



## Time after time

In Telangana, the TRS banked on its regional appeal to keep the Congress out again

In continuing with its politics of regional identity, the Telangana Rashtra Samithi won a second term in office in India's newest State, pushing the national party, the Congress, to a distant second. TRS leader K. Chandrasekhara Rao, sworn in again as Chief Minister, had made a calculated gamble by advancing the election, which was due along with the Lok Sabha election. The motive was clear: he did not want to fight the Assembly polls alongside the Lok Sabha election, in which the Congress would have been a strong contender at the national level. The gamble paid off handsomely, and the TRS has added 25 seats to its 2014 tally of 63 with an increase of 12 percentage points in vote share. For the second time, the Congress failed to capitalise on its role in carving out Telangana from Andhra Pradesh, allowing the TRS a runaway victory. While it did not get any credit in Telangana for bringing the State into being, it had to take all the blame in Andhra Pradesh for the bifurcation, where it conceded space to its breakaway party, the YSR Congress Party. Mr. Rao is now firmly entrenched in government, and his son, K.T. Rama Rao, is a parallel power centre. In the last five years, far from being able to challenge the TRS politically, the Congress appears to have slipped in voter estimation.

Some of the Congress's failures will have to be attributed to the national leadership, which hurriedly entered into an alliance with the Telugu Desam Party. Although the TDP does enjoy support in Hyderabad and surrounding areas, it is seen in the rest of Telangana as essentially a party of the neighbouring State of Andhra Pradesh. Congress president Rahul Gandhi may have been looking at the bigger picture when he welcomed the TDP as part of a broad Opposition alliance, but Telangana voters took a cynical view of the coming together of the two parties that were principal rivals just five years ago. Although the People's Front of the Congress and the TDP drafted a common programme, and held a joint campaign, this was not enough to challenge the TRS, which moved to poll mode several months in advance. The result could also have implications for the Assembly election in Andhra Pradesh next year, as the TDP might be wary of being identified too closely with the Congress, which is still seen as having facilitated the bifurcation. The TRS, which talks of maintaining equidistance between the Congress and the BJP, is more likely to back the BJP than the Congress in the post-election scenario. And given that the TDP, until a few months ago, was an ally of the BJP, any which way the Congress looks at it the twin States of Telangana and Andhra Pradesh remain a difficult terrain.

## Theresa must

Having survived a party challenge, the British PM should spell out London's next steps

British Prime Minister Theresa May has survived a trust vote on her Conservative party stewardship. But there is little sign that the bitter infighting within the ruling party will abate. Nor is there any assurance that Parliament will back her government's controversial Brexit deal with the European Union. The leadership challenge was suddenly triggered by a growing number of Tory rebels who felt emboldened by widespread opposition to the withdrawal agreement that has united Europhiles and Eurosceptics across parties. Their resistance gained momentum when Ms. May, deeply apprehensive about its approval by the Commons, decided to defer a vote on the deal. Following her victory in the party leadership battle, Ms. May hopes to secure more assurances from European leaders that Britain would not be permanently locked into a customs union with the EU. The customs union is the backstop arrangement meant to continue the open border between Northern Ireland and the Irish Republic, a lifeline of the 1998 Good Friday peace agreement. London has sought to sell the backstop as the best possible deal that could protect the U.K.'s territorial integrity. The EU insists the withdrawal agreement cannot be reopened for negotiations. The Remain and Leave camps want legal assurances that the customs union would at best be temporary, given the curbs it would impose regarding trade agreements with third countries.

It is possible that Brussels will adopt a flexible stance, despite its protestations to the contrary, to avert a no-deal scenario on the expiry of the Article 50 deadline on March 29, 2019. Examples of how the dilemma posed by the Danish rejection of the 1991 EU treaty, or Ireland's 'No' to the Lisbon treaty were legally overcome are being cited in relation to the present difficulty with the Irish backstop. Clearly, the EU's main concern is not to stretch the basic idea that the benefits of membership are limited to insiders. But the U.K. will have to show some flexibility, of deferring to the democratic mandate of the referendum, while recognising the practical imperatives of ceasing a long partnership. In that respect, it would be wishful thinking, to paraphrase former Prime Minister John Major, to want to dispense with the Irish formula that has been written into the withdrawal agreement. Tory rebels should rise above their narrow differences in the national interest and back the final agreement presented to Parliament in January. Else, they risk an extension of the Brexit deadline and even possibly a second referendum on the EU membership issue. The meaning of the 2016 referendum verdict has evolved from implying that a no-deal withdrawal was better than a bad deal to an acceptance that a soft exit is the more realistic option. Now, opinions on a second referendum are being openly voiced. It's time London decided what it really wants.

# The fear of executive courts

India urgently needs the return of a thriving legal culture that uncompromisingly calls out political posturing



GAUTAM BHATIA

On Monday, Justice S.R. Sen of the Meghalaya High Court observed in a judgment that "anybody opposing... Indian laws and the Constitution cannot be considered... citizens of the country." The case involved the denial of a domicile certificate. Justice Sen, however, thought it fit to further note that in 1947 India "should... have been declared... a Hindu country", and that "our beloved Prime Minister" ought to legislate to grant automatic citizenship to (non-Muslim) religious minorities "who have come from Pakistan, Bangladesh and Afghanistan". He also noted that "our political leaders" in 1947 "were too much in a hurry to get the independence... thus, creating all the problems today", and that "nobody should try to make India as another Islamic country". In parting, Justice Sen directed the Assistant Solicitor-General to hand over a copy of his judgment "latest by 11-12-2018 to the Hon'ble Prime Minister, Hon'ble Home Minister, and Hon'ble Law Minister".

It is tempting to dismiss this as an aberration, like the time that Justice Mahesh Chandra Sharma of the Rajasthan High Court observed that peacocks don't have sex. Giving in to that temptation, however, would be a mistake. Justice Sen's ill-advised and ill-judged diatribe is only the latest in a series of instances where judges have inserted themselves into fraught political controversies, and have displayed the prestige of judicial office to lend weight to one side of the controversy. This is an alarming trend.

We normally think about judicial independence as independence from the government. Our Constitution is designed to ensure that judges can do their work "independent" of government influence: fixed salaries, security of tenure, and an appointments process that — through the Supreme Court's judgments — is insulated from executive control.

### Judicial independence

Independence, however, means something more. It also requires that judges perform their constitutional role independent of personal biases, political and moral beliefs, and partisan ideologies. Of course, adjudication is a political task, and there is no doubt that a judge's political vision will inform her work. That, however, does not authorise the judge to turn into a politician. At all times, she is bound to maintain primary fidelity to the law and the Constitution: to the text of legal instruments, to the canons of legal interpretation, and to the body of judicial precedent that holds the field. These are crucial checks upon judicial power.

Judicial independence, therefore, depends on judges recognising that law, while being influenced by politics, is not reducible to it. Law and adjudication must remain autonomous from partisan politics in important ways. And the more we strengthen judicial independence in its first sense — independence from the government — the more attention we must pay to independence in this second sense. This is because control brings with it accountability. Politicians, for example, remain "accountable" to the people in at least some sense, because they depend upon them in order to continue in office after five years. Judges who are insulated from any external control are accountable only to themselves, and



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their own sense of the limits of their constitutional role.

Accountability only to oneself, however, is a very weak form of constraint. The temptation to overstep is always immense, more so when such immense power has been placed in one's own hands. It is here that legal culture plays a critical role in establishing judicial accountability. By legal culture, I refer to a set of unwritten, but clearly established, norms that determine what is or is not acceptable in the process of adjudication. And a legal culture does not spring up out of a vacuum: it must be created and nurtured by judges, lawyers, legal academics, the press and the citizenry.

### The roots of the crisis

Where, then, has the legal culture failed us? The answer takes us back a few decades. In the 1980s, there was a rapid expansion of judicial power. This expansion was motivated by a sense that the judiciary had long been a conservative institution, taking the side of landed interests against "the people". This needed to change. In order to accomplish this, the Supreme Court began to dispense with procedural checks upon its power. Some of these steps were important and necessary, such as allowing "public interest" cases to be filed on behalf of those who were

unable to access the courts. Others, however, were double-edged swords, such as diluting the evidentiary standards required to prove disputed facts, and vastly expanding the courts' discretion to shape and fashion remedies.

The 1980s Supreme Court was highly praised for this. Influential legal scholars — whose views continue to hold sway in law schools today — lauded the destruction of pesky "Anglo-Saxon" procedural rules, which stood in the way of "complete justice". Judges were painted as crusading heroes. In words that might have embarrassed Louis XIV, the Supreme Court was called "the last refuge of the oppressed and the bewildered". By the 1990s and the 2000s, under the misleading label of "judicial activism", the court was beginning to engage in a host of administrative activities, from managing welfare schemes to "beautifying cities" to overseeing anti-corruption initiatives. The constitutional court had become a Supreme "Administrative" Court. This, too, was justified on the altar of necessity: politicians were corrupt, bureaucrats were inefficient, and things didn't move. *Someone* had to come and clean it all up.

A combination of viewing the judiciary as an infallible solution to all social problems, and viewing procedure — that would otherwise constrain judicial power — as an irritant that stands in the way of a truer, purer justice has created the perfect storm that we see today. The first allows a judge to project her own social and political views as universally valid and beneficial; the second allows her to ignore the barriers that stand between her and the implementation of those views. Wrapped up in patriotic zeal, a judge does not stop to think whether he is authorised to compel all cinema halls in the nation to play the national anthem; another does not consider whether he has

the power to mandate that every student in Tamil Nadu must study the *Tirukkural*; a third takes over the entire process of preparing a National Register of Citizens (NRC), with nary a thought about whether the Constitution ever contemplated a task such as this to fall within the judicial domain.

### A frightening prospect

The record of the courts in protecting civil rights has been a mixed one. In far too many cases, courts have tended to defer to the executive and the government. However, judgments like the national anthem order, the *Tirukkural* order, the NRC process, and Justice Sen's recent foray raise an altogether more frightening prospect: that of an "executive court". By an executive court, I mean a court whose moral and political compass finds itself in alignment with the government of the day, and one that has no compunctions in navigating only according to that compass. Instead of checking and limiting government power, an executive court finds itself marching in lockstep with the government, and being used to set the seal of its prestige upon more controversial parts of the government's agenda.

We are not there yet. But we urgently need the return of a thriving legal culture, one that uncompromisingly calls out political posturing of the kind we have seen this week. And this legal culture cannot pick and choose, criticising regressive orders like Justice Sen's, while exempting judgments that equally cross the line, but nonetheless seem to have achieved a "right outcome". Only a principled consistency in requiring that judges must always give *reasons* for their judgment can halt the transformation of the constitutional court into an executive court.

Gautam Bhatia is a Delhi-based lawyer

# The anatomy of a police station

Lacking personnel, funds and motivation, the thana is not structured to enforce the rule of law



RASHMI SHARMA

The death of inspector Subodh Kumar Singh, shot while trying to control a mob of cow vigilantes in Bulandshahr district of Uttar Pradesh, is a vivid expression of the contempt of our ruling classes, and those aligned to them, for the rule of law. The increasing number of human sacrifices for the alleged protection of cows signals a steep rise in this contempt. These incidents shock us because they are graphic and indicate a discernible change for the worse. The shock turns into dread as the ruling elite fails to condemn and punish the perpetrators. Mob violence is growing, and the government's efforts to contain it are wanting.

Underlying these shocking incidents is an equally terrifying lawlessness, which is quiet, insidious and pervasive. The stunningly casual statements from the establishment after the incident are a new development in a systematised attack on the rule of law. This is illus-

trated in my case study of an obtrusive, sleepy looking police station in the tribal belt of central India.

### Unable to enforce law

The police station was structured to perpetrate lawlessness in two ways. First, it was simply not enabled to enforce the rule of law. Manned by 16 people in all, with six of its 22 posts vacant, and headed by a sub-inspector, it was expected to serve 83 villages across 2,680 sq km. The police personnel were expected to investigate crime, maintain law and order, and were frequently deployed on VIP duty. The personnel rotated through it rapidly, as there was at least one transfer per month. The senior officers complained that postings were based on patronage, and it was not possible to deploy the best people for the most difficult tasks. The *thana* was always short of money, and personnel spent from their pocket on stationery and other needs.

The police personnel were extremely dissatisfied. They were entitled to 16 days of leave in a year, but this was never actually sanctioned. They reported being overworked, on duty 24 hours a day, with high stress. Their families were neglected. A head constable



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said that he had never attended a parents' meeting in his child's school. A majority of the constables lived in the nearby city because of lack of housing, schools and health facilities in that area. They travelled to the police station everyday, which is not how things should be as they need to be available in case of a crisis. This cost them around ₹5,000 per month. They saw themselves as underpaid and not respected.

To this demotivating background were added idiosyncratic working styles. Though a police station is expected to respond to the needs and events of the area, it was assigned targets, such as for seizing a certain amount of liquor and issuing a number of *challans*. Every year, the targets were increased. Sometimes they simply did not correspond to the situation. For example, it had problems achieving its targets for issuing

*challans* in the case of people riding without helmets, because there were few motorcycles in the area and people simply did not have money to pay the fine.

Discussions with the police personnel showed poor understanding about enforcing the law. When violence against women was discussed, many said that women usually made false complaints. During the study, a mentally disturbed person was beaten up as he stood hallucinating, decrying imagined enemies. The shortage of personnel, the sorry working conditions and their ignorance created a system not capable of upholding the rule of law.

### Deep-rooted corruption

The second way in which the police station became an agent of lawlessness was corruption. Interaction with the community showed that the village people feared and avoided the police. They said that the police listened to those who had money. The usual dismal tales of police greed and brutality emerged. Constables extracted money from vehicles plying the highway, snatched away mobile phones of ordinary people and returned them only when they were paid money. When an FIR was lodged, the police evinced sym-

pathy for the victims as well as the accused, and took money off both to solve the case. An attempted rape was ignored after money exchanged hands.

One police personnel admitted that it was difficult not to be corrupt, because everyone was. She had started her career determined to never accept bribes. But over time, her perspective changed, as she faced pressure from senior officials as well as local leaders to 'help' in various ways. The pressure from inside, she said, was worse. This problem was clearly systemic and not individual, as the police personnel themselves were not happy with their corruption. They tried to atone for their sins by ensuring proper last rites when bodies were not claimed by anyone after accidents, by spending their own money.

This dull-looking police station was not newsworthy, and its activities did not shock anyone. But it symbolises the pervasive lawlessness to which we are now habituated. It is out of this system of lawlessness that the more dramatic incidents like the death of Singh emerge. We remain apathetic to systemic callousness, which also needs scrutiny and action.

Rashmi Sharma is a former IAS officer

## 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.

### The road to 2019

The Congress party has gained from these Assembly elections in two ways. One, it has managed to improve its bargaining power in the Opposition. And two, party president Rahul Gandhi's image has improved substantially. But will the Opposition parties, if they successfully form a mahagathbandhan, accept him as a possible prime ministerial candidate? After all, there are others who are equally, or more, eligible for the post. More important, will people who desire a stable government in power want a coalition of regional parties? The Congress has won this round, but there are many difficult decisions ahead.

JAVASREE THAMPI,  
Thiruvananthapuram

### Loan waivers

It is commendable that the BJP is averse to farm loan waivers despite its loss in the recent Assembly elections ("No farm loan waiver: Centre, Dec. 13"). But I fear that such a bold decision will cost the party since almost all parties promise loan waivers ahead of elections. Even the Telangana Rashtra Samithi won because of its numerous welfare schemes. It will be interesting to see how the BJP placates the farming community.

KSHIRASAGARA BALAJI RAO,  
Hyderabad

Year after year, political parties promise farmers that their loans will be waived off, but this is not a permanent solution. Governments should

ensure that farmers get higher incomes.

REHAN ALAM,  
Patna

### Crisis in Sri Lanka

President Maithripala Sirisena's statement that he will not appoint Ranil Wickremesinghe as Prime Minister even "if all 225 legislators back him" is very strange ("Ranil wins vote of confidence in House", Dec. 13). If Mr. Sirisena is unable to fulfil his duty, he has no right to manipulate the very system that helped him assume power. His way of functioning is unconstitutional. It is his moral duty to step down as President, especially now that the Sri Lankan Supreme Court has ruled that the President's dissolution of Parliament

was an illegal move.

ILANKO XAVIER M.,  
Pune

### Catch them young

Issues related to the environment seldom make it to election manifestos because Indians are mostly unaware of what climate change means ("Engaging with climate change", Dec. 13). International agreements on climate change are mostly understood only by the signatories, and carbon issues by industries. Unless there is pressure from the people to act on climate change, the government won't move an inch. For people to be aware, they need to be educated. It is important that children are taught to become climate activists. It's the only way

earth's future can be secured.

SIMRAN KAPOOR,  
Dehradun

Politicians have failed to comprehend the consequences of climate change. With rapid consumerism and growth-based politics, people no longer know how to live within their means. The massive degradation of forests in Brazil and Ecuador show that things

are out of control. If politicians fail, civil society needs to step in. In India, we need to spread awareness on how climate change impacts our everyday life, especially among children. It is time for schools to show the way forward as this is our last chance to fight climate change.

HARSAHIB SINGH,  
Ludhiana

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**CORRECTIONS & CLARIFICATIONS:** A blurb in the Assembly Elections - 2018 page feature "Breath in the Hindi heartland" (Dec. 13, 2018) erroneously read: "... the BJP could have been defeated more decisively if the Congress had aligned with the BJP." It should have said aligned with the BSP.

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, Kasturi 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