



Pursuing post-poll truth

Court order on CBI probe is a blow against violent electoral triumphalism in West Bengal

Political violence has long been a feature of West Bengal politics. Whether it is due to a sense of mass empowerment, or an outcome of political awareness, or the partisan nature of electoral politics, the phenomenon has been a subject of debate as well as a cause for concern. Post-election violence, however, stems from the victor's sense of entitlement and triumphalism, making it more condemnable and far less spontaneous than the frequent confrontations that mark the State's political scene. The latest round of violence broke out soon after the declaration of results of the State Assembly elections on May 2. The Calcutta High Court has ordered a Central Bureau of Investigation (CBI) probe into incidents of rape and murder that took place during this post-poll violence, while other incidents will be probed by a special team of State police officers. Both the probes will be under the court's supervision. The verdict by a five-judge Bench is a welcome denouement to days of fierce recriminations by the ruling Trinamool Congress and the Opposition led by the Bharatiya Janata Party over the incidents. It is a reflection of the state of affairs in the State that there is a dispute over how bad the violence was and how long it lasted. To make matters worse, the Mamata Banerjee government claimed that the violence was brought under control as soon as the party assumed office on May 5, giving the impression that three days of mayhem brooked no response from the police.

The court's decision to get the National Human Rights Commission to form a panel, including representatives of the State Human Rights Commission and the State Legal Services Authority, to make a field assessment was contested by the State government, but the report the exercise yielded confirmed large-scale and widespread violence, much of it by ruling party supporters against their political adversaries. The main judgment by Acting Chief Justice Rajesh Bindal has explained the reasons for handing over the probe to the central agency: the lack of concrete action, the absence of first information reports, or diluted ones registered after a committee had pointed out such cases, and the tendency to downplay many cases. Further, when faced with allegations of police apathy and inaction, only an investigation by an independent agency will inspire confidence. In a separate opinion, Justice I.P. Mukerji said that there was nothing to show that the ruling party intended to promote political violence, but agreed that the CBI probe was needed to ensure a fair investigation into heinous crimes. The State government may appeal against the verdict, but the doubt cast on the ruling party's commitment to the rule of law is genuine. An impartial investigation may not only result in credible prosecutions but also be a much-deserved blow against the culture of violence and post-election triumphalism in West Bengal.

Curbing Delta

Increasing vaccination and monitoring of new variants are essential in fighting the pandemic

The overall number of coronavirus cases in India is on a downward trajectory though around 35,000 cases continue to be added almost daily. Nearly three in four of these infections are from Kerala and Maharashtra with the former — once heralded as the model State in tackling the pandemic — contributing close to 60% of the national total. There may be several reasons why this is the case and one of the conjectures is that newer variants may be playing a significant role. A weekly update from the Indian SARS-CoV-2 Genomics Consortium (INSACOG), a repository of labs tasked with monitoring variants of the coronavirus, says that the Delta variant remains most responsible for the continuing spread of infections in India. The INSACOG collects a percentage of coronavirus-positive samples for analysis from all States and of the nearly 50,000 samples analysed for their genetic composition, about two thirds — 30,230 — were among the internationally classified Variant of Concern or Variant of Interest (VoC/VoI). Of these, nearly 20,000 were the Delta variant (AY.2) and about 5,000, its associated lineages (AY.1 and AY.3). Because they contain mutations that help the virus avoid detection by the immune system, the lineages of the Delta variant are driving spikes in infections worldwide. Globally, there are believed to be 13 sublineages of Delta with characteristic genetic mutations. AY.1, AY.2 and AY.3 are the predominant ones.

Concerning as this variant is, it should not be forgotten that the purpose of the existing vaccines is to prevent hospitalisation and mortality, and the limited evidence so far is that vaccine coverage has played a role in keeping hospitalisation in most States to manageable levels as well as allowing normalisation of economic activity. Unless there is a dramatic fall in susceptible hosts globally, it is unlikely that transmission will obliterate itself. India's Drugs Controller General has now approved a three-shot vaccine, ZyCoV-D, for use in those 12 and above. The interim efficacy data of this vaccine shows that it has only 66% efficacy which is lower than what most of the other vaccines delivered in their trials. ZyDus Cadila also has not published phase-3 results from the trials and so it is quite uncertain if the vaccine will meaningfully curb transmission but may well be effective in boosting India's vaccine arsenal, cutting disease and saving lives. The INSACOG still monitors too few a proportion of coronavirus samples given that India has the second highest numbers globally. Improving coverage and increased vaccination continue to remain the best bets against the pandemic.

Breaking the logjam, handing over the baton

With the Supreme Court Collegium showing the way in judicial appointments, the executive needs to match its pace



P.D.T. ACHARY

For the first time ever, the Supreme Court Collegium led by the Chief Justice of India (CJI) recommended/selected as many as nine persons at one go to be appointed to the apex court. With the appointment later of the nine judges by the President of India, barring one vacancy which arose after the Collegium met, all the nine vacancies in the Supreme Court will be filled up. The highest court in the country having its near full strength will ease the pressure on it considerably.

Much-awaited move

Every CJI during his tenure has taken up the filling up of vacancies as a matter of highest priority, but many could not succeed. CJI T.S. Thakur, in fact, broke down, in 2016, at a function attended by the Prime Minister in a rare expression of extreme anguish because of his inability or helplessness in filling the vacancies which was seriously affecting the functioning of the supreme judicial forum of the country. It is indeed a happy augury that the present CJI, Justice N.V. Ramana, could, along with his colleagues in the Collegium, select the judges within a short period of his assumption of office.

It is almost a truism that the selection of judges for appointment to the higher courts, particularly the top court is a complex exercise. After the Collegium came into existence, much to the consternation of political class, the selection of suitable judges has become most arduous in as much as the members of the Collegium have to take extra care to ensure that the process of selection remains transparent and the suitability of the persons selected at-

tracts the highest level of approbation.

Difficult task

This is by no means an easy task. The members of the Collegium are all the senior most judges who have in their own way helped shape the ethos of the highest judiciary. With their keen intellect, long years of experience at the Bench and an admirable ability to discern merit in individuals, it is a tough task to build a consensus around one person or a few persons. The CJI being the head of the Collegium, has an unenviable task in building that consensus. Therefore, it can be said without any fear of contradiction that the job of selecting as many as nine judges for appointment to the Supreme Court was done admirably well. Going by news reports, it appears that the selection process was concluded in the first ever formal meeting of the Collegium. It is a remarkable feat in itself.

As the Secretary General of Lok Sabha, I had the privilege of assisting the Presiding Officers and I witnessed close quarters the struggles the Speaker had to endure in evolving consensus even on absolutely non-partisan proposals. Justice Ramana deserves full credit for taking along his colleagues in the true spirit of being the first among equals. The latest resolution of the Collegium gave effect to the multiple judicial pronouncements of the top court on the subject, particularly in recommending three women, a feat which may not be possible to be repeated in the foreseeable future.

Article 142 (1) contains the concept of 'complete justice' in any cause or matter which the Supreme Court is enjoined to deliver upon. The citizens of the country look up to the Supreme Court for complete justice. So, while selecting a judge to adorn the Bench, the fundamental consideration should be his/her ability to do complete justice. The Supreme Court has gone into this fundamental nor-



R.V. MOORTHY

native matrix in which the whole exercise of selection of judges is performed. In the *Supreme Court Advocates-on-Record Association and Another vs Union of India* (1993), the Court spelt out the parameters within which to accomplish the task of selecting candidates for appointment to the higher judiciary. The most crucial consideration is the merit of the candidates. But consideration of merit should be done "... without giving room for any criticism that the selection was whimsical, fanciful or arbitrary or tainted with any prejudice or bias" (paragraph 330). The merit is the ability of the judge to deliver complete justice.

India's compelling realities

India is a country of bewildering diversity. In this cacophonous democracy, language, region, religion, community, caste, are all realities which the state cannot ignore while identifying people to man its various organs. The nine judges who decided the above case were quite aware of these compelling realities. So, they said, "In the context of the plurastic (pluralistic) society of India where there are several distinct and differing interests of the people with multiplicity of religions, race, caste and community and with the plurality of culture ... it is inevitable that all people should be given equal opportunity in all walks of life and brought into the mainstream so that there may be participation of all sections of people in

every sphere including judiciary". The overriding concern of the Supreme judiciary is to ensure equal opportunities to all classes of people ... be they backward classes or scheduled castes or scheduled tribes or minorities or women, ... so that the judicial administration is also participated in by the outstanding and meritorious candidates belonging to all sections of the society [and] not by any selective or insular group" (paragraph 315).

Need for transparency

India is perhaps the only country where the judges select judges to the higher judiciary. It is, therefore, necessary to make the norms of selection transparent. The Supreme Court has emphasised the need for maintaining transparency and an openness with regard to the norms of selection. In 2019, a five judge Bench of the Supreme Court, of which the present CJI was also a member, laid emphasis on this point. The Bench observed: "There can be no denial that there is a vital element of public interest in knowing about the norms which are taken into consideration in selecting candidates for higher judicial office and making judicial appointments".

Thus, the essence of the norms to be followed in judicial appointments is a judicious blend of merit, seniority, interests of the marginalised and deprived sections of society, women, religions, regions and communities. A closer look would reveal that these norms are followed in their essentiality in selecting the nine for the Bench. The selection of three women judges, with one of them having a chance to head the top court, a judge belonging to the Scheduled Caste and one from a backward community and the nine selected persons belonging to nine different States (Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Madhya Pradesh, Uttar Pradesh, Delhi and Gujarat; <https://bit.ly/385WjBp>), all point

towards an enlightened and unbiased approach of the members of the Collegium. It is also a matter of public knowledge that many of those selected have zealously upheld citizens' freedoms and public interest. The contributions of a few of them in waking up governments from their slumber in the wake of the COVID-19 pandemic is well documented. A high level of social consciousness possessed by a Judge enhances the quality of justice. The present CJI can be credited with recognising this crucial factor in the selection of judges.

Unwarranted

A needless controversy is sought to be raised by a section of the media about this round of selection citing the non-existing 'Rule of Seniority'. It is this insistence, on one single criterion, which led to the piling up of vacancies in the Supreme Court for nearly two years. The logjam of 22 months has been finally broken by the Collegium led by the CJI through a pragmatic approach. It is also significant to note that those who are complaining of omission have not alleged that the selected nine cannot do complete justice as the Constitution mandates.

There is no doubt that there are meritorious people outside this group too. But in a population of 1.3 billion, to select just nine suitable persons to man the highest judiciary is not without difficulty. Considering the merit of the selected persons, one can undoubtedly say that the Collegium has done a good job. With seven names (district judges) cleared by the Collegium for the Telangana High Court in one go, we can safely trust Team Ramana to speedily fill up all judicial vacancies. The Collegium has started doing its job. Now, it is time for the Government to match the pace and take the process of appointments to its logical conclusion at the earliest.

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In Afghan collapse, the fall of international relations

That global mediation has had a positive role in asking for a more pragmatic attitude from the Taliban is wishful thinking



RAMIN JAHANBEGLOO

The heartbreaking images of Afghans clinging on to a United States Air Force plane in Kabul, on August 16, in a desperate bid to flee Afghanistan is a reminder of the fall of Saigon, Vietnam, and the horrifying scenes of American diplomats evacuated by helicopter, leaving behind supporters to languish in re-education camps. We have the urge to ask this question: Who is responsible for the return of the Taliban and a new rise of barbarism in the name of Allah in Afghanistan?

One-sided accord

In his defiant speech justifying his Afghanistan policy, U.S. President Joe Biden conveniently omitted acknowledgement of his responsibility for the disastrous endgame. He squarely laid the blame on the Afghan government and army for all the problems. One cannot shift the blame away from the Biden administration for the current chaos in Afghanistan. But one has to recognise the fact that once the pre-

decessor administration of President Donald Trump and U.S. Special Representative for Afghanistan Reconciliation Zalmay Khalilzad signed the disastrous one-sided agreement with the Taliban, the fate of Afghanistan was sealed. It was just a matter of time. Whether keeping 2,500 personnel or 5,000 personnel or just one American soldier would have made a difference is subject to conjecture.

Lessons missed

This does not mean that the decision to withdraw American soldiers was wrong *per se*; rather, there was obviously inadequate planning in preparing the operation. As usual, many innocent people were left behind. There was certainly a moral failure in getting out as many of those Afghans who supported the U.S. intervention and military presence in Afghanistan as possible. One historical lesson that was not learned was the predictable collapse of the Afghan government. The surrender to the Taliban slowly gained pace in the months following the Doha deal in 2020, but it began to snowball as soon as Mr. Biden announced in April that U.S. forces would withdraw from Afghanistan.

But there is a second part to the debacle in Afghanistan. Surprisingly, when we think of the Tali-



AFP

ban, we have in mind a shabby army of 70,000 fervently Islamised foot soldiers confronting and defeating a modern Afghan army of 3,00,000 men. However, the world was surprised by the speed of the Taliban army in reconquering Afghanistan, from Kunduz on August 7-8 through Mazar-i-Sharif and every other provincial capital last week to Kabul on Sunday. Certainly, one of the reasons for the defeat of the Afghan army has been the poor training and corruption of the Afghan officers.

We can also add that the strategy of pushing the Taliban into the mountains and hinterlands, while securing towns and cities by the Afghan army did not work as expected. It took the Taliban only a few weeks to sweep away the Afghan army, which had been financed and trained by the United States for 20 years.

It is impossible to predict how the current situation will evolve.

But we can have a better understanding of the Taliban's violence if we go back to their history. The Taliban was a Pashtun movement which appeared in the early 1990s following the withdrawal of Soviet troops from Afghanistan in 1989.

Posing a danger

Once in power in Afghanistan, the Taliban imposed their own violent and authoritarian version of Sharia Law, exemplified by "punishments such as public executions of convicted murderers and adulterers, amputations for those found guilty of theft and imposing the all-covering burka for women. Television, music and cinema were also banned by the Taliban and girls aged 10 and over were forbidden to go to school". All these previous actions show that the Taliban will rule Afghanistan once again with extreme violence and barbarity. However, some analysts continue to believe that because of the negotiations in Doha, there is room for compromise with the Taliban and that international mediation has played a positive role in asking for a more pragmatic attitude from the Taliban. This is just wishful thinking that ignores the fact that the rule of the Taliban in Afghanistan will be a great danger for all Afghans and the neighbouring countries. Let us not forget that once

again, terrorist groups such as al Qaeda and the Islamic State will take advantage of the new rise of the Taliban to create their own power bases in Afghanistan.

Challenge for diplomacy

Last but not least, on a human level, the fate of the Afghan people under the new Taliban government is most important. One thing is certain. The sufferings of the Afghans will not end under Taliban rule. From the point of view of international affairs, it will certainly take a Herculean effort to maintain decent working relations with the Taliban. However, India, Iran, Russia, and China are hoping for stability and an end to bloodshed in Afghanistan. But the return of the Taliban will not necessarily be welcomed by all these countries despite the fact that they would rejoice at America's setback. There will also be a fear of Islamic jihadism all over West Asia, including in Turkey and in Saudi Arabia. So, all and for all, the Afghan debacle is not the story of a defeat of democracy in one country but a sign of a fiasco in international politics in general.

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LETTERS TO THE EDITOR

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Afghanistan today

The case of Afghanistan poses special challenges to progressive and democratic forces all over the world, since a foreign military presence there was always akin to an imperialistic occupation while the Taliban's takeover cannot be seen as a harbinger of justice and liberation for the people, particularly women and the minorities. It is for the United Nations to develop through detailed consensus, a policy for legal and legitimate international interventions in the country, whether through targeted sanctions or through peace-keeping military means, in all such cases where internal strife leads to unacceptable violations of human rights.

FIROZ AHMAD,
New Delhi

■ Harping on the colossal failure of the U.S. strategy serves no good as far as the U.S. is concerned or in the sorry state of affairs of Afghanistan. In the wake of the Taliban capturing Kabul, the lives of civilians are in jeopardy. Pro-Afghan countries like China and Russia have to be at their persuasive best to convince Taliban leaders to ally the fears of poor citizens and also offer help to Afghanistan to put its economy back on the rails.

RAJAMANI CHELLADURAI,
Tirunelveli, Tamil Nadu

Siblings on the warpath

Former Union Minister and Bihar Chief Minister Lalu Prasad does face a tough test as his cup of woes is now full to the brim (Page 1, "Lalu faces tough test as sons tussle over RJD leadership", August

22). Unfortunately for Mr. Prasad, he no longer has leaders of the calibre of Raghuvansh Prasad Singh to counsel him. That Tejaswi Prasad having ensured that the RJD retains its pre-eminent status in Bihar does have an edge cannot be brushed aside. It remains to be seen whether Tej Pratap Yadav can muster enough support to rock the boat or have his rebellion turn out to be a storm in a teacup.

C.V. ARAVIND,
Bengaluru

Get behind the politics

One must get behind the political motive pushing the idea of a "Partition Horrors remembrance day". What are the real motives of those who are floating the big idea? The Uttar Pradesh elections are fast approaching and the ruling party is badly in need

of emotive, evocative issues to deflect attention from horrific blunders in handling the second wave of the novel coronavirus pandemic. Though as an electoral strategy it may pay dividends, it is a communally loaded mantra fraught with the dangers of further communal polarisation. One must not forget that there were horrors on both sides. And why not also remember the horrors following the assassination of Mahatma Gandhi in 1948? Is it not fair that this 'horror day' is remembered too to bring solace to the victims? It is a pity that the lust for political power at any cost has driven leaders of political parties to turn blind to the dangerous consequences of their policies of hate.

M. JAMEEL AHMED,
Mysuru

The hospital case

This might be of interest to readers in the context of 'Madras Week'. On December 4, 1933, a parent along with his brother took his infant son to the Government Hospital for Women and Children, Egmore, Madras, for treatment. The child was just two or three days old. On December 11, the nurse in charge of the children's ward told the man that the child was cured, but before taking the child away, the father was advised to buy a piece of apparatus. The father and his brother came back to the hospital the same day to fetch the child. But they were informed that the child had been taken away by someone else. The father reported the matter to the police, but they were unable to find the child. Based on these facts, it was

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alleged that the loss of the child was due to the negligence of the "hospital authorities". This became the basis of the case, *Etti vs The Secretary of State* (1939) 1 MLJ 784, where the Madras High Court took up the question of vicarious liability of hospitals maintained out of public revenues, perhaps, for the first time in India.

Dr. K. MATTHIRAN,
Madurai

'Visit Hampi'

Vice-President M. Venkaiah Naidu's word of advice (August 22) is apt. Elders must tell children about the wonders of our monuments. In turn, they must know the depth of India's wonderful culture and heritage.

J. EDEN ALEXANDER,
Thanjavur, Tamil Nadu