so that this aspect is self-managed by users is going to be far greater than that of using the toilets built. Another answer to a pointed question is a generic statement – about "communities having come together", whatever that might mean. The sad fact is that the Swachh Bharat

Mission seems to have so far resulted in an increase in workload for a certain section of society, creating more fatalities. One wishes that the officials focussed on ensuring a real change in mindset rather than on merely meeting number-based deadlines.

S. BHASHYAM,
Bengaluru

There are some issues that need to be addressed by policymakers. One is the issue of adequate water in toilets, which is why people continue to use open spaces. The second is the issue of tank cleaning by manual scavengers. Technological interventions such as the use of robots like the one designed by a Kerala-based start-up are essential. The third is linking the SBM to

the Ayushman Bharat

scheme.

K. KESAVAN,
Chennai

Cricket writing

The column, "Between wickets" ("Sport" page, October 3), reminds one of a bygone era of cricket writing with imaginative writers. For example, David Frith, the founder editor of *Wisden Cricket Monthly* described (in 1986) Vivian Richards: "He walks with a swagger; he chews menacingly; and he thumps that cricket ball as if it contained all the evils of a millennium of mankind." Does someone require to be a Richards fan to enjoy the beauty of this statement?

RADHAKRISHNAN M.V.,
Thrissur, Kerala

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