



## Starting over

Rahul Gandhi's task as Congress chief is more challenging than that of his predecessors

Rahul Gandhi spent so many years stepping up to become president of the Congress party that once he was elected unopposed, the biggest surprise remained the timing: in the middle of an Assembly election campaign in Gujarat, Prime Minister Narendra Modi's home turf. Indeed, after the devastating blow to the Congress in the 2014 Lok Sabha election, and other electoral reverses since then, it was a bold decision – a signal that he is in for the long haul and that he is going to be undeterred by an election result that pundits, at least in the early days, had all but given to the Bharatiya Janata Party. No matter which way the result goes on December 18, Mr. Gandhi has made it clear that the responsibility of the party's success rests on his shoulders and that there is no one but himself to blame for any missteps. That he would take over as president was clear since his mother Sonia Gandhi's gradual retreat, but with a mere 18 months to go before the next general election, Mr. Gandhi doesn't have the luxury of a great deal of time in reversing the party's political fortunes. Given the personality cult that attaches itself to the Gandhis in the party, with every appointment and gesture read to see who's in and who's out, Mr. Gandhi will send the first signal about his leadership qualities by the speed and professionalism with which he constitutes his A-team. His swiftness in suspending family loyalist Mani Shankar Aiyar was an early indication of decisiveness and drawing a red line for partypersons.

Leadership is vital for the Congress to address its three big challenges: reviving the party organisation; firming up alliances; and formulating a cohesive programme as the main opposition party that is looking for another chance to govern India. Historically, once the Congress is edged out of a two-party contest in a State, its local organisation tends to fray. With the party ruling in half-a-dozen States and running at third or lower place in big States such as Uttar Pradesh and smaller terrains like Delhi, the challenge is obvious. Alliance-formation has remained reactive since 2014 and Mr. Gandhi will have to forge decisions on pacts with regional parties, somewhat similar to what Ms. Gandhi did painstakingly before the 2004 election. A transitional moment such as the leadership change also gives the Congress an opportunity to bring its offshoots, such as the Trinamool Congress, into an understanding. All of this will be easier achieved if the Congress can articulate its outlook and agenda. It needs to spell out where it stands on the economy, social inclusion, minority rights, foreign policy, welfare. Simply reacting to the Modi government or being un-Modi will not suffice.

## Unedifying campaign

The Gujarat election campaign was marked by more heat than light

The Gujarat election campaign, the second and last phase of which concluded on Monday, was high on decibels and low on substance. Election campaigns often generate more heat than light, but this one was riddled with a string of controversies, which served to deflect attention from the real issues, particularly those relating to Gujarat's development. For much of the campaign, the focus was on such things as Rahul Gandhi's religious identity, a rash and intemperate remark against Prime Minister Modi, and more broadly on personalities rather than issues. This was odd given that Mr. Modi swept the 2014 general election on the promise of expanding the so-called Gujarat model of development to other parts of the country. Ironically, very little was heard of the State's record on the economic front during the campaign, which ended on a bizarre and jarring note – with the Prime Minister accusing the Congress of colluding with Pakistan on the Gujarat election. This accusation was made on the basis that the Pakistan High Commissioner and its former foreign minister had attended a dinner at which some Congress leaders, including former Prime Minister Manmohan Singh, were present. The allegation that the meeting was held in "secret" is laughable given the presence of a clutch of political leaders, diplomats and journalists, not to mention a former Army Chief of Staff and a former Vice-President. A stung Manmohan Singh has exposed the irresponsibility in painting such a meeting as an act of collusion with foreign officials.

It is not clear whether the unseemly edge and rancour in the campaign rhetoric was a consequence of the perception that this would be a closely fought election, as some pollsters have predicted. But there is no denying that for both parties there is a huge stake riding on this Assembly election. For the Congress, which was charged with adopting a soft Hindutva approach following soon-to-be Congress president Rahul Gandhi's frequent visits to temples, a win here could reverse the political narrative of the last few years. The stakes for the BJP are arguably even higher – a narrow victory in the home turf will be insufficient to prevent the perception of a decline given the performance in the 2014 general election, when the party won almost 60% of the popular vote. To demonstrate that it retains the political momentum, the BJP would have to, at the very least, better its 2012 Assembly election performance, when it won 115 of the 182 seats. The big question is whether it can pull this off in the face of a new caste coalition that the Congress has cobbled together, spearheaded by the influential Patidar community, which seems palpably angry. Given Mr. Modi's personal stake in the BJP retaining his home State and Mr. Gandhi's need to prove himself as the Congress president, this Assembly election has had the character of a presidential contest – something that explains the huge interest in the result.

# Human rights and Indian values

Neither civilisational ethos nor the mere enshrining of constitutional morality is enough to deliver on basic rights



PULAPRE BALAKRISHNAN

Dadri, Alwar and Rajsamand are names that must ring a bell for every aware Indian. In a little more than a year these have been sites where a fellow citizen has been brutally murdered by another Indian. They should be a source of deep shame to us as these were not random events. In every case the victim was a Muslim from the poorest sections of our country. Mohammad Akhlaq, Pehlu Khan and Afrazul Khan were murdered for the identity assigned to them and the alleged guilt that is thereby claimed to cling to them.

### Acts of hate

Union Minister for Minority Affairs Mukhtar Abbas Naqvi was quick to respond to the murder of Afrazul Khan stating that it should not be seen as religiously motivated but as a criminal act. Not only is this difficult to sustain given the explanation by Afrazul Khan's assailant that he was only seeking revenge for "cross-community" marital relationships but it also ignores a pattern in the three killings in question. In all cases the murders have been justified in the name of injuring the sensibilities of Hindus. They are, for all to see, unmistakably acts of hate committed against a member of a religious minority.

Four days after the killing of Afrazul Khan on December 6, India celebrated Human Rights Day. December 10 is the anniversary of the adoption of the Universal Declaration of Human Rights by the UN General Assembly. As an early supporter of the UN movement and a constant participant in its

GETTY IMAGES/ISTOCKPHOTO

deliberations, India has, in international fora, constantly endorsed the charter of rights that the declaration unfurled.

On December 10, at an official ceremony at Delhi's Vigyan Bhawan Vice-President Venkaiah Naidu said two noteworthy things. He first affirmed India's commitment to human rights emphasising the duty of governments to ensure them to individuals. Second, he observed that human rights existed in India not due to some constitutional morality but because of the DNA of Indian civilisation. To clarify what he meant he chanted from the Upanishad "Sarve Janaha Sukhino Bhavantu", loosely translated as "May all be happy".

The Vice-President was obviously referring to the many assurances of the freedom of thought and expression and the right to life and liberty in the Constitution, suggesting that their provenance lies in the immemorial history of the country's civilisation. While there may be a grain of truth in this observation it doesn't count for much when it comes to repeated violation of human rights in India, of which the murders of Mohammad Akhlaq, Pehlu Khan and Afrazul Khan are instances.

### Role of government

In the light of these violations, it may have been more helpful if the

before the apex court that he had already lost. In an evident attempt at using RTI to fight a judicial battle already lost, he sought "action taken" reports on his letters.

The Registry could have lawfully disposed of this RTI request by simply stating that no such information was available. Instead, the Registry rejected the application, and asked Mr. Misra to apply under the Supreme Court Rules. Mr. Misra challenged this response before the then Central Information Commissioner Shailesh Gandhi.

In May 2011, appearing before the Commission, the Additional Registrar of the Court, Smita Sharma objected only to the use of the RTI, and not to Mr. Misra's request per se. She maintained that the Supreme Court Rules alone governed access to the information he had sought. Claiming that the Rules were consistent with the RTI, she asked Mr. Gandhi to reinstate the primacy of Supreme Court Rules over the RTI, in line with previous Central Information Commission (CIC) rulings.

However, as Mr. Gandhi noted in his decision, the Supreme Court Rules undermined the RTI in four key ways. Unlike the RTI Act, the Rules do not provide for: a time frame for furnishing information; an appeal mechanism, and penalties for delays or wrongful refusal of information. Finally, the Rules

Vice-President had said that the constitutional provisions are inadequate by themselves and the role of government is fundamental in advancing them. In fact, it is precisely because we cannot rely on civilisational values that may or may not be enshrined in the constitution to deliver us rights that we adopt democracy as the form of government.

Historically, votaries of civilisational values have struggled to break free of cultural prejudices and accord similar status to other civilisations. Not very long ago, colonialism had been justified on civilisational terms, with the very term "civilised" being used to differentiate the West from the indigenous populations of the lands colonised by Europe. It is perhaps this that led Gandhi to respond to the query of what he thought of Western civilisation by saying, "I think it would be a good idea." Gandhi is unlikely to have been any softer on champions of the superiority of eastern civilisations.

Civilisational hubris abounds in claims of "the inclusivity of Hinduism" or "the egalitarianism of Islam". Whatever be the exhortations in the texts that underlie these religions, the history of caste and gender inequality in India and Islamic societies, respectively, show them to have been neither inclusive nor egalitarian. It is clear

that civilisational values, in our case Indian, are far from sufficient to deliver us the rights that we seek to make our own.

Though the UN's declaration of human rights is expansive, in his speech the Vice-President took it further to include social and economic rights. It is clear that Indian civilisation has not had much success in ensuring their delivery. If any progress has at all been made in the desired direction, it has been after the adoption of a democratic form of governance; an arrangement that is distinctly non-Indian in its origins. In terms of human development, 21st century India is radically different from what it was in the 20th century. That economic inequality has steadily risen and ecological stress is written all over the country cannot take away from the fact that there has been progress of a form that has collapsed social distance. The rise to the prime ministership of India of Mr. Narendra Modi is the best testament to this. There is social churning in India, with some of it having come through affirmative action and some of it through economic transformation in which the more recent liberalisation of the economy has had some role.

However, as India has managed to shed some of the centuries old practices that maintained social distance due to caste and economic differentiation, newer axes of power have emerged. We have begun to see an unimaginable rise of violence against women and Muslims. Hardening patriarchy and Hindu chauvinism are India's unanticipated demons. These have taken us by surprise, and as a society we appear to be incapable of handling them.

### Ways to tackle intolerance

Our task of ensuring human rights in India is, however, made no more easy after rejecting the potential of civilisational values and

of the instrumentality of economic growth combined with constitutional morality in achieving such a state. While "constitutional morality", a term used by Ambedkar to appropriately reject any role for "societal morality" in the Republic, is of course a useful guide to the courts when it comes to adjudicating between individuals, it is by itself helpless in preventing acts of violence. The efficacy of constitutional provisions is entirely dependent on the government machinery entrusted to our elected representatives. An effective protection of individuals, in this case women and minorities, from acts of violence requires the power of the state to weigh in on their side. In too many cases of violence against women, Muslims and Dalits, the Indian state is distinguished by its absence.

In a recent paper Canada-based economist Mukesh Eswaran demonstrated that it is possible to understand "9/11" and home-grown terrorism in western Europe as a response to the historical wrongs inflicted on Muslim societies by Western powers, notably the invasion of Iraq. This is a useful corrective to the collective gasp of incredulity let out by Western elites when addressing the violence unleashed against them by Islamic groups. Transferring Eswaran's reasoning to the Indian context, one might argue that India should contain violence against its Muslims to ensure the safety of Hindus. But such crass instrumentalism would be unworthy of a great civilisation. We want to ensure the flourishing of all the peoples of India not out of self-preservation but because we want to be civilised. Vasudhaiva Kutumbakam, anyone?

Pulapre Balakrishnan teaches economics at Ashoka University, Sonapat, Haryana and the Indian Institute of Management, Kozhikode, Kerala

# Information at the court's discretion

The judiciary's brazen disregard for the RTI has now got a stamp of approval from a high court



ANIKET AGA

A six-year-long farce concluded at the Delhi High Court on November 21, 2017, and the Right to Information (RTI) Act, 2005 is the worse for it. At issue was the right of citizens to get information from the Supreme Court, and by implication, India's higher judiciary, which has strongly resisted the RTI. The apex court summarily rejects RTI requests, and insists that applicants exclusively request information under its administrative rules (Supreme Court Rules) framed in 1966, and re-issued with minor changes in 2014. To see why the High Court's judgment strengthens a culture of opacity in the higher judiciary, we need to delve into the Supreme Court's engagement, or rather persistent non-engagement with the RTI.

### The background

In April 2010, a former school-teacher, R.S. Misra, filed an RTI request with the Supreme Court Registry. He had earlier sent two letters to different Justices, essentially demanding redress in a case

before the apex court that he had already lost. In an evident attempt at using RTI to fight a judicial battle already lost, he sought "action taken" reports on his letters.

The Registry could have lawfully disposed of this RTI request by simply stating that no such information was available. Instead, the Registry rejected the application, and asked Mr. Misra to apply under the Supreme Court Rules. Mr. Misra challenged this response before the then Central Information Commissioner Shailesh Gandhi.

In May 2011, appearing before the Commission, the Additional Registrar of the Court, Smita Sharma objected only to the use of the RTI, and not to Mr. Misra's request per se. She maintained that the Supreme Court Rules alone governed access to the information he had sought. Claiming that the Rules were consistent with the RTI, she asked Mr. Gandhi to reinstate the primacy of Supreme Court Rules over the RTI, in line with previous Central Information Commission (CIC) rulings.

However, as Mr. Gandhi noted in his decision, the Supreme Court Rules undermined the RTI in four key ways. Unlike the RTI Act, the Rules do not provide for: a time frame for furnishing information; an appeal mechanism, and penalties for delays or wrongful refusal of information. Finally, the Rules



also make disclosures to citizens contingent upon "good cause shown". In sum, the Rules allowed the Registry to provide information at its unquestionable discretion, violating the text and spirit of the RTI. Consequently, Mr. Gandhi held that the Supreme Court Rules are inconsistent with the RTI Act, and that the Registry must respond to applications within the RTI framework alone.

### A ruse

This was a landmark ruling. As many applicants, which includes this writer, have found, the apex court's insistence on its own Rules for providing information is a ruse. Between 2014 and 2016, I attempted to access documents related to a disposed public interest litigation, filing requests under the

Supreme Court Rules and the RTI Act. The Registry rejected both requests. The Additional Registrar's office told me quite transparently over the phone that it would simply not release the information.

Returning to Mr. Misra's case, faced with an adverse order from Mr. Gandhi, the Registry filed a writ petition before the Delhi High Court in 2011, prolonging the matter. In essence, the Registry turned Mr. Misra's request into an RTI v. Rules contest, as it has done for others too.

Justice S. Muralidhar of the High Court stayed Mr. Gandhi's decision immediately without addressing Section 23 of the RTI Act, which forbids courts from entertaining "any suit, application or other proceeding in respect of any order made under this Act". The High Court did not justify how its writ jurisdiction applies to an appeal against a CIC order.

### Another ruling

Six years on, this November, Justice Manmohan overturned Mr. Gandhi's order. His judgment relies on four planks: Mr. Misra's application went beyond the RTI; Supreme Court Rules are consistent with the RTI Act; the RTI Act cannot apply to the Supreme Court's judicial functioning; and Mr. Gandhi should not have deviated from previous CIC rulings.

The first point is irrelevant, as the Registry could have disposed of the application under the RTI Act in 2010 itself. The issue before the High Court was the Registry's refusal to abide by the RTI Act. The second and third points are in contradiction. If the RTI Act and Supreme Court Rules are mutually consistent, then why should the Registry privilege the latter? Moreover, Justice Manmohan did not examine the obvious contradictions between the two. And if the RTI does not apply to judicial functioning, then it is inconsistent with the Supreme Court Rules, and must be declared ultra vires or an overreach. The final point is even more untenable. The CIC is not a court of record and Commissioners are not beholden to prior decisions.

The nub of the matter is that the Supreme Court Registry wants to provide information at its absolute discretion. Its brazen disregard for the RTI has now got a stamp of approval from a court of record. The RTI has suffered another blow, not from the berated political class or the much maligned babus, but from the "gems of institutions" enjoined to protect the law.

Aniket Aga is an Assistant Professor at the University of Michigan Ann Arbor. E-mail: aaniket@umich.edu

## 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.

### Invoking Pakistan

The Prime Minister, Narendra Modi, appears to have played his cards wrong by linking the "low profile" meeting in Mani Shankar Aiyar's house to the Gujarat elections. The gaffe has naturally deflected public attention from the main issues. The debate is now around the Centre insinuating Pakistan's involvement, polarising Gujarat and making remarks against a minority community. On a different point, it is surprising that the media too has not considered it necessary to grill the people involved in the "get together" and bring out the crucial facts regarding the agenda and outcome of the meeting. There seems to have been no news about such a meeting till the Prime

Minister referred to it. Even if he has tried to gain political mileage out of it, the people involved are answerable to the nation.

R. RAJARAMAN,  
Bengaluru

It is unfortunate that the Prime Minister appears to have fallen into a trap of political compulsions. Going by his statements, one is made to feel that he is behaving more like a Chief Minister than the Prime Minister of the country. Even if there were inputs about such a meeting of personalities from India and Pakistan, as a Prime Minister, with all the resources of agencies at his disposal, he should have waited a little more to ascertain the details and then acted. The move by former Prime Minister Manmohan Singh in seeking an apology has

meaning and is logical.

A.G. RAJMOHAN,  
Anantapur, Andhra Pradesh

It is shameful that senior leaders of the national parties have stooped to the level of levelling wild allegations in matters totally unrelated to the Assembly election in Gujarat. The "dinner party" that has triggered the latest round of political calumny has resulted in many valid questions. Apart from the controversy over the timing, venue and background of this "meeting", which seems to have had diplomats from across the border, the major point of concern is around the violation of normal protocol. If it was "normal practice" to hold such meetings, why was it hushed up and then acknowledged after the media highlighted

it? A communal slant is also apparent.

B. GURUMURTHY,  
Madurai

### New role

At last the reluctant prince, brimming with confidence after being elected unopposed as president of the party appears to have brought some cheer to the rank and file, but whether his elevation will change the fortunes of the Congress is still unclear as he does not seem to have a clear political vision ("Rahul Gandhi era begins for Congress", December 12). As Rahul Gandhi is still unused to the rough and tough of politics, it may not be smooth sailing. It is perhaps wise that he seems to have given up the idea of looking only towards youth within the party in trying to rebuild the party. He has to show without a

shadow of a doubt that the party has changed for the better and will follow democratic norms.

K.R. SRINIVASAN,  
Secunderabad

The Oxford English Dictionary defines "era" as a "system of chronology reckoning from a particular event; a long and distinct period of history". One needs to wait and see whether Rahul Gandhi elevates or erases the Congress party.

VEDANAYAGAM M.,  
Coimbatore

### Not a bond

Many readers like me were upset to come across the

Magazine article, "One life, many partners" (December 12), which we believe will hasten the moral fall of our society, under the guise of modern thought.

The Hindu commands respect from a cross-section of society, and to present 'perverted thoughts' is regrettable. Such acts may have been practised in history at some point in time, but should not occupy mainstream thinking. Why should the mainstream media start encouraging degeneration which will impact the next generation?

K.S. VARADARAJAN,  
Palakkad

MORE LETTERS ONLINE:  
www.hindu.com/opinion/letters/

CORRECTIONS & CLARIFICATIONS: "What will be Sonia's responsibility?" (Dec. 12, 2017) erroneously said Sonia Gandhi decided not to accept the Prime Minister's office in 2009. It should have been 2004.

The Reader's Editor's office can be contacted by Telephone: +91-44-28418297/28576300; E-mail: readerseditor@thehindu.co.in