



Being responsive

The government must ensure justice in cases of human rights violations in J&K

The government's decision to shut down communication with UN Special Rapporteurs seeking to question India on alleged human rights violations in Jammu and Kashmir may appear extreme, but is in line with its reaction to such international reports over the last few years. In a letter dated April 23, India's permanent mission to the UN in Geneva wrote to the Office of the High Commissioner for Human Rights rejecting any reference to the UN's original June 2018 report on J&K as well as Pakistan-occupied Kashmir, and refused to respond to questions about deaths of 69 civilians between 2016 and 2018 in violence in the Valley. In its objections, the government said the report was "false and motivated", that its conclusions and recommendations were violative of India's sovereignty and territorial integrity, and accused the Special Rapporteurs preparing the report of "individual prejudices" against India. In addition, India drew notice to the Pulwama attack this year, calling terrorism the "grossest" violation of human rights, not the allegations against the security forces. As a result, the government has decided to treat all allegations made by the UN Special Rapporteurs as a "closed chapter" and will not engage further on it. India's objections to the OHCHR report, the first of its kind when it was released in 2018, and the follow-up this year are understandable, given the often selective nature of allegations raised by the UN body. It is also clear that demands for action against Indian officials and amendment of laws can cross the line on Indian sovereignty. The call by the previous HCHR that the UN Human Rights Council set up an independent and international tribunal to investigate India's record in Kashmir was seen to be invasive, and could be dismissed by New Delhi as well.

However, the government cannot quell the troubling questions that the UN report and the Special Rapporteurs' submissions raise simply by rejecting them. To begin with, most of the sources for the OHCHR report are official Indian authorities, State and national human rights commissions, international human rights agencies as well as reputed Indian NGOs. This is therefore a view from within India, not some disengaged UN official, and must be taken very seriously. Two Kashmiri NGOs also released a report on Monday documenting 432 specific cases of alleged brutality by security forces in Kashmir, including electrocution, 'water-boarding' and sexual torture of civilians, of which only about 27 were taken up by the State Human Rights Commission. The government must press for due process and justice in each of these. Eventually, India will be judged not only by how close it stands to the world's most powerful countries, but how much the state extends itself to the most vulnerable within its own boundaries.

Highs and lows

The rally in stocks is driven primarily by investor sentiments, not market fundamentals

The prospect of the National Democratic Alliance led by Prime Minister Narendra Modi returning to power has got investors in India's equity markets all excited. Both the Nifty and the Sensex reached all-time highs on Monday as the indices appreciated 3.75% and 3.69%, respectively, the largest rise in percentage terms since September 2013. Though sanity returned on Tuesday with the indices shedding some of Monday's gains, in terms of the number of points gained Monday's rise was the largest in 10 years. This rally was after most exit polls released on Sunday predicted that the present NDA government would easily cross the halfway mark required to form the next government. The rally on Monday, however, was fuelled mainly by purchases made by foreign investors. Foreign portfolio investors bought shares worth ₹1,734 crore on Monday, pushing the rupee up by almost 0.7% against the U.S. dollar. It is worth noting that foreign investors were net sellers of stocks in the earlier trading sessions, causing the indices to fall significantly from their previous high that was reached in April. So Sunday's exit polls may have caused many foreign investors to take a more positive view of the Indian markets. Domestic investors, on the other hand, sold shares worth ₹543 crore on Monday.

Monday's record rally in stocks should be seen as one that was driven primarily by investor sentiments rather than by market fundamentals. As with any purely sentiment-driven rally, things can take a turn for the worse if subsequent events fail to meet the market's expectations. There is very little in the form of market fundamentals to warrant the kind of exuberance shown by investors on Monday. Corporate earnings data released as of now for the January-March quarter suggest that earnings might actually witness a significant fall from what they were a year ago. Growth has also been slowing down in core sectors as consumer demand has failed to pick up and liquidity remains a concern across the economy. Still, investors may be hoping that things could get better in the coming years as a stable government at the Centre will be able to undertake economic reforms. While the fact remains that no big-bang reforms that could give a strong boost to economic growth have been implemented in the last five years, investors may still view the NDA government as less-populist than any other realistic alternative. Trade tension between the U.S. and China is another immediate risk that will determine the direction of equity markets, including India's, as China tries to find new markets for products that it can't sell to Americans. Given these various uncertainties, it would be prudent not to over-read the message in the stock market fluctuations.

Time to rebuild India's secularism

The central idea of the Republic, that the country belongs to all equally, is in tatters today



HARSH MANDER

There is much that lies badly broken in India today. The economy desperately needs to be repaired, as do rural distress, the job crisis and the free-falling rupee. The country's institutions demand urgently to be rebuilt — the media, police, judiciary, universities, the planning process, the Election Commission of India. But above all, if there is one thing that stands most dangerously damaged, it is our constitutional pledge of a secular democracy. What are the prospects of rebuilding this?

Shrill, divisive campaign

Listen carefully to the speeches in the shrill summer election campaign which has just come to a halt. From their podiums, Opposition leaders spoke of everything else — the agony of farmers, unemployed youth, suspect defence deals, crony capitalism and indeed crony institutions. But rarely did they speak of lynching, of violence against Muslims, Christians and Dalits, of the fear which has become normalised in their daily lives, of our wrecked social contract of equality and harmony. And never did they speak of secularism.

The imagination of secularism in the Indian Republic was rooted in its singularly pluralist civilisational ethos, in the lives and work of Ashoka and Akbar, in the teachings of Buddha, Kabir and Nanak.

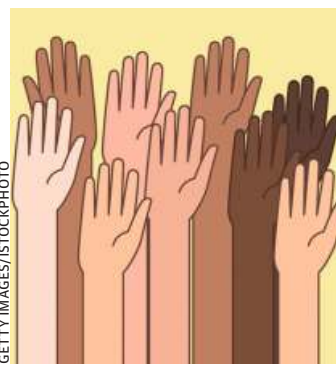
It was illuminated by our struggle for freedom, in the humanist and egalitarian convictions of Gandhi and Ambedkar, Maulana Azad and Nehru. It was the central iridescent idea: that this newly-freed country would belong equally to all its people. People of no religion, no language, no caste, no ethnicity, no gender, no class would be entitled to lay claim to the country more than any other.

Secularism is the soul of India's Constitution. Today the letter of this Constitution still remains unaltered, but its soul is mangled and choked. Not just the ruling Bharatiya Janata Party (BJP); even Opposition parties seem to have accepted that India is no longer the secular country born of the legacy of India's freedom struggle, but a majoritarian Hindu country. In this new India, people of minority religions, castes and gender are second-class. Their safety and well-being are dependent now on the consent and will of the majority upper-caste, patriarchal Hindu, and the dictates of this Hindu are interpreted and violently mediated by the ideology of Hindutva.

It is a grave mistake to frame the 2019 general election as a battle of Narendra Modi against the rest. This is how Prime Minister Modi, referring to himself repeatedly in the third person, has framed this bitter electoral contest. This is how the Opposition has fought the electoral battle, of Mr. Modi versus the rest. This is how the majority of Indian voters view this combat.

RSS vs. Constitution

However, the electoral battle waged around the country is truly a different one. On one side stands the Rashtriya Swayamsevak Sangh (RSS) and on the other is the secu-



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lar idea of the Indian Constitution. Mr. Modi is a formidable, pugnacious, tireless and immensely popular mascot of the Hindu supremacist ideology of the RSS; and his image is powerfully buttressed by a pliant corporate media and dizzying levels of spending on a public relations blitz to manufacture consent. But the central danger to secular India is not the personality of Mr. Modi. It is the penetration of the RSS into every institution of the country, into every political party, the media, the university, the judiciary, the civil services, and most dangerously into mainstream everyday social life of every ordinary Indian.

In the RSS worldview, Muslims and Christians are not authentical Indian, their loyalty to the Indian nation is and will always remain suspect; therefore, they need to be tamed, to be continuously shown their subordinate status in the Indian polity and society. It is for this reason that virulent hate speech was so central to this election campaign, with Mr. Modi mocking his rival, Congress president Rahul Gandhi, for seeking election in a constituency in which he would have to depend in part on Muslim and Christian voters; and other BJP leaders and candi-

dates raging against the threats of the 'green virus' and 'termites'. It is for this reason that BJP president Amit Shah pledges to extend the National Register of Citizens to all parts of India, while ensuring citizenship to Hindus, Sikhs and Buddhists from other parts of the subcontinent; in this way brazenly turning on its head the core constitutional idea that a person's religion is irrelevant to her rights to equal citizenship. And it is for this reason that lynching of Muslims and attacks on Christian places of worship, openly valorised by ruling party leaders, became the overarching symbols of the newly forged relationship of the majoritarian Hindu state with its now inferior religious minorities.

In a place of fear

If Mr. Modi is returned with an emphatic majority when ballots are counted on May 23, as many exit polls predict, this will herald that India has fallen deep into a cold hard place of hate and fear. It will signal that a significant majority of Hindus endorse the Hindu supremacist ideology of the RSS. It will indicate the popular abandonment of the secular and humane vision of India's Constitution, and its replacement by a violent and chauvinist majoritarian Hindu nationalism, which is suspicious and hateful in its relations with people who follow minority religious faiths. This outcome would also further imperil all left, liberal and democratic dissenting voices, in civil society, in the media, in universities, and in letters and the arts.

A second scenario, anticipated by a much smaller number of political commentators, is of reduced support for the National Demo-

cratic Alliance (NDA), its tally falling short of the half-way mark. In such a situation, they anticipate the possibility that many regional parties could be persuaded to support an NDA government only if it is led by a less belligerent leader than Mr. Modi, possibly Nitin Gadkari or Rajnath Singh. Many are relieved by the possibility of such an outcome: anyone other than Mr. Modi would be welcome, they reason. But it would be a dangerous mistake to believe that such a choice would pull India out of the dark abyss into which it has slipped. Even with a more acceptable face, as with Atal Bihari Vajpayee, the RSS would use political power to further penetrate all institutions, and enfeeble what survives of secular practice.

The least expected scenario, of the victory of the United Progressive Alliance or a federal front of regional parties, cannot be ruled out yet. After all, the BJP has lost no exit polls since 2004, but it lost many elections. However, even with such an outcome, the crusade against secular democracy waged with such vigour by the RSS will not be won. The appetite and moral courage to fight majoritarian politics head-on stands perilously weakened among Opposition political parties. Whatever the final outcome, this fight to salvage, defend and fortify secularism will have to be fought by the Indian people. India is today a wasteland of compassion. It will take generations to clean out the toxins of hate from Indian society. It is a battle that must be waged with courage, with perseverance and with love. History in the end is on our side.

Harsh Mander is a human rights worker, writer and teacher

Jokowi's balancing act

Protecting minority rights will be his biggest test in his second term as Indonesia's President



PALLAVI AIYAR

When Joko Widodo, or Jokowi as he is popularly known, was elected President of Indonesia in 2014, it was a moment pregnant with new beginnings for the region. Democracies in Asia have usually been afflicted by the same inglorious cast of characters: dynastic heirs, military strongmen, corporate tycoons and religious hardliners. Widodo's victory indicated the possibility of renewal via the democratic process even in a large, developing, Muslim-majority country. He was a novel breed of leader: middle-class and humble, with a pluralistic outlook and commitment to clean government.

Islam, a mainstream force

In 2019, Mr. Widodo is back at the helm of Indonesia, having once again beaten back his rival, Prabowo Subianto, a former military general dogged by accusations of human rights abuses. But this time the political prognosis is more sobering. Mr. Widodo's years in power have witnessed a shift in the role that political Islam plays in the public life of the world's third largest democracy, from a relatively marginal factor to a mainstream force that no political party can ignore. The President has proved no exception, demonstrating a willingness to bend to religious con-

siderations, even when they run contrary to his inclinations.

During the long campaign season, both candidates tried to outdo each other in brandishing their Muslim credentials, despite the fact that neither is traditionally pious. Mr. Prabowo's mother and brother are Christians, while Mr. Widodo is a heavy-metal fan who seems happier riding motorcycles than at prayer. But the vow to support religious clerics became a central plank of Mr. Prabowo's campaign, throughout which he organised mass prayers and ended speeches with shouts of "Allahu Akbar". His supporters are known to have carried out fake news campaigns portraying Mr. Widodo as a Christian or an atheist Communist, and at times even a logic-defying both.

On his part, Mr. Widodo rushed to Saudi Arabia on Haj just a week before the elections and laced his public rallies with traditional songs of devotion to Prophet Muhammad. But his most pointed concession to the religious lobby (and to his liberal supporters his most disappointing) was to appoint Ma'ruf Amin, a conservative Islamic cleric, as his Vice-Presidential running mate. The choice was intended as a bulwark against accusations of impiety, a charge that has been Mr. Widodo's political Achilles heel in the past. As a tactic, it has paid off, but its strategic implications remain open and worrying.

Mr. Widodo's track record in office when it comes to pandering to Islamists has been chequered. He has taken on some religious extremists, banning the Hizb ut-Tahrir,



a radical group that aimed to establish a global caliphate. He also walked back a decision to allow Abu Bakar Bashir, spiritual leader of the terrorist organisation Jamaah Islamiyah to walk free from prison on humanitarian grounds. However, the latter decision was only taken following a huge international outcry.

The President's greatest failure was his silence during the movement to charge his former deputy, Basuki Tjahaja Purnama, with blasphemy. Ahok (as he is known), a Christian of Chinese descent, was Mr. Widodo's running mate for the 2012 Jakarta Governor elections. In 2017, he was sentenced to two years in jail for having told voters in a speech that they shouldn't be duped by religious leaders who misuse a particular Koranic verse to justify claims that Muslims should not have non-Muslim leaders. Not only did Mr. Widodo stay quiet during Ahok's prosecution, he even joined demonstrators in prayer. His new Vice-President, Mr. Amin, testified against Ahok at the trial.

On the economic front, Mr. Widodo's first term as President was adequate, if unspectacular. Annual growth averaged 5%, well below the 7% target, in part because he caved in to pressure and backtracked on difficult reforms like reining in fuel subsidies. On the plus side, he lined up more than \$300 billion of infrastructure projects, including the opening of Jakarta's first subway line after 34 years of planning. He also rolled out a popular national health-insurance scheme and pumped money into education.

What lies ahead

Going forward, Mr. Widodo has his work cut out trying to get increased foreign investment amid a climate of economic nationalism. It also remains to be seen if, and how, he decides to tackle the thorny issue of restrictive labour laws. A final challenge will entail finessing Indonesia's response to China's growing economic clout in the archipelago. China has emerged as a major foreign investor in Indonesia, but there are worries about the consequences. A trope of the Prabowo campaign was the claim that under Mr. Widodo, Chinese goods and workers had flooded the nation.

But it is protecting minority rights that will remain Mr. Widodo's greatest and most fraught test. Forging a unified national identity out of its fractured ethnic and religious demography has been a remarkable achievement for Indonesia. Seven out of eight Indonesians self-identify as Muslims; more Muslims live in Indonesia than in any other country. And

yet the state also recognises five other religions: Hinduism, Buddhism, Protestantism, Catholicism and Confucianism. The archipelago is home to 719 languages, spoken by people from over 360 ethnic groups. Bhinneka Tunggal Ika, literally One Out of Many, is the defining catch phrase of modern Indonesia, and it will be Mr. Widodo's charge to ensure substance to the sentiment.

Given term limits, this will be Mr. Widodo's final stint as President. The optimistic scenario is one where he is able to slough off electoral considerations and finally tackle the liberal reforms and policies many still assume are close to his heart.

However, taking his record into consideration, it seems more probable that he will continue to co-opt his opponents rather than confront them. He has emerged as a tinkerer and incrementalist, rather than a visionary. To an extent, this is both necessary and even advantageous in a political landscape characterised by coalitions and consensus-building. Mr. Widodo leads a 10-party alliance and needs to garner support from a polarised Parliament. However, there is a fine line between pragmatism and opportunism, and the jury is out on which side of this line he will eventually come down. Mr. Widodo has one more chance to go down in the history books as a great President. The likelihood is that he will be remembered as a nice guy who tried, but not hard enough.

Pallavi Aiyar is an author and journalist based in Tokyo

LETTERS TO THE EDITOR

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A crucial space

Despite the brute majority scenarios that have been projected by most exit polls, the fact is that the Opposition needs to get its act together (Page 1, "Oppn. takes stock after exit polls favour NDA", May 21). Democracy needs both the Opposition and a strong independent media to keep a firm check on the party in power. There were shades of the format of campaigning during the Gujarat elections under Narendra Modi's tenure in the campaign this time. What was equally jarring was the series of unfortunate violations of the Model Code of Conduct. Having tasted power under the cover of a divided Opposition, there should be a check on any attempt to

push the 'one nation one election' idea. If the Opposition continues to stand divided, there will be no hope left. It is encouraging that at least one Opposition leader has been trying to take the lead in trying to get other leaders together.

N. NAGARAJAN,
Secunderabad

Battleground U.P.

I am certain that it is not going to be a cakewalk for the BJP this time around, especially in Uttar Pradesh, which has the distinction of deciding the fate of the next government (Editorial page, "Why the BJP is not invincible in Uttar Pradesh", May 21). Apart from the points expressed by the writer, there are other issues of social

relevance that are sure to have weighed heavily on voters' minds. The state of health care and lynchings are some examples. There are other instances of violence under the leadership of Chief Minister Yogi Adityanath.

G.B. SIVANANDAM,
Coimbatore

I am afraid that the article is born out of the writer's antagonism towards the BJP. We need to wait for just a day more to know what is in store for the ruling party as far as the State and the country are concerned. The writer calling the Samajwadi Party and the Bahujan Samaj Party as social justice parties is at variance with reality as they are caste-based outfits. In the case of the first, it has already become a dynastic

one; while in the case of the latter, it is at best an individual's virtual fiefdom. It is only natural that the writer is struggling to defend the indefensible.

C.G. KURIAKOSE,
Kothamangalam, Kerala

Post-election survey

The post-poll survey has done a fine and methodical job of unravelling the myriad and complex layers of voter preferences and expectations. While it has asked the right questions to make sense of the public mood, the questionnaire format does not solicit explanations or justifications for answers that point to a dominant preference, such as the high prevalence of trust in the leadership of the Prime Minister. Shouldn't readers know why a large

percentage of voters continue to repose faith in the PM despite the blitzkrieg of criticism unleashed by the Opposition and sections of the media? A post-poll survey would add value to a reader's understanding of the election scenario if it moves beyond a bland script and tries to seek a rationale for voter preferences that appear counterintuitive.

V.N. MUKUNDARAJAN,
Thiruvananthapuram

Water worries

When we have enough water, the thought of water conservation is distant (Editorial, "Eye on the monsoon", May 21). But now, when we are staring at a crisis, we think of solutions that should have been worked upon earlier. It is time to set up new

recharging wells and improve existing ones. Rain harvesting fails mainly because the operating part fails. It is important to entrust the operation and maintenance of rain harvesting on a long-term basis to the agency which constructs the same. Drip irrigation also met with the same fate after installation and obtaining a subsidy. Operation and maintenance should also be made a condition before awarding the work. Judicious use of water is another major concern. Field awareness is crucial. The support of non-government organisations should be thought of.

V.R. AJITH KUMAR
Thiruvananthapuram

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The aftermath of a nasty election

The time has come for civil society to forge corrective action and strengthen institutions



R. SESHASAYEE

The devastation caused by a vicious electoral campaign for the 17th Lok Sabha has cast a troublesome shadow on India's future. Citizens who have witnessed 10 or more elections in free India would readily agree that electoral politics has never sunk so low in the past as it has now. Truth and national interest were victims while destruction of the political enemy became the sole purpose of fighting the election. Yet there is one very bright side that needs celebration.

The redeeming feature has been the integrity of the election process and the mechanics of registering the choice of the voter. While the overall electoral turnout in this general election has been put at a tentative 67.11%, making it a historic one, there have been no proven instances of booth capture. Most importantly, there has been no credible evidence of any material failure of electronic voting machine (EVM) technology. But this is evaluating democracy against a low bar.

While the body of democracy might still be reasonably healthy, what must trouble every citizen is the deep corruption of the soul of democracy.

Fissures

What is the damage done to the future of India?

First, the credibility and effectiveness of Parliament, the very institution that we have so painstakingly sent our representatives to, is set to experience a further erosion. The culture of aggressive disruption by the Opposition might get chronic, given that there has been no evidence that political parties will place the nation ahead of their political interests. Parliament can discharge its responsibility of law-making, only if parliamentarians rise above partisan interests.

Second, while Indian foreign policy has remained somewhat underwhelming and defensive (with the exception of the liberation of



DEEPAK HARICHANDAN

Bangladesh, and the Balakot attack), the growing nexus between a rogue neighbour and an ascendant superpower in the region has highlighted the radical need for an assertive policy within the framework of non-aggrandisement. That requires a risk-taking attitude within a narrow space for manoeuvrability. It needs the government and the Opposition to stand as one. However, the behaviour of both national parties does little to inspire confidence in this direction.

An economic script

Third, by all indications, the Indian economy will face strong headwinds. Consumption-led demand is slowing down and the rural economy continues to be in distress. The 'twin balance sheet' problem is constraining new investments while the banking sector is in disarray. Yet, India can achieve at least a high single-digit growth. This will, however, depend on the government executing the next round of reforms in land and labour markets, further pruning unproductive subsidies, devising policies to attract foreign and private investments in infrastructure, and incentivising business to produce and service the world. The new government will have to sell to the public the necessity for some short-term pain for long-term gain. It will have to take bold financial decisions while being accountable and transparent. Election rhetoric and pre-election actions instead focussed on the opposite: doles, which are short-term gains; non-transparency in and witch hunting of procurement deals;

and a systematic alienation of private enterprise. This is not the canvas on which a bold turnaround plan for the economy can be scripted.

Fourth, the nation has not only been sharply polarised but the elections have pushed it to react emotionally rather than rationally. Social media has unleashed raw emotions. In election season, every social issue has been viewed through the prism of political ideology.

Need for constructive discourse

Despite our glorious history of advanced thinking, realisation of our constitutional aspirations of equality and liberty has been stymied by inherited societal backwardness. Social reforms can happen only in an atmosphere of constructive debate and dissent and a shared vision of modernity. The discourse has to move away as much as possible from ideology to constitutional rights.

Fifth, democracy has to be anchored in the system of checks and balances among autonomous institutions, the judiciary, the defence forces and the Election Commission of India as well as an independent media and civil society. Despite the mutinous situation in some of these institutions and the disturbing circumstances in this election, there is no great fear that institutions have been permanently damaged. That cannot be said of the media, especially the visual and social media. The polarisation of the media on political lines and the loss of neutrality appear almost complete.

Does this mean that we have collectively failed to safeguard our fu-

ture? No, there is hope and we have to act quickly and responsibly.

Role for civil society

The time has come for civil society to offer that hope and shoulder the responsibility for corrective action. Participative democracy has to be kept alive through a vigilant and demanding civil society that ensures restoration of the primacy of national interests. India has a very active and vast civil society that has several exemplars in the fields of advocacy, citizen rights, environment and philanthropy. There is a need and space for robust and credible civil organisations that act as bridges between the elected and the electorate.

Leaders from different vocations such as business, arts and administration have to render public service through civil organisations. Indifferent silence and armchair commentaries are not responsible options. Second, relevant organisations have to come together to demand a proper and orderly functioning of Parliament and State legislatures. A worthwhile experiment would be having citizen organisations at the constituency level that act as monitors of elected representatives.

Third, industry and trade organisations must demonstrate spine and pursue a vocal agenda of advocacy based on broader national interests and beyond narrow corporate gains.

Fourth, India has had a long history of socially committed organisations leading societal transformation from the front. While Parliament might enact laws when it comes to closing the gap between legislative intent and social practices, much falls on the shoulders of a socially conscious citizenry. Civil society needs to rise to meet this challenge.

Fifth, civil society should rise in force to safeguard the integrity and independence of autonomous institutions, should they face a threat.

Perhaps, the political class and our elected representatives will morph into butterflies and surprise us citizens with responsible behaviour. There is little doubt that the very presence of organised and active civil society would only serve to hasten such a splendid metamorphosis.

R. Seshasayee is a company director and corporate adviser

The IBSA task list

Why this unique grouping of India, Brazil and South Africa must be revitalised



RAJIV BHATIA

Even as two member-states (India and South Africa) of the IBSA Dialogue Forum have been busy with national elections and the third (Brazil) is settling down after its recent presidential elections, their foreign policy mandarins met in Kochi, May 3-5. The central goal was to develop a blueprint to rejuvenate IBSA, widely viewed as a unique voice for the Global South. Will this endeavour succeed?

Rise, fall and rise

First, some candour and recall are needed to trace the past trajectory. The idea of creating a grouping composed of major democracies of three continents, Asia, Africa and South America, emerged from the disarray at the end of the 20th century, and the perceived need for developing countries to forge decisive leadership. IBSA was launched through the Brasilia Declaration in 2003. Its summits, between 2006 and 2011, gave it a special global profile.

But, 2011 onwards, BRICS, the larger group comprising IBSA countries, China and Russia, started to overshadow IBSA. IBSA has been unable, until now, to hold its sixth summit. Nevertheless, a series of events marking its 15th anniversary, held during 2018-19, have imparted new momentum to the endeavour to revitalise IBSA.

Throughout the period of its marginalisation by BRICS, a strong body of officials and experts in the three countries has held the view that IBSA is the true inheritor of solidarity among developing countries, which was nurtured from the Bandung Conference (1955) through UNCTAD and G-77 to the BAPA+40 Declaration (2018). It is the champion of South-South Cooperation, and the advocate of a coordinated response by developing economies to secure the Sustainable Development Goals (SDGs). The glue that binds IBSA countries together is their faith in democracy, diversity, plurality, inclusivity, human rights and rule of law. This was reiterated through the IBSA Declaration on South-South Cooperation, issued in Pretoria in June 2018.

Notably IBSA remains determined to "step up advocacy for reforms of global governance institutions in multilateral fora". In particular, it is strongly committed to the expansion of the UN Security Council. As Foreign Minister Sushma Swaraj put it, "We

three have to ensure that our collective voice is heard clearly in BRICS and other groups on UN Security Council reforms, since if we do not speak for our own interests, no one else will."

Kochi parleys

Against this backdrop, IBSA Sherpas and senior officials of the three countries held detailed deliberations on all aspects of the grouping. The IBSA Academic Forum, comprising independent experts, held its sixth session in Kochi after a hiatus of over seven years. This forum hosted a candid and comprehensive exchange of views on the continuing relevance of IBSA; the need for a strategy to secure SDGs and cement South-South Cooperation; expanding trade cooperation; and the shared goal of enhancing academic collaboration on issues relating directly to the needs of democratic societies.

In fact, IBSA has been notching up a number of quiet successes. First, the three Foreign Ministers have been meeting regularly to provide a coordinated leadership to the grouping. The last meeting of the Trilateral Ministerial Commission took place in New York in September 2018. Second, while the India, Brazil and South Africa Facility for Poverty and Hunger Alleviation (IBSA Fund) is small in monetary terms, it has succeeded in implementing 31 development projects in diverse countries: Burundi, Guinea-Bissau, State of Palestine, Cambodia and Vietnam, among others.

Third, India has been running an innovative IBSA Visiting Fellows Programme through the Delhi-based think tank, RIS or Research and Information System for Developing Countries. A strong case exists for expanding its reach. Both South Africa and Brazil should initiate their own editions of this programme, as an investment in building intellectual capital.

The idea of IBSA remains valid. The grouping has its tasks cut out. The special responsibilities it bears cannot be discharged by BRICS. In fact, strengthening IBSA could increase the effectiveness of BRICS and encourage it to follow a more balanced approach on key issues of interest to India, Brazil and South Africa.

Hence, the current endeavours to infuse greater dynamism in IBSA are well-timed. They would need buy-in by the government that comes to power in India. Support by Brazil's President Jair Bolsonaro and South Africa's Cyril Ramaphosa, who has just won re-election as President, would be crucial. An early convening of the next summit is the pressing priority.

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SINGLE FILE

The problem with judicial legislation

Courts should be restrained and follow positivist jurisprudence

MARKANDEY KATJU & ADITYA MANUBARWALA



Several southern states of the United States – Georgia, Alabama and Missouri – have passed pieces of legislation banning abortion, though with some differences. These laws are inconsistent with the judgments of the U.S. Supreme Court in *Roe v. Wade*, which laid down a trimester test, and *Planned Parenthood v. Casey*, which laid down the undue burden and viability tests. The constitutional validity of these legislations will almost certainly be challenged in the U.S. Supreme Court, which will have to examine whether *Roe* and *Casey* were correctly decided. It is our submission that they were not.

The sheet anchor of *Roe* (and of *Casey*, which followed *Roe* in invalidating the ban on abortion, though with different directions) is the decision in *Grissold v. Connecticut*, in which the U.S. Supreme Court created a new constitutional right – the right to privacy.

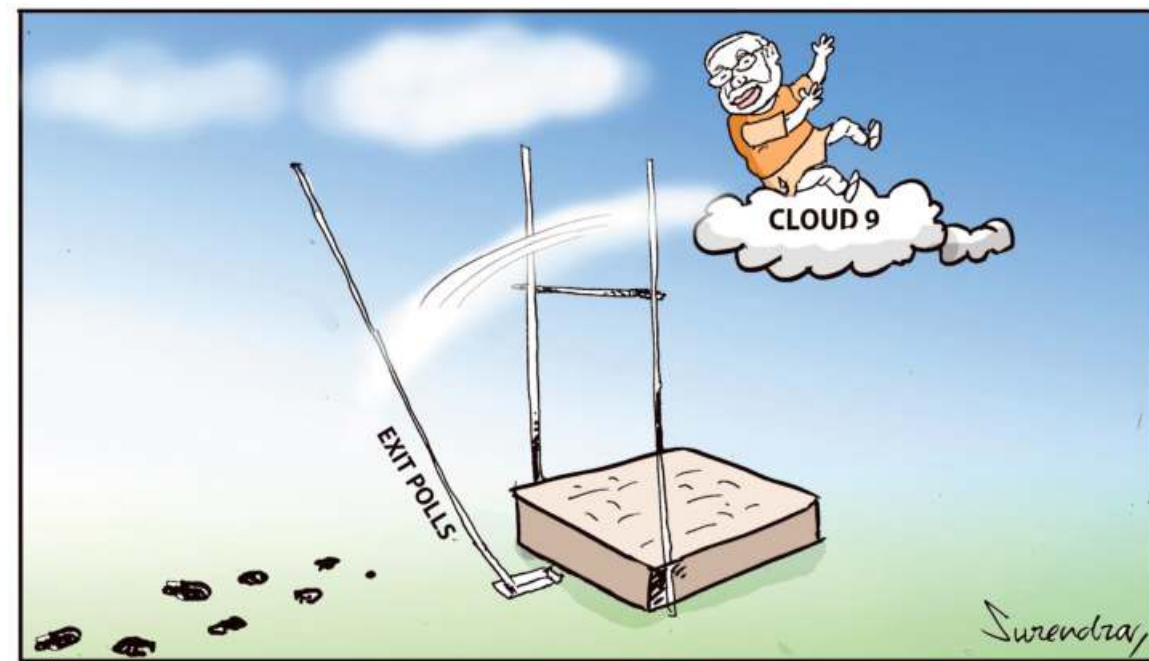
The Bill of Rights in the U.S. Constitution talks of freedom of speech and of the press, liberty and equality, but it nowhere mentions any right to privacy. So, by a judicial verdict, a right was created which in our submission was wrong, since according to the principle of separation of powers in the Constitution, only the legislature can create a right.

We regret to say that both the U.S. as well as the Indian Supreme Courts have not been observing the judicial restraint expected of judges of superior courts and have been encroaching on to the domain of the other two organs of the state, the legislature and the executive. Some examples.

In *State of Tamilnadu v. K. Balu*, the Supreme Court banned liquor shops within 500 m of highways, which was a legislative order. In *K. Puttaswamy v. Union of India*, it created a right to privacy, which is nowhere mentioned in the fundamental rights laid down in the Constitution. In *Subhash Kashinath Mahajan* it amended the SC/ST Act. In the NCT, Delhi, Sabarimala and LGBT cases it laid down the 'constitutional morality' test. In other decisions, the court fixed timings for bursting crackers on Deepavali, directed interlinking rivers and laid down regulations for the Board of Control for Cricket in India. In the Judges cases it created the collegium system for judicial appointments.

We submit that this judicial activism requires reconsideration, for it entails unpredictability in the law apart from violating the principle of separation of powers. It entitles each judge to lay down the law according to his own subjective notions. We submit that courts should be restrained and follow positivist jurisprudence, which advocates judicial restraint, and in which the centre of gravity of the legal system is statutory law, rather than sociological jurisprudence, which advocates judicial activism and shifts the centre of gravity in the legal system to judge-made law. In our view, judicial legislation is an oxymoron.

Markandey Katju is a former judge of the Supreme Court. Aditya Manubarwala is a law clerk and legal assistant in the Supreme Court



DATA POINT

Dubious distinctions

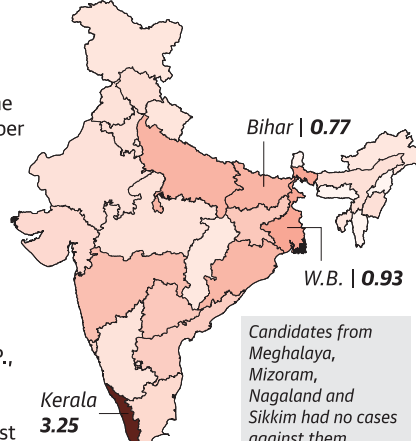
Nearly 20% of the 7,000-odd Lok Sabha candidates studied by the ADR* had criminal cases against them. The RJD, followed by the BJP, had the most criminal cases per candidate on average. Candidates in Kerala had the highest average in the country. By Varun B. Krishnan

Case file	Candidate	Constituency	State	Criminal cases
BJP and INC candidates figured in equal numbers among the top 10 with the highest no. of criminal cases against them	K. Surendran (BJP)	Pathanamthitta	Kerala	240
	Dean Kuriakose (INC)	Idukki	Kerala	204
	Ateek Ahmad (IND)	Varanasi	U.P.	59
	Soyam Babu Rao (BJP)	Adilabad	Telangana	52
	Anumula Revanth Reddy (INC)	Malkajgiri	Telangana	42
	George Tirkey (INC)	Sundargarh	Odisha	41
	Sobha Surendran (BJP)	Attingal	Kerala	40
	Saritha S. Nair (IND)	Amethi	U.P.	34
	Oli Mohammad Mallick (CPI M-L RS)	Barasat	W.B.	32
	Rajesh Ranjan (JAP L)	Madhepura	Bihar	31

BJP: Bharatiya Janata Party; INC: Indian National Congress; RJD: Rashtriya Janata Dal; SP: Samajwadi Party; SS: Shiv Sena; BSP: Bahujan Samaj Party; CPI M-L RS: Communist Party of India (Marxist-Leninist) Red Star; JAP (L): Jan Adhikar Party (Loktantrik); IND: Independent

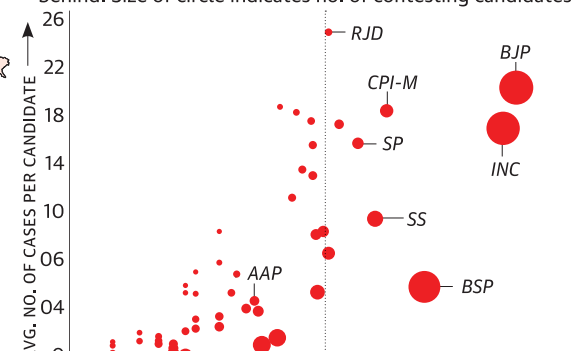
State of crime

On average, Kerala had the highest number of criminal cases per MP candidate, while West Bengal and Bihar were also on top. In absolute numbers, U.P., Kerala and Maharashtra topped the list



Party split

On average, the RJD had the highest no. of criminal charges per candidate. The BJP followed, while the INC was not far behind. Size of circle indicates no. of contesting candidates



Source: Association of Democratic Reforms, Data of 7,811 candidates considered

FROM THE HINDU ARCHIVES

FIFTY YEARS AGO MAY 22, 1969

Telangana issue: Centre watching situation

The Union Government's latest assessment of the situation in Andhra Pradesh following the Telangana agitation is that the worst is over and that there are enough indications to show that the movement for a separate State is losing momentum slowly but steadily. The general expectation is that if the agitation continues for some more time, it would even become counter-productive. Already, some members of Parliament coming from Telangana have expressed surprise and reacted sharply to the reported demand of Dr. Chenna Reddi that there should be a referendum immediately to ascertain the views of the people of Telangana on the demand for a separate State. At least one M.P., said in an interview that it was a strange demand and if it was conceded, it was bound to have significant political repercussions in the rest of the country. The Centre is closely watching the situation but it is satisfied that so far the agitation is confined only to a few urban areas.

A HUNDRED YEARS AGO MAY 22, 1919.

Franchise for Indian Women.

(Letter to the Editor: An Excerpt)

Sir: On behalf of the members of the 46 Branches of the Women's Indian Association, all of which have signed requisitions in favour of women suffrage, I protest vigorously against the decision of the Southborough Committee that the franchise shall not be extended to women because, forsooth, "the social conditions of India make it premature". Is this handful of men better able to judge of these conditions than were the thousands of Indian delegates to the Bombay and Delhi Congresses? These latter were the fathers, husbands, brothers and sons of the women concerned and knowing at first hand their social conditions, with full understanding of what the necessary steps to women's voting would be, they voted enthusiastically for the removal of the sex disqualification in all the terms of the Reform Scheme; as also did the men in many Provincial and District Conferences such as Madras and Bombay. Are the considered opinions of these representative bodies of Indian men and women to be flouted by these few Committee members, some of the Englishmen already known to be opposed to the grant of the vote even to their own Englishwomen and who are thus dated as behind the times?

— Margaret M. Cousins, Acting Secretary, Brookhampton, Ooty.

POLL CALL

Strongroom

At the end of voting, the electronic voting machines (along with VVPATs) are kept in designated strongrooms, which are sealed with double locks. This process is done in the presence of candidates and observers of the Election Commission of India. CCTVs are installed in the strongrooms and they are also guarded with security provided by the Central armed police forces round the clock. Candidates can send designated agents or present themselves at the strongroom for vigil as well.

MORE ON THE WEB

Analysis: Advantages and disadvantages of TMC and BJP, as West Bengal waits

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