



Law and lawmakers

SC is right in saying legislative privilege cannot be a cover for crimes in the House

The Supreme Court ruling that legislative privilege cannot be extended to provide legal immunity to criminal acts committed by lawmakers ought to be welcomed for two reasons. It lays down that legislators charged with unruly behaviour that results in offences under penal laws cannot be protected either by their privilege or their free speech rights. Second, the decision revivifies the law relating to a prosecutor's role in withdrawing an ongoing criminal case. The LDF government in Kerala has suffered a setback as it strongly favoured the withdrawal of cases against six members sought to be prosecuted for creating a ruckus in the Assembly on March 13, 2015, when they boisterously tried to interrupt the presentation of the Budget presented by the erstwhile UDF regime. Their action resulted in destruction or damage to some items, amounting to a loss of ₹2.20 lakh. Based on the Assembly Secretary's complaint, the police registered a case and later filed a charge sheet against them for committing mischief and trespass under the IPC and destroying public property under the Prevention of Damage to Public Property Act, 1984. This year, the Chief Judicial Magistrate, Thiruvananthapuram, had rejected the application by the public prosecutor for withdrawal from prosecution, an order that was later affirmed by the Kerala HC. It is not surprising that the apex court concurred with these decisions, as it is indeed an unacceptable argument that the alleged vandalism took place as part of the legislators' right to protest on the floor of the House.

Kerala CM Pinarayi Vijayan, who has rejected calls for asking his General Education Minister, V. Sivankutty, one of the accused, to resign and face trial, maintains that the matter ought to have been seen as a political protest and something that should not have been taken into the domain of criminal prosecution. He is indeed right when he says that courts ought not to re-appraise a prosecutor's decision to withdraw a case, and that they should only examine whether the prosecutor had applied his mind independently. However, there is equal force in the proposition that it is the court's duty to decide whether the withdrawal is in good faith, is in the interest of public policy, and is not aimed at thwarting the process of law. Legislative privilege and parliamentary free speech are necessary elements of a lawmaker's freedom to function, but it is difficult to disagree with the Court's conclusion that an alleged act of destroying public property within the House cannot be considered "essential" for their legislative functions. It is indeed quite legal for Mr. Sivankutty to remain in office, as he is yet to be convicted. However, he will be well-advised to take a cue from several recent precedents of those in ministerial positions stepping down until their names are cleared by due process.

Patchwork progress

Move to hasten insured bank deposits' repayment need not have taken this long

The Government hopes to ring in fresh changes to the 1961 Deposit Insurance and Credit Guarantee Corporation law in the monsoon session, after the Cabinet nod this week. From savers' perspective, the most significant modification on the anvil is a 90-day deadline for the Corporation (DICGC) to remit the insured deposits of customers in troubled banks. As per the plan, once the RBI imposes curbs on a bank, the clock will start ticking and by the 91st day or thereabouts, account holders will get their outstanding balance back with a cap of ₹5 lakh. While Finance Minister Nirmala Sitharaman said this will not apply retrospectively, she did indicate that this would apply to cases of lenders already under a moratorium. In the last two years, Yes Bank, Lakshmi Vilas Bank and the PMC Bank, have faced such a bar on depositors seeking to withdraw. PMC Bank accounts still face such curbs, even as savings parked in other co-operative lenders that have gone under continue to elude their rightful owners. The Minister said it normally takes eight to 10 years for insured deposits to be forked out, from the time a bank hits a hurdle and myriad conditions are imposed on withdrawals. But these delays were well-known last year too, when the insured deposit amount was raised to ₹5 lakh from ₹1 lakh laid down in 1993.

Making incremental changes in quick succession suggests a piecemeal approach to governance rather than a system-wide view, even though the government stressed it has been working 'overtime' to resolve the PMC Bank crisis. Nevertheless, given the rising distress in households and the downward momentum in savings levels due to the pandemic, this change must be allowed to make it through the din in Parliament. As per RBI data, ₹76.21 lakh crore or almost 51% of deposits are now insured, but 98.3% of all accounts have balances of ₹5 lakh or less so they are fully insured. This can be a source of renewed comfort for people in the banking system, grappling with bad loans, dwindling deposits and a still-fledgling insolvency framework. It is important for financial stability that people feel it is safer to park their money in a bank than stashing it under a mattress. For several people with limited financial literacy and access to retirement savings instruments, with lifetime earnings (possibly over ₹5 lakh) parked in a neighbourhood co-operative bank, this would still be a less than perfect outcome. The RBI needs to up its oversight game, and the Centre, which has recently made the Department of Cooperation a full-scale ministry, needs to allow it to do so. Moreover, just as the latest amendments have an enabling provision to raise the premium paid by banks to the DICGC in future, there should have been one to raise the insured deposit limit in line with inflation and per capita income trends.

Visualising the Himalaya with other coordinates

Looking at it only through the prism of geopolitics and security concerns ignores its other crucial frameworks



SWATAHSIDDHA SARKAR

Conceptual audit of questions related to geopolitics and security concerns while talking or thinking about the Himalaya is perhaps long overdue. There is no gainsaying the truth that we have been examining the Himalaya mainly through the coordinates of geopolitics and security while relegating others as either irrelevant or incompatible. In a certain sense, our intellectual concerns over the Himalaya have been largely shaped by the assumption of fear, suspicion, rivalry, invasion, encroachment and pugnacity. If during colonial times it was Russophobia, then now it is Sinophobia or Pakistan phobia that in fact determines our concerns over the Himalaya. Within the domain of geopolitics and security, conceived by that which lies outside the Himalaya, a process that decolonial scholars such as Pauline Hountondji refers to as extroversion. Ironically it is the Delhi-Beijing-Islamabad triad, and not the mountain *per se*, that defines our concerns about the Himalaya. Are we not really leading Himalayan studies towards the dead end of violent intellectual pursuits?

A national Himalaya

If extroversion in the field of knowledge production has resulted in academic dependency, in the case of Himalayan studies it has given birth to the political compulsion of territorialising the Himalaya on a par with the imperatives of nationalism. Thus the attempt to create a national Himalaya by each of the five nations (Nepal, Bhutan, India, Pakistan, and Tibet/China) that fall within this transnational landmass called the Himalaya. The National Mission on Himalayan Studies, for example, under the Ministry of Environment, Forest and Climate

Change, Government of India, is a classic case in point that provides funds for research and technological innovations, but creating policies only for the Indian Himalayan Region (IHR). The Mission document avowedly claims: "The Government of India has come up with this Mission in recognition of the fact that the Himalayan Ecosystem is important for ecological security of India (https://bit.ly/3x8dOMB)". Thus, comes the Indian Himalaya. It reminds us of that ancient parable where a few blind men were trying to fathom how huge an elephant was by touching only the different parts of its body.

By considering cartographic fixations as the natural limit of scholarship, we have overburdened Himalayan studies with the concerns of States in place of people, culture, market or ecology. India's understanding of the Himalaya is informed by a certain kind of realism, as the Himalaya continues to remain as a space largely defined in terms of sovereign territoriality, in contrast to alternative imaginations such as community, ecology or market. It may be perceived that such an alternative conceptualisation of Himalaya is not only possible but also necessary. But can we really work out such an alternative imagination especially when we find territorialisation and securitisation to be the two dominant modes through which the Himalaya is imagined both in the official context, and, by extension, in popular discourses.

A historical logjam

The Himalaya's territorialisation bears a colonial legacy which also sets up its post-colonial destiny as played out within the dynamics of nation states. The arbitration of relationships between and among the five nation states falling within the Himalayan landmass has failed to transcend the approach derived from the given categories of territoriality, sovereignty and difference. As such, the fact that the lines of peoplehood and the national border, especially within the context of the Himalaya, never



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coincided, is bound to give birth to tensions while working out projects predicated upon national sovereignty. Given this historical logjam, what we can only expect is the escalation of territorial disputes as the immediate fallout when infrastructure development projects in the border areas are adopted by constituting nation states to secure their respective territories falling within the Himalayan landmass.

Borders and their differences

It needs to be recognised that political borders and cultural borders are not the same thing. Political borders are to be considered as space-making strategies of modern nation-states that do not necessarily coincide with cultural borders. In other words, while a statist imagination has a telling effect on the way a border is understood in political terms, culture in that sense defies the (political) idea of border or at best considers it as permeable, penetrable, connective, heterogeneous and one that can be accounted for mainly through dreams, passions, flows and livelihoods. The singular statist conception of a political border would then appear to become a 'polysemic' or even 'rhizomatic' when viewed in cultural terms, and, by extension, in terms of trade and ecology or the environment.

It needs to be realised that human security cannot be effectively appreciated through the paradigm of sovereign territoriality, although state systems operating within the Himalaya have failed to devise any other framework to grapple with the issue of security. More often than not, the state has dominated the agenda of defining

the domain of non-traditional security (such as human rights, cases of ecological devastation, climate change, human trafficking, migration, forced exodus of people, transnational crime, resource scarcity, and even pandemics) besides setting the tone of an approach to handling traditional security threats (such as military, political and diplomatic conflicts that were considered as threats against the essential values of the state, territorial integrity, and political sovereignty). Interestingly enough, it has often appeared as a fact that the measures to deal with traditional security threats from outside have in fact triggered non-traditional insecurities on several fronts on the inside.

Understanding the Himalaya

Keeping these arguments in order, it is proposed that there could be several alternate ways of reading the geopolitical and the security concerns of the Himalaya and if the statist meaning (territoriality, sovereignty and difference) is privileged over and above those of the anthropological, historical, cultural, and ecological ones, it would continue to reflect a set of mental processes predicated on a certain conception of spatial imagination that could be anything but 'unHimalayan' or, for that matter, antithetical to the very idea of the Himalaya itself. How long should one go on referring to the Himalaya as the one of the largest biodiversity hotspots? Or as the largest water tower of Asia? Or as a zone that is culturally and linguistically diverse, sharing a common historical pool of resources, communities, cultures, civilisations and memories, and susceptible to climate change and ecological vulnerabilities? When would these terms of references be predicated in our scholarly, and, by extension, pedestrian, attempts to understand the Himalaya and produce impactful policy research on the Himalaya?

The argument is simple. The Himalaya being a naturally evolved phenomenon should be understood through frameworks that

have grown from within the Himalaya. The Himalaya needs to be visualised with an open eye and taken in as a whole instead of in parts unlike the ancient parable of the efforts of the blind men in trying to understand the elephant in parts. The Himalaya is a space whose history defines its geography rather than the other way round. Since histories are always made rather than given, we need to be careful about what kind of Himalayan history we are trying to inject or project in the way we imagine the Himalaya. Viewing the Himalaya as a space of political power and, by extension, through the coordinates of nation states epitomising differential national histories is a violent choice, which actually enriched ultra-sensitivity towards territorial claims and border management.

A road map of other routes

In contrast to this, if we are ready to consider the Himalaya as a space that is deeply embedded in human subjectivities, we can possibly come out of the grip of a national absolute space, which is actually necessary if we are to address the concerns of trade, commerce, community, ecology and environment – issues which are no less important when we are to think of securing livelihoods, cultures and the environment in the Himalaya. In fact, the road map of all these alternative routes – trade, community, environment – are located beyond the absolutist statist position. The need is that these alternative imaginations of security should be given the required space in the way policy making, state-building strategies and diplomatic relations are worked out in relation to the Himalaya. The time has come when we need to take position between the Himalaya as a national space and as a space of dwelling instead of avoiding our encounter with this ambivalence.

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A Hindu-Muslim dialogue without conditions

A genuine dialogue the RSS chief hopes to initiate must also recognise that India belongs equally to all communities in it



A. FAIZUR RAHMAN

In what has been widely perceived as a gesture of conciliation towards Muslims, the Rashtriya Swayamsevak Sangh (RSS) chief Mohan Bhagwat said in a recent speech (https://bit.ly/3j2Oe6t) that Hindu lynching minorities for cow slaughter were acting against Hindutva, and those asserting that Muslims have no place in India were not Hindus. He also tried to allay Muslim fears about the bleak future of Islam in India saying the religion was not in danger, and asked Muslims to help the RSS in making the country a world leader (*vishwaguru*) on the basis of the fact that all Indians, being the descendants of common ancestors from the last 40,000 years, have the same DNA.

The viewpoints

Muslim opinion makers either brushed off Mr. Bhagwat's remarks as "mere rhetoric" because "RSS leaders often spoke with a forked tongue", or tried to mollify him by saying that "if there is someone who can initiate perestroika in the RSS, it is Bhagwat" because, "in a gradual manner he has been trying to change the Sangh's attitude towards Muslims".

If the untenability of the first viewpoint is based on a dismissive distrust of the RSS, the second amounts to nothing more than complaisant backslapping. Such facile responses, to say the least, exude an attitude that is not conducive to a genuine Hindu-Muslim

dialogue the RSS chief hopes to initiate.

To his credit, the RSS chief spoke with an open mind and wanted the mistrust (*avishwaas*) between Hindus and Muslims to be understood and dispelled in an atmosphere of forthright outspokenness (*khari khari baat ko jaisa hai waisa samajna*). However, communal unity (*ekta*) through such a dialogue was possible only if Muslims acknowledge India as their motherland; accept its traditions and culture (*parampara, sanskriti*), and honour their common ancestors (*samaan purvaj*).

Mr. Bhagwat virtually rendered these three prerequisites a *sine quo non* for establishing one's Indianness with the condescending summation: *baaqi hamaare yaahaan sab swatantrata hai* (there is freedom for everything else in our land).

A melding

This attempt to meld Indianness and Hinduness together is eerily similar to V.D. Savarkar's credo which defines a Hindu as one who regards the entire subcontinent as his fatherland (*pitrubhu*); descended of Hindu parents, and considers this land holy (*punyabhumi*). For Savarkar these three conditions signified a common nation (*rashtra*), a common race (*jati*) and a common culture (*sanskriti*), respectively, and together they form the foundation on which Hindutva rests.

Several assertions of Mr. Bhagwat reflected this attitude. For instance, his full statement on cow vigilantism was *Hindustan Hindu Rashtra hai, gaumata puja hai; lekin lynching karne wale yeh Hindutva ke khilaf jaaraha hain* (India is a Hindu nation, the cow is worthy of worship; but the lynchers



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are going against Hindutva).

He also quoted the RSS founder K.B. Hedgewar as stating that Hindus were wrong in blaming the British and the Muslims for their pitiable state (*durwasta*) because, despite being the owners (*maalik*) of their country, and their large numbers, if Hindus could be reduced to such a state then there must be some shortcoming (*kami*) in them that needs to be addressed.

This, Mr. Bhagwat said, is how the RSS conceptualises the situation and therefore, in its view the minorities are not the reason for the miserable condition of the Hindus in a Hindu country (*Hinduon ke desh mein*).

Portraiture of India

Had the Muslim commentators listened to Mr. Bhagwat's 34-minute speech made in Ghaziabad – instead of relying on selective versions of it publicised by the media – they would perhaps have challenged, in the spirit of the candidness he suggested, the portraiture of India as indigenously Hindu with a non-native Muslim population.

Nonetheless, was Mr. Bhagwat trying to say that Muslims, even if they are "our own brethren" (*hamaare apne bhai*) now, are outsiders?

But he did want the people to

know that Islam's entry into India was aggressive (*woh aakramakon se saath aaya*), but even so, all those who came to our land are still here coexisting peacefully (*hamaare yaahaan jojo aaya hai woh aaj bhi maujood hai*).

Islam in the subcontinent

Mr. Bhagwat should have known that Islam in the subcontinent predates the forays of invaders such as Mahmud of Ghazni, Muhammad Ghori, and Muhammad bin Qasim who captured Sindh and Multan from Raja Dahir around 711 CE. It was around 630 CE that Islamised Arab merchants started arriving in the coastal regions of Konkan-Gujarat and Malabar in continuation of the trade links they had with India from pre-Islamic times. The cordiality of this transactive relationship was such that it resulted in the spread of Islamic culture and religion in India.

Thus, most Indian Muslims today are the descendants of the locals who converted to Islam and, therefore, they have always considered India their motherland and respected it traditions, culture, and diversity. The ultimate proof of this patriotism was demonstrated when they chose India over Pakistan after Partition.

But it would be unfair to expect this loyalism to be rooted in the subliminal recognition of an autochthonous Indian race that magnanimously "accommodated" them. For there is no evidence to show that such a race existed in India, nor are the Muslims aliens.

Researcher Tony Joseph, in his engrossing book *Early Indians: The Story of Our Ancestors and Where We Came From* and subsequent articles, has shown that Indians are a multi-source civilisation who draw their cultural

impulses, traditions and practices from a variety of hereditaries and migration histories. He calls the earliest direct ancestors of people living in India today, the 'First Indians'. They were the descendants of the Out of Africa (OoA) migrants who arrived here about 65,000 years ago. The First Indians were later joined by Zagrosian herders from Iran with whom they formed the Harappan civilisation.

After 2000 BCE came the Aryans, the Austroasiatic and Tibeto-Burman-language speakers, and, much later, the Greeks, the Jews, the Huns, the Sakas, the Parsis, the Syrians, the Mughals, the Portuguese, the British, the Siddis – all of whom left small marks all over the subcontinent.

In short, says Mr. Joseph, almost all the population groups of India carry 50-65% of their ancestry from the First Indians, no matter where in the caste hierarchy they stand, what language they speak, which region they inhabit or what religion they belong to.

This being the truth, India cannot be spoken of in terms of *Hinduon ka desh* (Hindu country) or *Musalmaanon ka desh* (Muslim country). It belongs equally to all communities living here, and as pointed out by the RSS chief himself, India being a democracy cannot countenance the dominance of Hindus or Muslims.

Likewise, any Hindu-Muslim dialogue must be unconditional and take place in an atmosphere of peace and harmony. In Mr. Bhagwat's own words: *Darke maare ekta hona nahin hai* (Let there not be unity out of fear).

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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.

Intentional act

The murder of an Additional Sessions judge in Dhanbad in broad daylight strikes at the root of democracy (Page 1, July 30). It is another instance of judicial officers facing grave threats, attacks and allurements for handling cases with political dimensions or wider

ramifications. It is an irony that security for judicial officers is unsatisfactory and that they have to rely on the executive and law enforcement machinery.

V. JOHAN DHANAKUMAR,
Chennai

■ The citizen's last bastion of hope rests with the judiciary. The role of judges is even

more crucial in the India of today. The incident is a threat to the independence of our judiciary. If we cannot protect our judges, then how can we protect our democracy?

PANKHURI KAUSHIK,
Karnal, Haryana

■ The main blame for failure of justice lies with the illegal

and impermissible political pressure on investigation and prosecution. Press reports point to such possibilities in the present case also. Is it whither our law and order system? The only solace this time is the *suo motu* intervention by the higher judiciary.

P.R.V. RAJA,
Pandalam, Kerala

Education in Japan

As a student of Class 12, I felt I have done nothing in my school life after reading the article, "Japanese education spells holistic development" (Editorial page, July 29). I have not even planted a tree on my own when, in contrast, Japanese primary students spend quality time with nature and have a

nature notebook. Moral education is very important but in our country, teachers cover the subject more out of a necessity to cover the syllabus. The Government needs to make changes to the education policy.

P.S. RAJAGOPAL,
Chennai

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