

Across THE AISLE



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When Nani Palkhivala propounded the theory of an unalterable and unamendable “basic structure” of Constitution, legal experts scoffed at the argument. How can the power of a sovereign Parliament to amend the Constitution (Article 368) be curtailed or subjected to a review by judges appointed by the Executive, they asked. At the end of the day, only seven out of 13 judges on the Bench bought Palkhivala’s then-novel argument. Today, we can say, thank god they bought the argument

WE THE people gave unto ourselves the Constitution of India. The Constituent Assembly was not constituted on the principle of ‘one person, one vote’ and hence not truly representative of the people. Yet, judged on the final outcome, the Constituent Assembly spoke for all the people of India. It is a Constitution that has proved resilient in times of extreme stress like the Emergency (1975-77) or the premature collapse of the Central government (1979-80); and it has survived many amendments without losing its basic structure.

When Nani Palkhivala propounded the theory of an unalterable and unamendable “basic structure” of the Constitution, several scholars and legal experts scoffed at the argument. How can the power of a sovereign Parliament to amend the Constitution (Article 368) be curtailed or subjected to a review by judges appointed by the Executive, they asked. At the end of the day, only seven out of 13 judges on the Bench bought Palkhivala’s then-novel argument. Today, we can say, thank god they bought the argument.

WHITHER JUSTICE FOR ALL ?

It is the Constitution of India that has resolved to *secure to all its citizens* JUSTICE, social, economic and political. Each phrase — e.g. social justice — has profound meaning. The phrases ignited the fire of ambition in millions of hearts and continue to do so. On January 26, 2020, we will celebrate the Constitution’s 70th anniversary. It is time to ask hard questions: who has got social justice and who has not?

Republic for half the people

What is economic justice and do all citizens get economic justice? Even when all citizens have a political vote, do all get political justice?

For centuries, the people at the bottom of the pyramid have been the Scheduled Castes and the Scheduled Tribes. The Other Backward Classes, and among them the Most Backward Classes, and the minorities are other disadvantaged categories. The blacks in the United States were, for over a hundred years, in the same position as the Dalits, tribals and Muslims are in India today. It took a civil war to abolish slavery and a Civil Rights Act in 1963 to begin the long process of acceptance, affirmative action and providing equal opportunity. In India, we have a Constitution that frowns upon untouchability, outlaws discrimination on the basis of religion, and provides for reservation for SC/STs. Yet the reality is that social justice, in terms of access to education and health care (among other Human Development Indicators) and appointments to government jobs, is beyond the reach of the neglected sections.

DISCRIMINATED AGAINST AND POOR

I have not referred to data on housing, crime, undertrials, representation in sports teams etc. which will conclusively establish that SCs, STs and Muslims are socially discriminated against and are subjected to neglect, humiliation and violence.

Economic justice is an offspring of social justice. The neglected and disadvantaged groups have lower educational attainments, less property, fewer government or quality jobs and lower in-

	Per 1,000 persons 15+ with higher secondary education		Percentage in govt jobs	Monthly per capita consumption expenditure in rupees	
	Rural	Urban		Rural	Urban
All	85	139	100	1,430	2,630
SC	71	116	17.49	1,252	2,193
ST	66	107	8.47	1,122	2,028
Muslims	57	90	n.a.	1,133	1,673

comes/expenditure, as the numbers in the table (above) illustrate:

THE WORST CASUALTY

The third promise of political justice is the worst casualty. Thanks to reserved constituencies, SCs and STs have a fair proportion of seats in elected bodies including the state legislatures and Parliament, but political justice seems to have stopped there. In many political parties, representation of SCs and STs in decision-making bodies or levels is no more than tokenism. Even if the SCs found their own party (the BSP, VCK), their support base is limited to SC voters and, unless they form broader social alliances (*Bahujan*), or political coalitions, they are stuck where they are. In the case of minorities, especially Muslims, the position is worse. Mainstream political parties have ‘minority cells’, but rarely frontline leaders of the party. The BJP openly shuns Muslims and intimidates voters and, unless they form broader social alliances (*Bahujan*), or political coalitions, they are stuck where they are. In the case of minorities, especially Muslims, the position is worse. Mainstream political parties have ‘minority cells’, but rarely frontline leaders of the party. The BJP openly shuns Muslims and intimidates voters and, unless they form broader social alliances (*Bahujan*), or political coalitions, they are stuck where they are. In the case of minorities, especially Muslims, the position is worse. Mainstream political parties have ‘minority cells’, but rarely frontline leaders of the party. The BJP openly shuns Muslims and intimidates voters and, unless they form broader social alliances (*Bahujan*), or political coalitions, they are stuck where they are.

Causes that are central to Muslims get

little support or provoke virulent opposition. Consider the case of Jammu & Kashmir. It seems to me that the cause of 7.5 million people living in the Kashmir valley is fast becoming a lost cause. The Valley (reduced to half a Union Territory) is under siege since August 5. Terrorist incidents touched a new high in 10 years in 2019. So did the number of civilians killed and civilians injured. Six hundred and nine people continue to be in custody, including three former chief ministers, without charges. The media reports official hand-outs on ‘normalcy’. The rest of the country seems to have forgotten the Kashmiri people and moved on to other pressing concerns. The Supreme Court has reserved the verdict in the habeas corpus petitions filed in August 2019.

The Constitution is breached every day, denying to millions of people minimum justice, social, economic and political. As far as J&K is concerned, it is a case of Constitutional defilement, but we have to wait for the judgment of the Court. Seventy years later, the justice that was promised to all citizens is not available to at least one-half of the citizens and is available in, bits and pieces, to the other half.

Fifth COLUMN

TAVLEEN SINGH

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A real leader needed

THERE ARE many reasons why Narendra Modi’s image has taken a beating since that long ago ‘Howdy Modi’ moment. But, despite the protests across India in recent weeks that have so severely damaged the Prime Minister’s image internationally, there is one reason why he continues to be India’s most credible leader. That reason is Rahul Gandhi. He has been missing in action for a while but returned recently to declare that the new citizenship law was going to be worse than demonetisation because the ‘money that will be made will go to Modi’s fifteen friends’. It was only a snippet of a video that circulated virally on social media, but it was long enough to remind every viewer of an important reason why Modi won a second term.

I watched the video more than once to try and understand why the heir to our most powerful political dynasty believes that this is ‘note bandi number 2’, but was utterly mystified by his analysis. Neither have I managed to fathom why his political advisors have not told the former (and probably future) president of the Congress party that, in this case, it is the people’s money being squandered on a terrible idea that is the problem. Rahul also needs to be urgently told that he has to stop repeating the tired old charges of corruption that he has been flinging at Modi and ‘his fifteen friends’ for more than six years. They did not stick then and they do not stick now. Someone needs to explain to him that if people are protesting angrily against the citizenship law, it is because it is discriminatory. Something much more important is at stake and it is this that Modi’s principal opponent should be talking about. For the moment the best thing Rahul can do is listen carefully to what the protesters have been saying.

There is underway across India the first serious revolt against the Modi government’s policies. It is being led by young people who use the Indian Constitution as the symbol of their protest and who sing the national anthem at public gatherings to ensure that nobody charges them with being ‘urban Naxals’ or ‘anti-national’. These protests have been so effective that the Prime Minister has deployed a small army of ministers, party spokesmen and friendly journalists to try and change the narrative. They have been ineffectual because his closest political comrades, Amit Shah and Yogi Adityanath, spend their time adding fuel to the fire. Modi himself did not exactly cover himself with glory last week when he declared that the Congress party seemed to hate India’s Parliament more than it hates Pakistan.

He will however remain unchallenged as long as his main rival on the political stage is Indira Gandhi’s grandson. This is unfortunate. A real opposition leader is needed if the outpouring of anger and violence that we have seen is to be channelled towards saving political ideas that must be saved. Much has gone wrong. The Kashmir Valley remains in almost complete lockdown and now the same stories about police brutality against children that came from there are beginning to come from Uttar Pradesh. What is going on? Why is the Prime Minister not ordering his hand-picked Chief Minister to do more to calm public anger instead of fuelling it with his threats?

Uttar Pradesh has seen the largest number of protests against the changes in the citizenship law because it has a huge Muslim population and Muslims have understandably been in the forefront of the protests. But, instead of trying to calm people’s fears and their anger, Yogi Adityanath has taken to seizing people’s properties and allowing his police a free hand. He has an allergy to dissent that is quite frightening. He has made it clear that he will crush all signs of it. So he has allowed his police force to use maximum force and, if reports are accurate, to torture women and children in order to stop the protests.

The other dynasty heir, Priyanka, has gone many times to show solidarity with families who have been victims of the Yogi government’s police, and this is good. But, she would have looked more credible had she not made that childish drama about being ‘strangled’ by a woman police officer in full view of a large crowd of protesters. There is a sense of entitlement that the heirs to the dynasty exhibit that makes both of them a liability for the Congress. It must start looking for a new leader. A leader who will stand up for the values that the party professes to still believe in. These are the values of liberalism, democracy and the right to dissent. Values that are more important today than ever because Modi and his cohorts have made it plain that these ‘foreign’ ideas need to be crushed.

inside TRACK

COOMI KAPOOR



UP AND DOWN IN 2019

As recent political developments in Maharashtra demonstrated, a day, not to speak of an entire year, can be a long time in politics. The wheel of fortune kept changing. Here are some key winners and losers at the end of 2019. But who will be at the top in New Year 2021 is anybody’s guess.

JODI No. 1

Narendra Modi and Amit Shah were riding quite high in January 2019. But the general elections loomed large and the naysayers warned of the unbeatable arithmetic of a Samajwadi Party-BSP combine in Uttar Pradesh and the handicap of incumbency, seen in the Assembly results in Madhya Pradesh, Rajasthan and Chhattisgarh. But the formidable *jodi* raised the level of campaign outreach to a new high, decimated the Opposition and outdid the party’s 2014 performance, with the BJP on its own crossing 300 seats. Then, with lightning speed and steely determination, not witnessed since Indira Gandhi’s times, Shah as Home Minister successfully pushed through some far-reaching legislation. Parliament voted to scrap Jammu and Kashmir’s special status and amended the citizenship Act to bring in religion as a criterion on refugees. Also, the Supreme Court finally gave a ruling in the century-old Ram Janmabhoomi dispute.

But when the rise is so sharp, the fall can be equally steep. A slowing economy, rising inflation and a steady growth in the number of non-BJP-ruled states could foreshadow the future. It depends whether the economic downside or the mood of majoritarianism propagated by the BJP prevails.

VETERANS ON TOP

In the past year, many veterans bested the younger generation in the political sweepstakes. The laid-back royal, Chief Minister Amarinder Singh, demonstrated that he was supreme in Punjab and not dependent on his party, which was keen to rein him in. The Shiv Sena’s Uddhav Thackeray took a big gamble and won the chief ministership of Maharashtra, but his future depends on how long he can steer his boat with three oarsmen not in sync. The savvy old-timer Kamal Nath outsmarted a

predatory BJP, holding on to the CM’s chair in Madhya Pradesh. Another from the old guard who bested the youth was Sharad Pawar. During the Maharashtra campaign, most in the Opposition, including Rahul Gandhi, thought it was a lost cause. Pawar seethed silently when some of his lieutenants were targeted by the government and others crossed over to the BJP. But he fought back heroically, delivering a hefty punch for the NCP. His post-result role was more spectacular. He played the wily king-maker, who would determine whether the BJP or Sena ruled Maharashtra. Many reckon he is now a potential leader for any anti-BJP national-level alliance.

YOUTH LOSES OUT

Rahul Gandhi could have taken over as prime minister and leader of the Congress party at any time between 2004 and 2014, but he procrastinated, assuming that age was on his side. Now at 49, Rahul can no longer be considered youthful. Perhaps his heart was never really in the role his mother felt was his destiny. Though he campaigned spiritedly during the Gujarat and Karnataka Assembly elections, his interest seemed to flag by the time of the general elections and his judgment of campaign strategy and choices for key party assignments was wanting. After the humiliating result, Rahul announced his resignation and departed for Vipasana sessions abroad, leaving his party adrift. The Congress old guard was quick to take control in his absence. Rahul may yet reclaim his post as party president, but an increasing number of Congresspersons view the plight of their party as similar to that of Britain’s Labour Party where Jeremy Corbyn, though a distinct handicap, refuses to quit gracefully and make way for a new leader. The Congress young blood is dispirited and at a loose end.

QUICKIE LEGISLATION

The government may have won temporary plaudits with its quick-fix legislation and glib semantics. But the real impact will be known only in the months to come. Increasing polarisation makes it difficult to heal the scars in the national psyche. High-handed methods to quash the continuing unrest of a disenchanted, educated youth is not a long-term solution. True statesmanship lies in taking all sections of society on board. A refusal to back-track is not a sign of strength, but a failure to learn from the lessons of the past. History has shown that it has not generally been a happy outcome for rulers who tried to forcibly stamp out the voice of dissent, especially when a new generation is at the vanguard.

Life & WORK

SHWETA CHAUHAN

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NINETEEN METRO stations closed. Mobile Internet services suspended. Section 144 of the CrPC invoked. Vehicles, police post torched in Uttar Pradesh, protests in Assam, Hyderabad, Bengaluru, Kolkata. These headlines along with images of opposition leaders, activists assembled in their winter clothes just as Delhi records its lowest temperature of the year flood our TV screens. It is not a happy day in the life of a police officer. The larger the gathering, the higher the stakes for us. We must tread carefully, protecting life and property, remaining neutral, acting strictly by the book, because one misstep will reverse the direction of protests. And once that happens, all issues will become secondary, police bashing will start and we will be facing a public trial.

I spent hours watching over protests at Ramila Maidan during my posting in Delhi. Sometimes we would hear taunts. On other occasions, like at a doctor’s strike at AIIMS, I was asked by the protesters to resign, join them. Sometimes our patriotism was questioned, as in the Anna Hazare protests. Sometimes our humanity was questioned, as in the Nirbhaya protests. But on a basic human level we are not very different from the people on the other side of the barricades. The only major difference is that we carry the weight of protecting democracy, protecting lives, protecting the rule of law. Trust me, this isn’t a lament, this is just an earnest attempt at KYC — Know Your Cop.

Handling protests is an integral part of the work of a police personnel. We are given exhaustive training in riot control at the Sardar Vallabhbhai Patel National Police Academy, Hyderabad — weekly classes on the use of anti-riot gear and equipment; extensive training on negotiation skills; engaging positively with a crowd of protesters; forging a rapport with the stakeholders; giving a clear warning before any escalation of force. It is done week after week, continuously, till it is ingrained as muscle memory. All this finally culminates in a grand riot-control practice session where all 120-odd officer trainees participate in containing a mob of unruly protesters made up primarily of our own trainers and academy staff.

We are aware that in a democracy, there will be protests. We also know that a large crowd by nature is unpredictable. Only a few rabble-rousers are enough to turn a peaceful protest into a full-blown riot. Handling a protest is an ordeal for all police officers and we are well aware that lives, law

‘A democracy has protests... most end at the barricades’



A clash between police and protesters at Jamia Millia Islamia. File

and order in society are on the line.

I remember that in 2015, when I was posted in Outer Delhi, we received a call that a crowd of protesters from Narela colony had stopped traffic on NH-44. When I reached with reinforcements, I found that the protesters had torched our police post (no lives lost) and pelted stones at a fire tender. It took some strict warnings for the crowd to allow the fire tender to douse the fire. Meanwhile, a separate group of hooligans torched two motorcycles and one private car belonging to a police personnel. Before we could gauge the strength of the crowd, they started pelting stones at us. I saw a police inspector bleeding from his nose. Another stone came hurling at the one standing next to him and hit his forehead.

We fired tear gas after adequate warning but even the wind did not favour us. Soon I was calling my own teary-eyed flock of policemen, trying to keep them together. We had to charge at the protesters with *lathis*; this resulted in people running in all directions. Some policemen went so far into the alleys that I was momentarily worried about their safety. Some protesters came back brandishing *lathis* of their own. There was mayhem for several minutes till the crowd was dispersed. Thankfully no shots were fired, no protesters grievously hurt.

Like each investigation, each protest is also different. Each minute spent at the barricades makes one wiser for future incidents. Much is said about police excesses but rest assured, contrary to representations in popular cinema, there are no trigger-happy Chulbul Pandey in real life. In my eventful career, I am yet to meet a police of-

ficer who is eager to order a lathicharge on a crowd of peaceful protesters, forget firing on them. In fact, we try to avoid any confrontation at the barricades, till it is felt that a rule of law has been threatened.

When there is information of a protest, police try by all means to contain it within manageable proportions. We try to contain rumours. We try to cut down on mass means of transportation to stop unmanageable crowds from gathering, because a large mob is faceless, nameless and offers a false sense of anonymity, power and ruthless disregard for law in its members. Suspending Internet services, closing down metro stations, diversion of traffic are all steps to stop collection of a large crowd of protesters.

Yet people gather, protests take place and when they turn violent, we try to contain them from damaging life and property by graded use of force; lathicharge is mostly the last step. In a full-blown riot, police may resort to firing, but it comes with its own hazards.

In conclusion, I will say, most protests end at the barricades. But when they don’t, we are easily targeted. This is because police is a branch of government that has the maximum interface with common people. Khaki has the maximum visibility of all government functionaries. We perform our duties without getting affected by the disdain of the very public we serve. We have learnt to live with the hatred, but a little appreciation is always welcome!

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Out of MY MIND

MEGNAD DESAI



AS 2019 closed, much of what happened in the earlier half of the year was forgotten. Prime Minister Narendra Modi rode the waves in the first half. Modi was the story. Now six months later, the solidity of Modi’s leadership is being tested. We are witnessing a mass movement which surpasses the Anna Hazare movement. The sole parallel people can cite is the Navnirman Movement which got Jayaprakash Narayan to give up his retirement from politics to lead a new generation of youth.

This movement has not found its JP. Maybe the millennials are more confident

Now is the moment for Sabka Vishwas

and self-sufficient. Opposition leaders are jumping on their bandwagon and leading from the rear.

It is a classic example of the professionals on both sides having failed to foresee the storm.

For the BJP, it is a rare failure of communication. The Home Ministry may have felt the Citizenship (Amendment) Bill was a routine legislation affecting maybe half a million individuals whose life could be improved by getting proper status. It would be helpful to see how over the years refugees’ recognition issue has been tackled and how many cases remain to be settled.

How did this routine issue come to incite such a big fire and wreck India’s rep-

utation abroad? Make no mistake. The opposition to Article 370 abrogation was nothing like this at home or abroad. It was just J&K partisans across the world who were pointing a finger. Now the charge is that the Modi government is against all Indian Muslims. In the Article 370 debate, the battleground was the UN Security Council and the likely critic Pakistan itself not morally strong. But here are the citizens of India, mostly young, convinced that the Citizenship Amendment Act (CAA) is a threat to their citizenship.

Chief ministers are threatening to prevent the implementation of CAA in their state. What does this entail? Leaving the refugees in their precarious state? Such an exercise of state sover-

eignty, even if constitutional, does not enhance public welfare.

Whatever the misunderstanding, the Prime Minister has to take charge and convince the unhappy citizens that there is nothing to fear. He should acknowledge their concerns. Ideally, he should summon representatives of all parties as well as civil society groups to a no-holds-barred dialogue (broadcast on live TV) and give adequate time for the fears to be expressed and then dispel them. It would reassure people if someone senior and of unalloyed repute was to chair such a dialogue — say, ex-President Pranab Mukherjee or retired Chief Justice of India Ranjan Gogoi. It would be a Teach-in. The idea is for people to be able to articulate differences and re-

ceive answers which the Prime Minister alone can give.

The one advantage the Prime Minister has is that he has four-and-a-half years to accomplish many vital goals. If CAA is merely about refugees getting citizenship, rename it as Refugee Naturalisation Act. Calling it Citizenship Amendment Act has fuelled misunderstanding. If Indians are feeling anxious about their future, then it is imperative to address their fears. Modi should postpone the implementation of CAA for a year or two. Enough lives have been lost needlessly.

On the day he won a second term, Modi reiterated his slogan of *Sabka Saath Sabka Vikas*. He added *Sabka Vishwas*. Now is the moment for *Sabka Vishwas*.