



The IS shadow

The Sri Lanka bombings confirm the terror group's potent reach in South Asia

The Easter Sunday bombings in Sri Lanka that killed over 250 people have raised concerns about the Islamic State's expansion into the South Asian region. The group, which controlled huge swathes of territory in Iraq and Syria, is now practically on the run. The 'Caliphate' that Abu Bakr al-Baghdadi established across the Iraq-Syria border has been destroyed. But the Sri Lanka bombings, which happened a month after the U.S. and Kurdish rebels in Syria declared victory over the IS after liberating the last slice of territory it was holding, confirm that the destruction of the physical Caliphate doesn't end the threat the group poses. From early 2015, when it started losing territories, the IS started shifting its strategy from expanding territorially to expanding insurgency and terror. And South Asia has been one of its key targets. In Nangarhar in eastern Afghanistan, the IS set up a *wilayat* (province) from where it controlled its South Asia operations, mainly recruitment of young men from the region. Over the last few years, the IS has carried out dozens of attacks in Afghanistan, mostly targeting the Shia-Hazara minority. In Pakistan, the Jamaat-ul-Ahrar, a splinter group of the Pakistan Taliban with IS links, carried out several terror attacks, including the 2016 Easter Sunday bombing in Lahore targeting Christians. In Bangladesh, the IS claimed the July 2016 Holey Artisan Bakery attack. In India, it hasn't carried out any attack but has found dozens of recruits.

Early reports suggest that two of the suspects involved in the Sri Lanka attacks had travelled to Iraq and Syria. This is a set pattern in IS-directed attacks and poses a major security challenge to several countries. The IS had recruited thousands of youth from South Asian nations such as Afghanistan, Pakistan, India and Sri Lanka. Some of them joined the *wilayat* in Nangarhar and others travelled to Iraq and Syria. Now that the Caliphate has been destroyed, thousands of trained militants are left without a place to hide. Many have retreated to pockets on the Iraq-Syria border or to the deserts in Syria, Iraq and Jordan. Several others returned to their own home countries, as in the case in Sri Lanka. The second challenge is that the IS still controls some territory in Afghanistan. The U.S. had declared two years ago that defeating the IS in Afghanistan was one of its main policy goals, but it hasn't made much progress on the ground. An equally formidable challenge is to counter the ideological narrative of the IS. The old wisdom that lack of education and poverty breed terrorism doesn't hold good in the case of the IS. Among the Sri Lankan bombers were some from one of the country's wealthiest families. Most of those who travelled to Afghanistan's IS territories from Kerala were from upper middle class families. It is the ideology of puritanical Salafi-jihadism that continues to attract the young, disaffected people. Any counter-terror strategy should have a counter-narrative to the IS worldview, besides the security measures, for it to be effective.

Uncertain times

India needs to diversify its oil supplier base and increase domestic sources of energy

The oil market is in ferment once again with a great deal of uncertainty over supplies. On Monday the United States announced that it would not extend beyond May 1 the 180-day waiver it had granted to eight countries, including India, to purchase oil from Iran. This caused the price of Brent crude oil to witness a sudden jump to more than \$75, from last week's close of \$71.97, as traders expected the withdrawal of the waivers to adversely affect the supply of oil in the market. The price of Brent crude, it is worth noting, has been rising steadily in the last few months, and has increased by almost 50% since it hit a low of about \$50 in December, as a result of the decision of the Organisation of the Petroleum Exporting Countries (OPEC) to restrict their output to boost prices. India imports more than 10% of its crude oil from Iran, so the government faces the immediate challenge of having to find alternative suppliers to meet its huge energy needs. Even more worrying is the likely negative impact higher oil prices will have on India's current account deficit, fiscal deficit and inflation in the wider economy. The current account deficit, which narrowed to 2.5% of GDP in the December quarter thanks to lower oil prices, will likely worsen going forward. The fiscal deficit, which has been widening in advance of the elections, is also likely to get increasingly out of control. While inflation is relatively benign at the moment, any further acceleration in price gains will tie the hands of the Reserve Bank of India.

It may, however, be hard to say for sure that the jump in the price of oil this week, and over the last few months, marks a secular rise in the price of the commodity. The entry of U.S. shale producers into the oil market has put a lid on the price of oil as freely competing shale suppliers have been happy to increase their output whenever oil prices rise significantly. Even this week, the oil market has been torn between the news of the end to the waivers granted to oil imports from Iran and competing news of the increased supply of oil pouring into the market from the U.S. Higher oil prices also make it lucrative each time for members of OPEC to cheat on their commitments to restrict supply. If India is to protect its interests in the ever-volatile global oil market, the government will need to take steps to diversify its supplier base and also work towards increasing domestic sources of energy supplies. Opening up the renewable energy sector for more investments will also help avoid over-dependence on oil from the global market to meet the country's ever-increasing energy needs.

An illustrative case

The court needs to show that the principles of due process are just as applicable to one of its own



SUHRITH PARTHASARATHY

Unlike Parliament, the Supreme Court lacks the conventional legitimacy derived from securing membership to its judges through elections. The court's command is derived from, and grounded in, a general acceptance of its status as an impartial referee of disputes and as an unbiased interpreter of the law. Predictably, its sense of esteem and its sense of moral authority, which together constitute its most important assets, are immanently fragile. Any degradation of the court's acceptance amongst the public of its reputation as an equitable body will, therefore, impair its authority irredeemably. And that today, as the Chief Justice of India (CJI) faces allegations of sexual harassment, is the explicit threat that the court faces.

The story so far

The complainant, who joined work in the Supreme Court in May 2014 as a Junior Court Assistant, and who worked in the court of the present CJI, Ranjan Gogoi, from October 2016, alleges not only that she is a survivor of sexual harassment, but also that she was unfairly dismissed from service. What is more, on her dismissal, she claims that she and her family were foisted with a series of false criminal cases and were subjected to abuse at the hands of the police. She sent her complaint, in the form of a sworn affidavit, to 22 judges of the Supreme Court on Friday, and on the same day, four magazines, *Scroll*, *The Wire*, *Cara-*

van and *The Leaflet*, sent a questionnaire to the CJI. In response, the court's Secretary General denied the allegations, terming them "scurrilous", and claimed that it was "also very possible that there are mischievous forces behind all this, with an intention to malign the institution".

On the next day, minutes after the story was published online, the CJI convened an extraordinary hearing by a Bench comprising himself and two other judges to hear what was termed "In Re: Matter Of Great Public Importance Touching Upon The Independence Of Judiciary". These proceedings were initiated suo motu, i.e. on the court's own motion, without awaiting a formal prompting from a party. In a hearing which disregarded every ordinary precept of due process, not only was no notice given to the complainant, calling upon her to appear, but her allegations were effectively dismissed outright as a product of a larger conspiracy. In a brief order that was issued at the end of the hearing (which, bizarrely, wasn't signed by the CJI, despite his participation in the proceeding), the court said it was leaving it to the "wisdom of the media to show restraint", to decide what should or should not be published, since "wild and scandalous allegations undermine and irreparably damage" the judiciary's independence. It's easy to see, though, that if anything, it was the court's own conduct that was blighting its moral prerogative. Since then, the CJI withdrew himself from the case, but a new Bench that he assembled has now ordered a probe by a former Supreme Court judge, Justice A.K. Patnaik, to examine whether these allegations spring out of a plot to overthrow the judiciary.

Hark back to January 2018,



when the four senior-most judges of the court, including the present CJI, called an unprecedented press conference to mark their disapproval of the then CJI, Dipak Misra's arbitrary choices as master of the roster. Despite those public expressions of dissent, nothing, it appears, has really changed. The CJI continues to enjoy unquestioned authority over allocation of judicial work and over selection of Benches, even in cases where a conflict of interest is to be presumed.

Hewart's dictum

That justice should not only be done but should manifestly and undoubtedly be seen to be done is an aphorism often attributed to Lord Chief Justice Hewart of the King's Bench. But, as a former Australian judge, James Spigelman, has written, the maxim could scarcely have had "a less auspicious provenance". For, as Lord Devlin wrote in 1985, "Hewart... has been called the worst Chief Justice since Scroggs and Jeffries in the seventeenth century. I do not think that this is quite fair. When one considers the enormous improvement in judicial standards between the seventeenth and twentieth centuries, I should say that, comparatively speaking, he was the worst Chief Justice ever."

James Spigelman records a litany of misconduct, which the Court of Appeal had found Hewart to have committed in one single defa-

mation trial, where he had delivered a ruling against the plaintiff without hearing the plaintiff's counsel; where he had accused the plaintiff in front of the jury of fraudulently concealing documents and had refused to withdraw or apologise for the accusation even after it was pointed out that the document had been disclosed; and where he had received communications from the jury which were not disclosed to counsel.

Natural justice, therefore, has always stood on delicate ground. But as principles go, it is so axiomatic to the rule of law that courts around the world have repeatedly stressed on Hewart's dictum, notwithstanding the author's own indiscretions. That justice should be open has also been immortalised in Article 14 of the International Covenant on Civil and Political Rights, which states that "all persons shall be equal before the courts and tribunals," that everyone "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Not only is India a party to this treaty, but its Constitution also guarantees to every person equality before the law. But much as the Supreme Court has relied on these codes to invigorate its own sense of power, as it has repeatedly shown in recent times, it's just as capable of renouncing its grand declarations when one of its own is under the cosh.

Back to basics

Now, prompted perhaps by resolutions passed by various bar associations, a committee — comprising Justices S.A. Bobde (the senior most judge on the rest of the court), N.V. Ramana (who was replaced by Justice Indu Malhotra after he recused himself) and Indra

Banerjee — with the apparent support of the full court, was formed to conduct an administrative probe into the charges made against the CJI. The committee's creation is, at the least, an acknowledgement of some kind that the complaint deserves an inquiry. But doubts persist over the committee's legality, over whether it can at all scrutinise allegations made against the CJI, and over whether its composition lacks a moral base in that no external members have been included. Besides, it's also difficult to countenance how the parallel proceeding, to be headed by Justice Patnaik, can continue even before the administrative inquiry into the complaint has been completed.

These are no doubt extraordinary circumstances, but to advance the cause of justice, it's important that basic procedural norms are respected. Given the absence of a proper, institutional mechanism, it's likely that any mode adopted to judge the charges made will prove indiscriminate. But that's precisely why the Supreme Court needs to step up, to collectively show us that it can establish an ethical precedent. The assertions made may or may not be veracious, and they may impugn only the CJI. But ultimately the court's institutional integrity is at stake here. It's therefore imperative that the court articulates and espouses a commitment to the rule of law. It needs to show that the principles of due process that it holds applicable to all of us are just as applicable to one of its own. That due process isn't merely a poetic homily, to be discharged on convenience, but that is integral to the court's foundations and to the Constitution's guarantee of equal protection.

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Heed Ambedkar's message

His warnings on authoritarianism are salient in the general elections



D. RAJA

The general elections to the 17th Lok Sabha are very critical for our secular, democratic Republic, its future, and its constitutional ethos. In that sense, it is another tryst with our country's destiny. The five years of the BJP-led NDA government headed by Prime Minister Narendra Modi have been of misrule and misgovernance. The Constitution so meticulously drafted by B.R. Ambedkar and other visionary leaders and the institutions and values protected by the Constitution are under sustained attack. For more than six decades, the judiciary, the Election Commission of India, the Planning Commission, the Reserve Bank of India, etc. were the institutional pillars of our Republic. These institutions are being, or have been, destabilised by right-wing communal forces who have captured the state apparatus. The values inscribed in the Constitution, such as secularism, socialism, fraternity and democracy, are under severe strain now. Ironically, on April 14, Dr. Ambedkar's birth anniversary was observed as

usual, as if nothing has happened to tamper his legacy. The reality is that our Republic is in existential crisis. The challenge before the people is how to retrieve it from this crisis.

The reluctance of the ruling BJP and its leaders to take up the real issues concerning the people during the election campaign is evident. Poverty and the lack of jobs and livelihood opportunities for people are not agitating the ruling leadership. During canvassing, the Prime Minister repeatedly invokes nationalism and national security, but does not address the basic social and economic issues, thereby in effect making them irrelevant for these elections. What Mr. Modi is doing in the name of nationalism brings to mind Dr. Ambedkar's anguish that nationalism could become a basic plank for those who care nothing for the welfare of the people and use it to create fertile conditions for the upsurge of fascism and dictatorship.

Using nationalism

Indeed, the communal forces are now using nationalism to completely divert attention from the basic issues of people while ensuring ascendancy of fascist and communal formations. Dr. Ambedkar made a sharp observation that the ruling class in India always raised the cry of nationalism being in danger whenever the exploited



classes asked for justice, fair and equal treatment and affirmative action for their representation in the legislature, executive and public service. This is best reflected in what Mr. Modi is doing. He is behaving in the same manner to dismiss the basic problems of people in the name of nationalism and national security. By saying that Pakistan and terrorists would be happy to see him ousted by the Opposition, the Prime Minister is trying to divert the attention of people from their livelihood issues. It is unfortunate that no one less than the Prime Minister is building a fake narrative and indulging in a false campaign to sideline people's problems. In a way, he and his party are trying to create a fear psychosis and intimidate the people to garner votes. How can nationalism be seen only in military terms and not in terms of empowerment of people and enhancement of their capabilities? By invoking Pakistan and terror attacks all the

time in his election campaign, the Prime Minister is showing his desperation to build a false narrative.

Dr. Ambedkar stressed on public reasoning to mobilise people and make them aware of their problems. His mantra 'Educate, Agitate and Agitate' sought the deepening of public reasoning by employing constitutional methods. Instead of deepening public reasoning, the Prime Minister is subverting the culture of dialogue and debate by calling those who critically engage with him and question his policies as 'urban Naxals' and 'anti-nationals'. The BJP leaders' false narratives based on lies and half-truths show their utter lack of ability to apply reason and logic to take forward public issues and causes.

In their book *How Democracies Die*, Steven Levitsky and Daniel Ziblatt identified four key indicators of authoritarian behaviour which cause the death of democracies. While one such indicator is advocacy of intolerance and encouragement of violence by leaders, others are delegitimising opponents as unpatriotic and resorting to demagoguery and authoritarianism. The Prime Minister repeatedly says that Opposition leaders are acting against the nation and national security by asking questions. In doing so, he is displaying the typical characteristics of an authoritarian leader out to deliver

a fatal blow to democracy.

This election must be fought on real and basic issues, centred around poverty eradication, access to quality and affordable education, healthcare, housing, livelihood and human security. It must be fought on the welfare of children, empowerment of women, Dalits, tribals, minorities, and all sections of workers, farmers and rural labourers, and on sustainable development. All such issues remain at the core of nationalism and national security in the true meaning of these words. In raising such issues, we become authentic nationalists and any attempt to sidetrack them would mean derailment of national security.

A historic election

This election is, therefore, a historic election for the Republic. People have the historic task to vote decisively for India to remain a secular, democratic Republic. The alternative should be a pro-people and secular, democratic government with a strong commitment to the Constitution and constitutional morality, for building and regenerating India based on liberty, equality and fraternity, ensuring justice (social, economic and political) to all citizens.

D. Raja is national secretary of the Communist Party of India, and a member of Parliament

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.

CJI case

The readiness of the Supreme Court Special Bench to take at face value the conspiracy theory advanced by a lawyer even before verifying the bonafides of the affidavit submitted by him is baffling ("SC firm on unearthing 'larger plot against CJI'", April 25). While no one is guilty unless proved, it is not proper for the judges who are going to decide on the case to attribute motives to the act of the complainant till the legal process is completed. Since the case involves the CJI, why can't the President, who administers the oath of office to the CJI, take a call to ensure impartial conduct of the case?

V. SUBRAMANIAN, Chennai

The constitution of the panel is against the basic tenets of natural justice ("The Supreme Court committee and institutional bias", April 25). Instead of ensuring that an inquiry is conducted by retired judges, the court has decided to appoint a panel comprising its senior-most judges, including future CJs, to examine the case. This type of judicial action will create a sense of hopelessness among the people.

C. SAMBASIVAM, Salem

Switching loyalties

It is baffling why a person's defection from the Congress to its ideological adversary should evoke so much indignation ("Political careerism is fine

but sad", April 25). What is conspicuous by its absence in the article is the willingness to examine the purported reason for Priyanka Chaturvedi's switch to the opposite camp, which is the Congress's re-induction of party members who were suspended for misbehaving with her. It is the Congress that owes an explanation to Ms. Chaturvedi. That a woman spokesperson is not safe in the party makes a mockery of the Congress's so-called values of liberty and equality.

V.N. MUKUNDARAJAN, Thiruvananthapuram

Political values in India have been plummeting so rapidly that the Congress spokesperson's switch to the Shiv Sena comes as no

surprise. Except the defections of very senior leaders, other defections have no shock value any more. Political parties, it seems, appoint spokespersons based on their gift of gab and not on the basis of the person's understanding of the party's ideology or her loyalty. The public should learn to take the arguments of party spokespersons with a pinch of salt.

KOSARAJU CHANDRAMOULLI, Hyderabad

Electoral reforms

The electoral system is designed in a way that makes it pro-politicians and anti-voters: a politician can contest from two seats but a voter can't vote from two places; those being held under preventive detention

can participate in elections and cast their vote via postal ballot but convicts and under-trials cannot. How will we have a blemish-free society if those with questionable legal records contest elections to the Lok Sabha? ("NIA court:

can't stop Pragya from contesting elections", April 25). The NIA is not at fault, but the agony of the father is palpable.

A. JAINULABDEEN, Chennai

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CORRECTIONS & CLARIFICATIONS:

>>A front-page graphic "It's raining votes!" (April 24, 2019) got the Kerala polling percentage figure wrong. It was not 71.96%, as given in the graphic. An inside page story titled "Kerala witnesses robust polling" gave the correct figure: 76.82%.

>>The report, "Odisha MLA Pradeep Maharathy arrested for leading attack on ECI team" (April 23, 2019, some editions), erroneously gave the name of the Puri District Collector as Jyoti Prasad Das. It should have been Jyoti Prakash Das.

>>In question number 5 of the Easy Like Sunday Morning quiz (The Hindu Magazine, April 21, 2019), the year of Mark Twain's death was wrongly given as April 21, 1919. It should have been April 21, 1910.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturba Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com

Has the Supreme Court been discredited?

PARLEY

A discussion on the manner in which allegations against the CJI have been dealt with in the past week

On April 20, when a complaint of sexual harassment against the Chief Justice of India (CJI), Ranjan Gogoi, became public, he responded by constituting a special Bench comprising himself and two other judges. This invited sharp responses from many in the legal fraternity. Three days later, the Supreme Court instituted a panel headed by Justice S.A. Bobde to examine the charges against the CJI. In a discussion moderated by Anuradha Raman, Karuna Nundy and Mihira Sood examine the implications of the decisions taken by the apex court. Edited excerpts:

What do you think of the Supreme Court's move to set up a three-judge panel, including Justice Indira Banerjee, to examine the sexual harassment complaint against the CJI?

Mihira Sood: I have some reservations. For one, it is not in keeping with what the composition of a sexual harassment committee should be. The committee should be headed by a woman. The present committee is slightly flawed in its composition. The complainant had requested a special committee of retired judges, and the reason for that is simply that they would not be beholden to the CJI in any way.

While one hopes that the committee will display some independence, it is difficult, because these are judges who are still under the administrative control of the CJI. It would be better if this committee were to go about setting up an external committee comprising a majority of women, chaired by a woman, retired Supreme Court judges as well as others who are committed to the cause of gender equality. The committee should inspire confidence that it is going to be independent and not beholden to the CJI in any manner. What happened last Saturday was highly irregular. That Bench had no jurisdiction under the Supreme Court rules or under the Constitution to have conducted the hearing.

Karuna Nundy: I think there are two problems with the setting up of the panel. One is that the com-

mittee is under the administrative control of, and junior to, the CJI. Ideally, you should have someone senior to the CJI (retired judges, for instance) or an unimpeachable decision-maker who has no connection to the person whose actions are being examined. Then there is also another Bench examining the affidavit filed by a lawyer who claims that he was asked to frame the CJI. Essentially, the two Benches will be looking into the same issue. It is not that any of the judges are not trusted. That's not the point. The point is that the robustness of the mechanism has to be above any allegation of bias.

Last Saturday, the Supreme Court registry said in a notice that the Bench was being set up to deal with a 'matter of great public importance touching upon the independence of judiciary'. What do you make of that remark?

MS: In terming it as such, the CJI is equating himself, an individual, with the institution, the judiciary, which is extremely worrying. What he should have done was acknowledge that these allegations had been made and submitted himself to an inquiry.

KN: Last year, Justice Gogoi and three other judges stood for the same principles that constitutionalists are asking them to stand up for now – that you cannot be a judge in your cause; that however high you may be you are not above the law; and that there must be predictability in the allocation of Benches. These principles must be followed, and have not been followed so far. Justice Gogoi has been a great judge in so many ways and I think there is an opportunity to admit that a mistake has been made. This is also a time for our judges to dissent.

What do you mean by dissent? Are you saying that the judges should have protested against the CJI's decision?

KN: I am saying that this is exactly the principle that brought the four judges out to protest – the arbitrary



allocation of Benches by former CJI Dipak Misra. The judges were saying you cannot choose your own Benches. This is now about the integrity of the institution. This is also about the reputation for fairness of the senior-most decision-maker of the court.

MS: I think he has done far more damage to his own reputation and to the integrity of the institution by his conduct on Saturday. I don't think the allegations bring that much disrepute to the institution as to him.

KN: If the judges had demonstrated that even if they were scurrilous allegations, the process has been fair, that nobody can say that every side has not been heard properly, it would have been okay. There appears to be verifiable evidence that definitely needs an answer.

MS: The allegations certainly bring the judiciary into disrepute. But the act of making the allegations cannot undermine the judiciary.

Should the CJI have stepped down instead of presiding over his own matter?

MS: The affidavit was sent to various judges of the Supreme Court. The in-charge of the court's internal committee should have taken it up and taken on the task of setting up a committee. In her affidavit, the complainant had requested that a special committee of retired judges should look into it.

Is there a formal procedure to

deal with allegations of sexual harassment involving the CJI?

MS: Last year, Justice Gogoi and three other judges stood for principles that we are asking them to stand up for now – that you cannot be a judge in your cause; that you are not above the law; and that there must be predictability in the allocation of Benches.

deal with allegations of sexual harassment involving the CJI?

MS: There isn't. The permission of the CJI is required to proceed with any complaint. Barring the CJI, all other judges and employees of the Supreme Court as well as lawyers functioning in the court and any court under the Supreme Court are theoretically subject to proceedings under the Gender Sensitisation Internal Complaints Committee. The CJI's permission is required before anyone can proceed with any complaint. The CJI has to sign off his belief in the authenticity of the complaint. So, while it does cover other employees, it does not cover the CJI.

KN: In the case of criminality or corruption or sexual harassment charges against the judges, the processes are deeply and woefully inadequate. The complaints go to the senior-most judges and some sort of closed door decision is made. The second thing that happens is there is talk of impeachment when the charges are serious. But nobody has been impeached so far.

What the present problem brings us is the absence of predictable structures when serious allegations

are made against judges. We have to begin with the premise that judges are human and fallible. There are three layers to deal with sexual harassment at other workplaces: workshops to transform the sexist entitlement and sexual attitudes of people; frame policies; and set up the Internal Complaints Committee. The Supreme Court does not have that structure. The day-to-day dealing with such issues is absent.

At the end of the hearing, an order was passed that seemed like a gag order on the media.

MS: It was intended to be a gag order. I would say that you have already decided that the allegations were wild and scurrilous and were clever in saying that that you leave it to the wisdom of the media to exercise their wisdom, knowing well that large sections of the media would be too terrified to say anything. This is what is called a chilling effect. Also, in the order, the CJI did not record that he was present. On what basis did they say it was wild and scurrilous without a hearing? It boggles the mind that these are the same people who decide on matters of justice and they see no injustice in pre-deciding the matter.

KN: The order on the media is against the spirit of the *Mirajkar* judgment, which says there must be a law even if you are seeking to gag the media. You cannot by a court order suo motu directly or indirectly gag the media. This isn't a direct gag but it has a chilling effect.

What was the purpose of the special hearing last Saturday?

MS: There are three women judges in the Supreme Court and their absence on the Bench says a lot. The two other judges who were hand-picked were not the senior-most. I find it difficult to believe that the judges were unaware of this. One can conclude that the purpose was to give the CJI a platform to proclaim his innocence.

KN: That is what is so striking about this hearing – it was to quash the temerity of anyone who makes such a public allegation and, of course, that comes from a place of entitlement. We really miss the presence of more women on our Benches.

That's why the complainant has requested for a special inquiry committee external to the Supreme Court. What this also brings out is that our Benches have to be more diverse. It is also important to separate the patriarchy from the gender of the individual. It is also true that men can be more feminist than women. We also have women judges on the Bench who have been very conservative and have a different idea of justice. Feminism founded on the principles of justice needs to find an outlet in the composition of the Benches of the Supreme Court.

The role of the Attorney General (AG) and Solicitor General (SG) have also come under scrutiny for their unwavering support to the CJI in the matter. What do you have to say about this?

MS: The manner in which they conducted themselves in this proceeding has been shameful. The Bar Council chair and Supreme Court Bar Association president, who condemned the allegations and termed them scurrilous, have no authority to speak for the rest of us.

KN: Their conduct in this manner was not right at all.

Is sexual harassment in the highest judiciary one of the worst-kept secrets?

MS: I think it is a problem wherever there is a high concentration of power in the hands of very few people. In the legal profession, sexual harassment is rampant. It is extremely difficult for women to come forward. Most prefer to put such incidents behind them or leave the profession rather than seek justice for fear of repercussions. The proceedings on Saturday as well as the allegations detailed in the affidavit, if they are true, justify that fear.

KN: The question is, should such a thing happen, is there impunity? The answer is, yes. It is that impunity that needs to be addressed. But we are going through a churn. We have women who are much more aware, and men who are in positions of power and have a sense of entitlement. We have to strengthen the system to check impunity and ensure that due process is followed.



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SINGLE FILE

Breaking new ground

The Madras High Court's recent judgment is truly path-breaking for the LGBTQ community

MANURAJ SHUNMUGASUNDARAM



A judgment of the Madras High Court, Madurai Bench, has extended enjoyment of civil rights, especially those pertaining to marriage, to transpersons. While this is path-breaking for much of the country, the judgment also opens doors to the larger LGBTQ community for availing civil rights including marriage, succession and inheritance.

In the judgment delivered in *Arunkumar and Sreeja v. Inspector General of Registration and Others* (2019), the Madras High Court has held that a properly solemnised marriage between a male and transwoman is valid under the Hindu Marriage Act, 1955, and the Registrar of Marriages is bound to register the same. The judgment quotes *NALSA v. Union of India* (2014), which held that transgender persons have the right to decide their "self-identified gender".

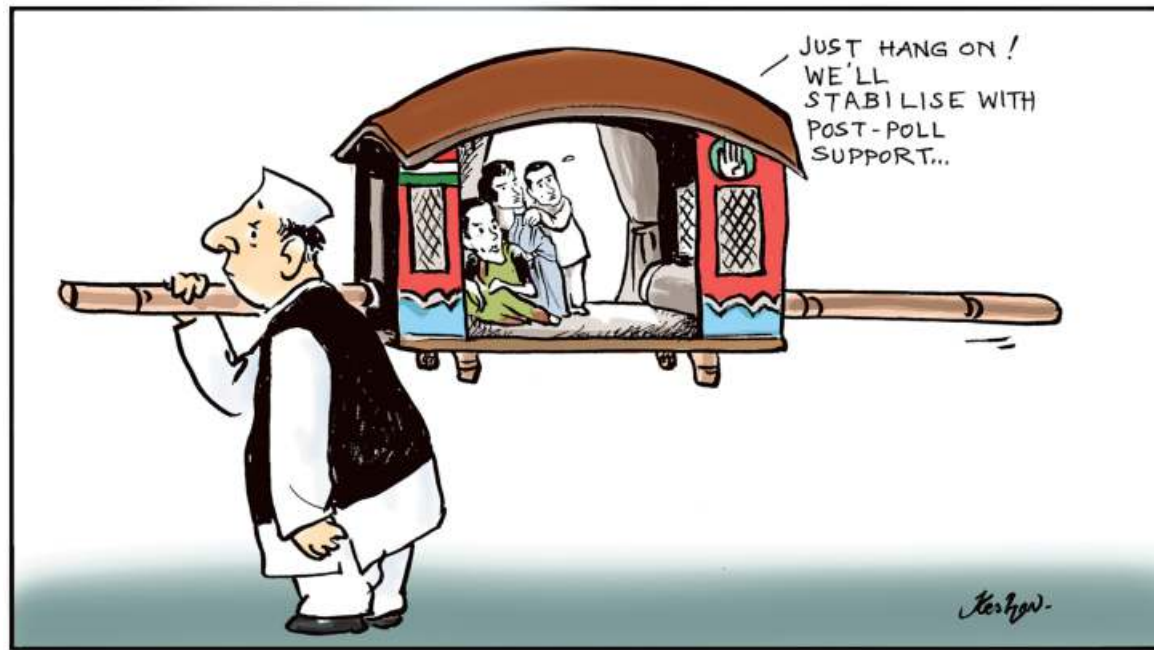
The Madurai Bench judgment, however, breaks new ground when it comes to the interpretation of the statutory terms found in the Hindu Marriage Act, especially that of bride. It states that the expression "bride" occurring in Section 5 of the Hindu Marriage Act cannot have a static or immutable meaning. As noted in Justice G.P. Singh's *Principles of Statutory Interpretation*, the court is free to apply the current meaning of a statute to present-day conditions.

The nine-judge Bench in *Justice (Retd.) K.S. Puttaswamy* made a telling reference to the landmark judgment, *Obergefell v. Hodges* (2015), wherein the U.S. Supreme Court held that the "fundamental right to marry is guaranteed to same-sex couples by both Due Process Clause and Equal Protection Clause of the Fourteenth Amendment."

The Madurai Bench judgment has revised the legal construction of gender and the conventional interpretation of terms such as "bride" and "bridegroom". Now, when this is read along with the Supreme Court's explicit reference to the American court's guarantee of right to marry to homosexual couples shows that there cannot be a legal bar any more to extending civil rights such as marriage, succession or inheritance to LGBTQ couples who have decided to get married consensually, have married in accordance with the existing laws and are not in violation of any other laws.

At the preliminary hearings before the Supreme Court in *Navtej Singh Johar*, the Solicitor General, representing the Government of India, sought the curtailment of the scope of the case to that of the decriminalisation aspect or the constitutional validity of Section 377 of Indian Penal Code, 1860 alone. The Supreme Court, consequently, did not have an opportunity to examine the bundle of rights that were to naturally arise from the striking down of Section 377. Therefore, in this context, the present judgment is truly path-breaking for the LGBTQ community, which is denied equal protection of laws with regard to civil rights.

The writer is an advocate and a DMK spokesperson



NOTEBOOK

Democracy, Bihar style

Witnessing booth capturing in the 1989 Lok Sabha elections

SUDHA VEMURI

The year was 1989. The Bofors scandal had gripped the nation. V.P. Singh was a household name. And in the Congress citadel of Bihar, Lalu Prasad was making waves.

When the general election was announced, we rookies in the newsroom were eager to go out and capture the drama in Bihar. To add to our excitement, a BBC crew came to make a documentary on how Indian elections are covered. The sight of a 'foreign' team created quite a buzz, with curious onlookers following them as the crew followed my colleagues across the State.

Those of us on the desk, who seldom got a chance to go on the field, were not left untouched by what was happening around us, both inside and outside the office. I too wanted to get a first-hand experience of reporting from the field. At

the best of times Bihar was not, and is still not, considered safe for women to be out and about alone. Would the boss say yes?

On election day, after some persuasion, I was allowed to accompany a reporting team to Vaishali, a semi-rural constituency not far from Patna. Be cautious, the boss warned. And we were off. Since 1952, the constituency had been represented in Parliament by Digvijay Narain Singh of the Congress. He quit in the aftermath of Emergency and won in 1977 on a Bharatiya Lok Dal ticket. Kishori Sinha of the Janata Party broke his uninterrupted run in 1980 to become the first woman MP from Vaishali. She won again in 1984, this time as a Congress candidate. She now faced Usha Sinha of the Janata Dal.

Driving towards Vaishali, we saw a very mela-like atmosphere, with people heading to the polling sta-

tions in groups. However, several centres were deserted. Reports of violence and booth capturing from a neighbouring constituency trickled in.

As we headed to the interiors, we spotted a booth just off the highway. On an instinct, we stopped the vehicle and got down. Perhaps it was the sight of a woman alighting from a jeep, or the fact that I was wearing a khadi sari, a couple of polling agents rushed out to greet me. "Madamji yahan sab manage ho gaya hai aapke paksh mein (Madam, here everything has been managed in your favour)," they said. We went in and I was stunned to see a group of men with a bunch of ballot papers, stamping away furiously and stuffing them in the ballot box. The polling officer was sitting in a corner, helpless.

I had just witnessed a classic instance of booth capturing.

Before we could ask any questions, someone had spotted the sticker on our vehicle and shouted "Yeh log press se hai (These people are from the press)!" As the men became aggressive and a crowd started gathering, we managed to escape. To this day, election time revives memories of that eventful day.

Bihar kept up its reputation of violence, with blasts, shootings and deaths reported from across the State. It would be another year before T.N. Seshan became Chief Election Commissioner and changed the way elections are conducted. It would be several years before electronic voting machines were introduced. It would be several more years before people managed to go out and vote without fear.

And regarding the result, Usha Sinha won. The elections threw up a hung Parliament and V.P. Singh became Prime Minister.

FROM The Hindu ARCHIVES

FIFTY YEARS AGO APRIL 26, 1969

Blaze at Congress pandal at Faridabad plenary

A fire consumed the giant pandal, the venue of the 72nd plenary session of the Congress Party, shortly after it began its deliberations this morning [April 25]. The fire was caused by a short-circuit in one of the air-conditioned anterooms behind the dais where top leaders were sitting. It was first noticed by Mr. Vicky Kapoor and Mr. J.S. Vyas, Private Secretaries to the Congress President, Mr. S. Nijalingappa, and the Deputy Prime Minister, Mr. Morarji Desai, respectively. Sabotage was ruled out by the Haryana Congress, the hosts of the session. A couple of fire engines which stood by the pandal swung into action immediately the alarm was raised - but only for a while for they were handicapped as the hydrants soon went dry.

A HUNDRED YEARS AGO APRIL 26, 1919.

Mr. Gandhi Ahmedabad Riots.

For placing his views clearly before the public, Mr. M.K. Gandhi has issued a leaflet which is the first of the series he proposes to publish and has been distributed... among the people of Ahmedabad. Mr. Gandhi asks for funds for relief of the families of those who have died or are lying wounded in hospitals. He states: Twenty-two men have died in hospital and there have been many more deaths. It was the duty of the citizens, he says, to render help to the families of those dead or wounded. These include two or three Englishmen (now ascertained to be one). Our first duty is to render help to their families since we are responsible for their deaths. We have no excuse whatsoever for killing. They have been killed simply out of animosity. If we do really repent for what we have done it is our duty to aid their families. That is the least penance we can do. Some of us believe that we can obtain our rights by such acts of terrorism, violence and arson. Satyagraha on the contrary held that the rights so obtained should be rejected. I admit that of the two parties using brute force, the one possessing more of it than the other apparently gains its end.

POLL CALL

Cash for votes

When politicians violate election law to influence voters through payments in the form of cash, goods or services, this is broadly referred to as cash for votes. A number of anecdotes points to this being a regular feature of elections in south India. The impact of such bribes on the voter and the election result is hard to measure, but analysts say it could swing elections in close races. The Vellore parliamentary poll was rescinded during the second phase of this Lok Sabha election this month when the Election Commission said that it had received a "highly damaging" report on the use of money power in the constituency.

MORE ON THE WEB

'Avengers: Endgame' quiz: Are you an MCU expert?

<http://bit.ly/AvengersQuizEndgame>