

## **In the name of caste, soldiers and faith**

By Sukumar Muralidharan, April 26, 2019

Despite bans and other warnings from the Election Commission, campaign rhetoric this poll season remains divisive and inflammatory.

Back on the campaign trail after a two-day ban, Bahujan Samaj Party chief Mayawati was not holding back. The penalty imposed on her by the Election Commission of India (ECI), she declared, was an explicit affront to the Dalit identity.

Considering it was an appeal based on religious identity that had brought on her the ECI's sanction, Mayawati's invocation of the Dalit theme immediately afterwards might have seemed reckless. It turned out though, that she was on safer ground there.

Campaigning in a part of Uttar Pradesh (UP) with a significant Muslim presence, seldom reflected in the representation people of the faith secure, Mayawati urged a tactical use of voting power. A division of the community's vote, she warned, would only benefit the ruling Bharatiya Janata Party (BJP).

In what seemed an effort at even-handedness, the ECI, alongside Mayawati, also imposed a three-day campaign ban on UP chief minister Yogi Adityanath, for his play on words — Ali versus Bajrangbali — that sought to exploit a growing schism, portraying one religious faith as alien and the other as intrinsic to the land.

It could be asked if the ECI has not established a false equivalence. On one side was a politician urging the creation of an electoral bloc based on faith as a tactical means to halt a community's political marginalisation. On the other was a sense of cultural animosity being fostered with intent to assemble a majoritarian bloc that would isolate a minority faith.

The ECI clearly is uncomfortable playing referee in matters of campaign rhetoric in an election season that has brought multiple challenges. Section 123(3) of the Representation of the People Act bars appeals "to

vote or refrain from voting for any person on the ground of his religion, race, caste, community, or language”. Alongside, the “use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem” for campaign advantage, would be a corrupt practice.

By these criteria, Prime Minister Narendra Modi has himself served up a sufficient number of rhetorical tropes to keep the ECI busy. When his main competitor, Rahul Gandhi of the Congress, chose to hedge his bets by contesting the Wayanad seat from Kerala aside from his customary Amethi, Modi suggested that the choice of seat was dictated by the “majority being in minority” there.

On a campaign visit to Kerala, Modi swore to protect the faith of the people, in an evident reference to divisions over the entry of menstruating women in the Sabarimala shrine. In between, he condemned the Congress for smearing Hindus with the accusation of terrorism, and urged people of that faith to avenge the collective insult.

Modi’s repeated suggestions that loyalty to the men in uniform could be expressed by voting for him, has caused great disquiet, not least among retired armed forces personnel. If the use of the national flag or emblem as a campaign prop is defined as a corrupt practice, the armed forces are not specifically mentioned, perhaps because of a widely respected consensus that they will not be used as political pawns.

Union minister Maneka Gandhi, meanwhile, muddied the waters further, with her warning that people of the Muslim faith would gain no favours if they declined voting for her. This was stepping perilously close to the line as a corrupt practice, while also lending strength to the most unflattering descriptions of Indian democracy as a process of dispensing patronage.

The judicial orthodoxy on these matters was set in 1995 in two rulings by the Supreme Court (SC) involving Shiv Sena legislators from Maharashtra, Yeshwant Prabhoo and Manohar Joshi. Both had been disqualified by the Bombay High Court — Prabhoo after winning his seat in a 1987 by-election and Joshi after the 1990 general election — on grounds of corrupt electoral practices. By the time the matter reached the Supreme Court, Joshi had won re-election in 1995 and assumed office as Maharashtra’s chief minister. Prabhoo had retired after retaining his seat in 1990 and serving out a full term in the state assembly.

In two judgements that still confound the most patient efforts at parsing, the SC turned down Prabhoo's appeal while upholding Joshi's. Far from seeking to establish a consistent standard, the court's main concern seemed to avoid being drawn into electoral politics. It is a sense the author of the two judgements, Justice JS Varma, expressed in other judgements too, notably the landmark 1994 case of SR Bommai versus the Union of India (over the misuse of Article 356, which allows the imposition of President's rule in states).

Hearing a plea for revisiting the Joshi-Prabhoo judgements in 2017, the SC observed that election campaign appeals couched in religious identity are "evil", but declined to take up the petition. And that essentially is where it will rest until politics comes up with a campaign idiom that stresses hope and inclusion, rather than rancour and exclusion.

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