



## Back to life

Belated acquittal of death row convicts highlights the need to junk the death penalty

It is a tale of Kafkaesque horror. Six members of a nomadic tribe spent 16 years in prison in Maharashtra; three of them were on death row for 13 of these years, while the other three faced the gallows for nearly a decade. One of them was a juvenile at the time of the offence. And all this for a crime they did not commit. The only silver lining for the six convicts is that even though 10 years had elapsed since the Supreme Court imposed the death penalty on them, the sentence was not carried out. Hearing on their review petitions became an occasion for another Bench of the Supreme Court to revisit the 2009 verdict. A three-judge Bench has now found that unreliable testimony had been used to convict the six men. One of the two eyewitnesses had identified four others from police files as members of the gang that had raided their hut in 2003, but these four were not apprehended. The gang had stolen ₹3,000 and some ornaments, killed five members of the family, including a 15-year-old girl, who was also raped. It is possible that the heinous nature of the crime had influenced the outcome of the case. The belief that condign punishment is necessary for rendering complete justice could be behind courts brushing aside discrepancies or improvements in the evidence provided by witnesses. On a fresh hearing of the appeals, the court has concluded that the accused, who were roped in as accused in this case after being found to be involved in an unrelated crime elsewhere, were innocent.

The case, in itself, holds a strong argument against the retention of the death penalty on the statute book. Had the sentence against these six been carried out, the truth would have been buried with them. In recent years, the Supreme Court has been limiting the scope for resorting to the death penalty by a series of judgments that recognise the rights of death row convicts. A few years ago it ruled that review petitions in cases of death sentence should be heard in open court. In a country notorious for “the law’s delay”, it is inevitable that the long wait on death row, either for a review hearing or for the disposal of a mercy petition, could ultimately redound to the benefit of the convicts and their death sentences altered to life terms. In a system that many say favours the affluent and the influential, the likelihood of institutional bias against the socially and economically weak is quite high. Also, there is a perception that the way the “rarest of rare cases” norm is applied by various courts is arbitrary and inconsistent. The clamour for justice often becomes a call for the maximum sentence. In that sense, every death sentence throws up a moral dilemma on whether the truth has been sufficiently established. The only way out of this is the abolition of the death penalty altogether.

## Wiggle space

SEBI’s new rules to protect those investing in liquid mutual funds are not tight enough

According to new regulations issued by the Securities and Exchange Board of India (SEBI), liquid mutual funds holding debt securities with a maturity term of more than 30 days will have to value these securities on a mark-to-market basis. Until now, liquid mutual funds could report the value of debt instruments with a maturity term of up to 60 days using the amortisation-based valuation method. Only debt securities with a maturity term of over 60 days were to be valued on a mark-to-market basis. So the new rule seemingly narrows the scope for amortisation-based valuation. Amortisation-based valuation, which is completely detached from the market price of the securities being valued, allowed mutual funds to avoid the volatility associated with mark-to-market valuation. SEBI’s new rules come in the midst of the crisis in Infrastructure Leasing and Financial Services (IL&FS) that led to various fund managers reporting the value of the same debt instruments issued by the infrastructure lender at vastly different levels. The chief financial markets regulator believes that mandating mutual funds to report the value of a greater share of their holdings on a mark-to-market basis can lead to a better and more objective valuation of these securities.

By exempting securities with a maturity period of up to 30 days from mark-to-market valuation, however, SEBI may be doing no favour to individual investors. This is because the new SEBI rule gives a strong incentive for liquid mutual funds to invest more of their funds under management in securities with a maturity period of fewer than 30 days; this helps avoid the volatility of mark-to-market accounting and the need to provide a fair account of the value of their investments. What is likely is a decrease in the yields received on securities maturing in 30 days or less and an increase in the yields on debt instruments with a maturity period of 31 to 60 days. It will, however, do nothing to make investors in mutual funds become more informed about the real value of their investments. The latest SEBI rules are also in direct contrast to the usual accounting practices when it comes to the valuation of securities. Generally accepted accounting principles mandate securities with the least maturity to be reported on a mark-to-market basis while allowing the amortisation-based method to be employed to value other securities with longer maturity periods. This makes sense as the profits and losses associated with securities with shorter terms are closer to being realised by investors when compared to longer-term securities. SEBI would do well to mandate that all investments made by liquid mutual funds should be valued on a mark-to-market basis. Simultaneously, it should work on deepening liquidity in the bond market so that bond market prices can serve as a ready reference to ascertain the value of various debt securities.

# On the edge of history

Much depends on the DMK and the AIADMK holding their outright dominance in the Lok Sabha polls in Tamil Nadu



NARAYAN LAKSHMAN

As election fever tightens its grip on India, most recently the focus has been on the alliance prospects of the Bharatiya Janata Party and the Congress, as these two parties go about building bridges with powerful State-level parties. Nowhere else has this process been more complex and historically significant as in Tamil Nadu, the land of the erstwhile Dravidian movement.

Indeed, the two standard-bearers of this movement, the Dravida Munnetra Kazhagam (DMK) and the All India Anna Dravida Munnetra Kazhagam (AIADMK), have over decades had mixed feelings about ‘national parties’, which draw their strength from the ambit of New Delhi. These feelings have ranged from outright hostility to openness to forming alliances with the latter.

In its heyday, the ruling political ideology in Tamil Nadu was dominated by anti-Delhi, anti-Brahmin, anti-Hindi sentiment. The agenda of the State’s leaders remained firmly fixed on questions of State autonomy, promoting the Tamil language, and retaining a sense of distinct ethnic Tamil identity in the face of domineering impulses of a politically centralising government in New Delhi.

As the legatee of ‘Periyar’ E.V. Ramasamy and C.N. Annadurai, the late M. Karunanidhi, president of the DMK until his passing in August 2018, was very much the product of this school of Dravidianism.

Under him the DMK consolidated its base through the guiding principle of what academic Narendra Subramanian described as “assertive populism,” or bringing small propertied groups and small-scale traders of assorted middle castes under the umbrella

of resurgent Dravidianist policymaking.

**More accommodating** Nevertheless, the sharp edge of this socio-political movement was gradually blunted, especially during the final few decades of the 20th century, as Dravidianism came face to face with the federalist authority of the Government of India, which would not brook any talk of secessionism or autonomy beyond the minimal space permitted within the framework of constitutional principles.

A second factor that reshaped the terrain of Tamil ethnic nationalism was the electoral success of the AIADMK from 1977 onward. Under M.G. Ramachandran, and later Jayalalitha, this party promoted a different style of patronage distribution, which has come to be recognised as “benevolent populism”, driven by an all-powerful leader worshipped as a veritable political god. The party also stitched together a broader inter-caste coalition as the base for its campaign strategies, and arguably that heralded its successes through the turn of the century and beyond.

As this second wave of Dravidian politics took hold, fuelled in equal measure by leaders using cinema culture to spread party propaganda, and the distribution of mass welfare goods to secure basic living standards of the poorest demographic cohorts, Tamil Nadu’s polity evolved almost to the point of being an enlightened State. It seemed to have found that ideal policy mix, balancing economic growth priorities and industrialisation with the redistribution of the fruits of progress, including through the pioneering Noon Meal Scheme that simultaneously improved nutritional, educational and inter-caste harmony outcomes.

Yet it is all too well known that a dark, cancerous shadow crept across this landscape even as these remarkable progressive goals were achieved. Political leaders, for years swathed by the adu-



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lation of the masses and their party cadre, turned into robber-baron and unleashed an unstoppable culture of corruption – everything from grand larceny, loot and thuggery, to petty bribetaking and venality on a micro-transactional scale. Tamil Nadu repeatedly found mention as a poor performer in multilateral bodies reporting on transparency, accountability and corruption levels. Industries fled the State over the years, preferring the efficient regulatory climates of Andhra Pradesh, Karnataka or other parts of India.

### On fragmentation

As this generalised social reality of runaway rent-seeking gained deeper roots across the State under alternating governments of the AIADMK and DMK through the 1990s and beyond, a plethora of smaller breakaway parties emerged to the forefront within this matrix of patronage distribution, including the Paattali Makkal Katchi (PMK), Marumalarchi Dravida Munnetra Kazhagam, Tamil Maanila Congress, Viduthalaitha Chiruthaigal Katchi (VCK), Pudiyar Tamizhagam, Desiya Murpokku Dravida Kazhagam and others. Some, such as the PMK and VCK, represented the aspirations of specific caste groups. Others, such as the TMC, were based on the supporter-base popularity and political networks of individual leaders, in this case G.K. Moopanar, formerly of the Congress.

As Andrew Wyatt and C. Manikandan recently explained, “Small parties might ‘lose’ by failing to join governments in their home

State, but they can claim to ‘win’ when they join a national coalition government.” This was indeed the story of Tamil Nadu’s many smaller parties, some of which lived with the odd contradiction of being viscerally hostile to Dravidianism and its offshoots yet proclaimed that they were committed to serving the needs of the Tamil people as such.

This mode of fragmented power coexisting with outright dominance by the two major Dravidian parties continued right until 2016-18, the phase that marked the passing of Jayalalitha and Karunanidhi and thus the end of charismatic leadership of the AIADMK and the DMK, respectively. These leaders had for decades held the reins of the party organisation tight, left little space for genuine leadership to flourish in the lower rungs of the cadre, and concentrated their efforts on extracting political rents from the system, either for personal gain or for distribution of largesse that could secure even more access to official power.

### A collective future

Their passage has marked a more radical inflection point in the long arc of Dravidian politics than most might imagine. The most obvious signs of political implosion became evident in the immediate aftermath of Jayalalitha’s death: first, former Chief Minister O. Panneerselvam rebelled against the ‘main’ faction of the party being controlled by the infamous V.K. Sasikala, only to return to the fold alongside current Chief Minister Edappadi K. Palaniswami after Sasikala was jailed in the disproportionate assets case. Next Sasikala’s nephew T.T.V. Dhinakaran led a clutch of MLAs into a separate party, the Amma Makkal Munnetra Kazhagam.

Now the entire AIADMK machinery is throwing its weight behind the BJP, perhaps calculating that their potential loss of organisational capability and popularity with voters, stemming from the absence of the “Amma” factor, might be offset by sheer money

muscle that the deep-pocketed Hindutva party could bring to the table. For now, they appear to have parked to one side any unsettling questions about how a Dravidian-philosophy-based party could align itself with a saffron-rooted, north-India-based, upper-caste-favouring political entity. Indeed, in this regard they are adopting the very same opportunism that Jayalalitha displayed in 1998 and 2004, when political expediency easily trumped ideological coherence.

The DMK has similarly been floating into uncharted waters since the demise of Karunanidhi, although it had a definitive succession plan in place. The problem for this party is that its new boss, M.K. Stalin, has not yet delivered a State-level election victory – where his father succeeded and ascended the Chief Ministerial throne five times – and to that extent he remains an untested quantity politically. Some have also argued that he has failed to live up to his father’s formidable reputation as the Leader of the Opposition in the State Assembly. However, unlike the AIADMK, which may be beholden to the BJP’s financial firepower or its threats of using law enforcement agencies to do its bidding, the DMK has a more balanced relationship with the Congress and other alliance partners.

If these weaknesses within both alliances get manifested in election results in the coming months, then it could lead to a split verdict for Tamil Nadu in the Lok Sabha. This would go against the grain of the State frequently and overwhelmingly voting one of the two major Dravidian parties into power. It would also suggest that the leadership vacuum that has recently emerged has sucked the oxygen out of State politics. Only if a new crop of leadership or different parties fills this space before the Assembly election of 2021 does the State stand a chance of resuming its progressive march toward the universal betterment of its people.

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# Flying in the face of the demand for transparency

The Comptroller & Auditor General’s report on the Rafale deal is a let-down



KAPIL SIBAL

The report of the Comptroller & Auditor General (CAG) on the Rafale fighter aircraft deal throws up more questions than it answers.

This aircraft deal is referred to as an Inter-Government Agreement (IGA) – between France and India. The nomenclature itself is difficult to understand in the context of events prior to April 10, 2015 when the Prime Minister decided, in a public pronouncement, to purchase 36 Rafale aircraft manufactured by France’s Dassault.

The United Progressive Alliance (UPA) government, through a global tender, had shortlisted two fighter aircraft: Dassault’s Rafale and the Eurofighter Typhoon, which is made by four European nations. The price bid of the Rafale was found to be lower than that of the Eurofighter. The UPA then decided to negotiate the terms and conditions for the acquisition of 126 Rafale aircraft.

This was not a government-to-government (G-to-G) contract, since any contract pursuant to a global tender cannot possibly be G-to-G. No global tenders were floated when the UPA bought de-

fence equipment from either Russia or the United States; these were G-to-G contracts. Under the UPA’s 126 planes deal, 18 were to be manufactured by Dassault and the remainder, 108, were to be manufactured by the Hindustan Aeronautics Ltd. (HAL) under transfer-of-technology by Dassault.

In March 2015, Eric Trappier, the CEO of Dassault, publicly said the deal with HAL was 95% complete, with the balance to be hopefully finalised soon. But the Prime Minister scrapped this deal and instead decided to purchase 36 aircraft, excluding HAL from the transaction. The supplies were still to be made by Dassault and not the French government. Yet, the deal is referred to as an IGA and not a G-to-G.

### Akin to a new deal

Following the Prime Minister’s decision, the consequence was that all conditionalities relating to the purchase of the aircraft, including its price, were to be negotiated post his announcement, and contrary to Defence Procurement Procedures (DPP). In one sense, given the manner it was done, the purchase of the 36 aircraft was an entirely new deal. The Prime Minister’s announcement in 2015, made on French soil, put the Government of India in a very piquant situation, as it was bound by the unilateral decision of the Prime Minister. The Prime Minister’s Of-



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fice (PMO) was directly involved and interfered in the delicate negotiations that were to follow. This undermined the procedures contemplated under the DPP as well as the position of the Defence Acquisition Council (DAC), which under the DPP, was entitled to negotiate the deal. File notings that have been made public have embarrassed the PMO. Allegations of the PMO having undermined the negotiating position of the Defence Ministry ring true. In this, two features transformed the nature of the transaction: first, the inclusion of an offset partner, and second, the exclusion of HAL in the manufacturing of the remainder (the 108 aircraft).

The deal is not even an IGA, far from it being a G-to-G contract, because Dassault, a private company, and not the French government, is the supplier of the 36 aircraft. Consequently, the French government has refused to guarantee the supply of the aircraft in terms of the contract. Since Dassault was responsible for the supply, the contract should have re-

tained the integrity clause along with clauses pertaining to commissions. The clauses relating to penalties and anti-corruption should not have been excluded. The PMO, presumably, intervened to have these clauses removed. No reason has been given as to why this was done and at whose instance.

Withdrawal from the deal by the DAC would have embarrassed the Prime Minister. Therefore, the French government found it easy to reject stipulations that would later embarrass them. The guarantee for supplies was replaced by a Letter of Comfort, which in legal terms, is not enforceable. Even payments by the French government to Dassault through an escrow account was rejected, perhaps because the French did not wish to be saddled with that responsibility.

### Many faultlines

The CAG has let us down in more than one way. First, its report limits itself to the pricing issue of the 36 aircraft and concludes that the deal was 2.86% cheaper than the one which was to have been finally negotiated by the UPA. The CAG report does not disclose all the facts and on non-transparent assumptions arrived at this conclusion. It is difficult to scrutinise the rationale behind this conduct. Second, the CAG has chosen not to deal with the cavalier manner in which the Prime Minister picked 36 aircraft off the shelf. Third, the

report ignores the procedures required to be followed under the DPP of 2013.

It also chooses not to refer to the dissent notes of the Indian Negotiating Team and thus fails to provide justification for overruling them. Further, it fails to explain the reasons why the anti-corruption and other clauses were not included in the final terms of the contract. Though the CAG comments on the issue of financial impact of not providing for guarantees, it chooses not to deal with reasons why guarantees were not provided for.

What is most surprising is that the CAG seeks to criticise the UPA for choosing the Rafale but is silent on the Prime Minister’s decision to endorse the purchase of the aircraft. The objective for reducing the number of aircraft from 126 to only 36, to augment the depleting strength of the Indian Air Force, does not seem to have been achieved as the report itself concludes that the delivery schedule under the new deal is shorter only by one month when compared to the timelines under the UPA’s deal.

By not rising to the occasion, the Office of the CAG has let itself down. The CAG has gone out of its way to protect this government. It is the integrity of the office of the CAG that needs protection.

*Kapil Sibal is a Rajya Sabha MP, former Union Minister and a senior Congress leader*

## LETTERS TO THE EDITOR

Letters emailed to [letters@thehindu.co.in](mailto:letters@thehindu.co.in) must carry the full postal address and the full name or the name with initials.

### More expensive deal

As far as the Rafale fighter aircraft deal goes, the government must be more concerned about the loss of money to the public exchequer as a result of what it did rather than with the publication of the key documents (‘Exclusive’, Page 1, “No bank guarantees meant a more expensive new Rafale deal”, March 6). Transparency and accountability are salient features of a modern democracy and cannot be dispensed with even in the name of ‘national security’. The publication of the documents may have dented and damaged the

government’s image, but it has also brought us closer to truth, which is a laudable thing.

G. DAVID MILTON,  
Maruthancode, Tamil Nadu

■ The daily needs to clarify its sources so that its readers are thoroughly convinced. When it says it has had access to reports, it is incumbent to clarify the source, especially as it deals with very sensitive information.

C.M. UMANATHI,  
Marikunnu, Kozhikode, Kerala

### Abolish it

I am writing to once again renew the call for abolition

of the death penalty. I represented the six convicts (Page 1, “Six convicts on death row found innocent”, March 6). This is a historic judgment. It is the first case in India of a person whose death sentence, which has been confirmed and upheld by the full judicial process, has subsequently been found to be innocent. The judgment is also interesting because it cites a psychiatrist’s reports about the deleterious effects of the death penalty. The weakest and most vulnerable sections are too handicapped to prove their innocence. The horrific nature of crimes attracting the death penalty

arouse such revulsion and loathing as to militate against the dispassionate judicial scrutiny that is all the more necessary in such cases. This case finally proves what we always knew, but were never able to demonstrate till now: the death penalty is flawed and error-ridden in its application.

YUG CHAUDHRY,  
Mumbai

### Much to iron out

The rebuff that India experienced at the OIC’s conclave in Abu Dhabi is yet another reflection of the chinks in India’s foreign policy (Editorial page, “Fifty years apart, the story of two

OIC fiascos”, March 6). India’s relationship with almost all neighbouring countries has deteriorated. Despite the Prime Minister’s effusive diplomacy, India does not have any reliable relationships.

MANOHAR ALEMBATH,  
Kannur, Kerala

### Pollution crisis

Keeping rapid industrialisation in view, it is imperative to reduce air pollution (“Fifteen of the 20 most polluted cities in the world are in India”, March 6). Given that India is in a transitive phase of implementing pollution standard norms, it is time to

look at introducing efficient ways of transportation.

NEELESH CHATURVEDI,  
Gwalior, Madhya Pradesh

### Saving our heritage

Two interesting reports, “Presidency College’s underground secret” (Page 1, Chennai, March 5) and “The House that Chisholm built” (Page 5, Metroplus, March 4), show that a greater awareness can save many a colonial architectural treasure in Chennai. Many can be turned into money-spinning tourist sites.

TERESA ABRAHAM,  
Chennai

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