



## The Michel test case

The extradition may have been a diplomatic success, but don't tout it as a political victory

The extradition to India of British businessman Christian Michel, alleged to be the middleman in the AgustaWestland helicopters case who bribed officials to secure the deal, is a diplomatic success for a number of reasons. India's track record with securing the extradition of fugitives from justice is modest, with only about a third of all requests since 2002 being accepted. Amongst the 44 countries India has extradition treaties with, the United Arab Emirates has been the most amenable; it has deported or extradited 19 of 66 fugitives to India in the past decade and a half. A reason for the low success rate in the past is the perception that India's criminal justice system delivers too slowly. A case in point was the last high-profile case of the 1993 Mumbai blasts accused Abu Salem, who was extradited from Portugal in 2005. His trial was finally completed in 2017, when he was sentenced to life. Mr. Michel's case is also unique since he is a British, not an Indian national; and unlike similar cases in which extradition was granted, he is not wanted on serious criminal charges like murder. His extradition comes at a time when several other cases of businessmen who have fled India are pending, causing the government some embarrassment. No doubt, Mr. Michel's extradition for a case of corruption involving the previous Congress-led UPA government came at a timely juncture for the BJP-led NDA government, during the last stretch of the campaign for State elections. It is no secret that the government pursued the case of Mr. Michel single-mindedly, with the National Security Adviser reported to have made several trips to the UAE to secure the extradition.

However, it is short-sighted for the government and the ruling party to play the diplomatic success as a political victory. The government must be aware that its actions in the Michel case are under close scrutiny, not just from the UAE, whose courts deliberated for some months on whether to send him to India, but other countries where India has about 150 pending requests at present. Thus the Central Bureau of Investigation, which has received custody of Mr. Michel for five days from a special court, must take pains to adhere to internationally accepted norms of interrogation, lest it gives other fugitives fuel to oppose pleas for their extradition to India. The U.K. has also taken up strenuously its request for consular access to Mr. Michel, and New Delhi's record in fulfilling its diplomatic obligations may impact high-profile cases in U.K. courts, including Vijay Mallya's and Nirav Modi's. If handled professionally and without politicisation, Mr. Michel's extradition could reveal important leads in the helicopters case. It would also bolster India's reputation as a country serious about ensuring that justice is served, and expeditiously so.

## Uneasy truce

The U.S. action against a top Huawei executive threatens the tariff thaw with China

The 90-day trade truce between China and the United States reached over the weekend on the sidelines of the G20 meet in Argentina is already proving to be fragile. Chinese telecommunications giant Huawei's chief financial officer Meng Wanzhou was arrested recently by Canadian authorities, acting on an extradition request from the U.S. Ms. Wanzhou is the daughter of the company's founder Ren Zhengfei, a former member of the Chinese military. The arrest happened around the time U.S. President Donald Trump and Chinese President Xi Jinping met in Buenos Aires to defuse trade tensions between their countries, but news of the arrest broke only on Wednesday. Huawei at this moment has been accused of breaching American sanctions against Iran, but U.S. lawmakers have also been concerned about the Chinese government using the company to carry out spying operations on foreign soil. Last year, it is worth noting, Chinese telecom giant ZTE reached a settlement with the U.S. government over charges of exporting banned items to Iran. Markets across the world were negatively affected on Thursday as trade tensions looked to flare up once again between the world's two largest economies.

It is hard to determine whether the present U.S. action against the Huawei official is based on legitimate concerns about national security or if the U.S. has simply attacked China on yet another front in the ongoing trade war. To be sure, other countries, including Australia and the United Kingdom, have also been quite wary about doing business with Huawei due to the alleged gathering of intelligence by the company. In particular, they fear that Huawei's involvement in building their 5G network could lead to problems linked to cyber-espionage. At the same time, radical anti-Chinese politicians in the U.S. have every reason to exaggerate national security concerns simply in order to justify protectionist sanctions against Chinese companies. Huawei has clearly been seen by many as a serious threat to the global domination exerted by American technology companies. Either way, recent actions are bound to have a negative impact on U.S.-China trade ties as the Chinese will not be too happy about the continuing assault on multinational companies which have their roots in China. U.S. concerns about national security are also closely related to accusations against Huawei of violating intellectual property rights with the tacit approval of the Chinese government. The arrest might thus suggest that the U.S. may not go soft on its demand for the protection of intellectual property rights during its talks with the Chinese authorities in the next few months. With the rapid escalation in trade tensions over the year, it will take serious efforts to bring a lasting solution that is acceptable to both American and Chinese politicians.

# An invitation to corruption?

The Electoral Bond Scheme inhibits the citizen's capacity to meaningfully participate in political and public life



SUHRITH PARTHASARATHY

Early this year the government introduced an Electoral Bond Scheme purportedly with a view to cleansing the prevailing culture of political sponsorship. But the programme's failings have been so blindingly obvious, and its consequences so utterly devastating to rectitude and transparency in government, that even O.P. Rawat, who just retired Chief Election Commissioner, thought it fit to deliver a damning indictment of the scheme. "There are many grey areas in this because when there is no ceiling on party expenditure and the EC (Election Commission) cannot monitor it, how can you be sure that what is coming in is not black money as there is a secrecy of the donor," Mr. Rawat told *The Economic Times* in an interview last week. "Even foreign money can come and even a dying company can give money now... So, prima facie it appears the scheme cannot really deliver whatever it was intended to."

### Too opaque

In its present form, the scheme permits not only individuals and body corporates, but also "every artificial juridical person," to purchase bonds, issued by the State Bank of India, in denominations of ₹1,000, ₹10,000, ₹1 lakh and ₹1 crore, during specified periods of the year. Issued in the form of promissory notes, once a bond is purchased the buyer can donate it to any political party, which can then encash it on demand.

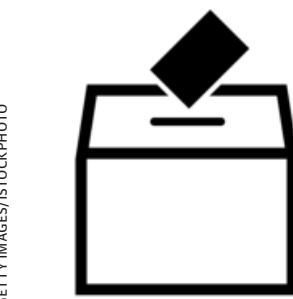
The government claims that

since these bonds are purchased through banking channels the scheme will eliminate the infusion of black money into electoral funding. But not only is this argument palpably false, as a simple reading of the scheme's terms shows us, the programme also virtually endorses corruption in political funding, as Milan Vaishnav has argued. Consider, for example, the fact that the scheme allows for complete anonymity of the donor. Neither the purchaser of the bond nor the political party receiving the donation is mandated to disclose the donor's identity. Therefore, not only will, say, the shareholders of a corporation be unaware of the company's contributions, but the voters too will have no idea of how, and through whom, a political party has been funded.

Just as damaging to the most basic democratic ideals is the elimination of a slew of other barriers that were in place to check the excesses of corporate political sponsorship. For instance, the programme removes an existing condition that had prohibited companies from donating anything more than 7.5% of their average net-profit over the previous three years. This now means that even loss-making entities can make unlimited contributions. Additionally, the requirement that a corporation ought to have been in existence for at least three years before it could make donations – a system that was meant to stop shell concerns from being created with a view purely to syphoning money into politics – has also been removed.

### Two judgments

The dangers inherent in untrammelled funding of political parties, especially by corporations, have been apparent for many years. Even as early as in 1957, in a pair of judgments outstanding in their lu-



cidity and prescience, the Bombay and the Calcutta High Courts warned Parliament of the perils in allowing companies to freely add to party coffers. It's a threat, wrote Chief Justice M.C. Chagla, of the Bombay High Court, which is likely to "grow apace and which may ultimately overwhelm and even throttle democracy in the country". The court was conscious that, given the circumscriptions of the law, it could scarcely deny, in the case before it, permission sought by Tata Iron and Steel Co. Ltd. to amend its memorandum of association, to allow the company to make contributions to different political interests. But this did not stop the court from drawing Parliament's attention to the problem.

Even H.M. Seervai, who was representing Tata, the court noted, conceded that the least the company could do was to disclose clearly in its yearly balance sheet the list of donations made by it. But, to Chief Justice Chagla, such a condition was grossly insufficient. It was imperative, he ruled, that not only the company's shareholders, but electors too must know how a party is being financed. For democracy, he believed, couldn't function unless the voters had free and complete access to information about the parties for which they were going to vote.

Only months earlier, faced with a similar petition, the Calcutta High Court had made an almost identical appeal. "To the cynic it

appears to be a plea of the company to have a legal sanction to bribe the Government of the day, to induce policies that will help the company in its business," wrote Justice P.B. Mukharji. If amendments of this kind were allowed, and if joint stock companies serve as adjuncts to political parties, he added, the "man who pays the piper will then call the tune".

In entreating Parliament to act, the judgments were recognising a bedrock principle of democracy: that public action ought to be guided by transparency and fairness. Unfortunately, however, in the years since, every effort has been made to endorse opacity in political funding. The electoral bonds scheme, which represents the latest such assault, unless immediately rescinded, may well irredeemably damage India's democratic edifice.

As petitions filed in the Supreme Court point out, the scheme suffers from at least two foundational defects. One, that it was incorporated on the back of a series of amendments made to legislation, including the Representation of the People Act, the Income Tax Act and the Companies Act, which were introduced in the form of a money bill. And two, that the scheme flouts a number of fundamental rights.

Article 110 of the Constitution allows the Speaker to classify a proposed legislation as a money bill, only when the draft law deals with all or any of the subjects enlisted in the provision. These subjects comprise a set of seven features, including items such as the imposition of a tax, the regulation of the borrowing of money by the government, the custody of the Consolidated Fund of India, the appropriation of money out of the consolidated fund, and any matter incidental to the subjects explicitly mentioned in Article 110. Hard as we might try, though, it's impossi-

ble to see how the provisions pertaining to the electoral bond scheme could possibly fall within any of these categories. The Finance Act, through which these amendments were introduced, therefore did not deal with only those matters contained in Article 110.

### Fundamental rights

The scheme is equally destructive in its subversion of the fundamental rights to equality and freedom of expression. There's no doubt that the Constitution does not contain an explicitly enforceable right to vote. But implicit in its guarantees of equality and free speech is a right to knowledge and information. Our courts have nearly consistently seen "freedom of voting" as distinct from the right to vote, as a facet of the right to freedom of expression and as an essential condition of political equality. In the absence of complete knowledge about the identities of those funding the various different parties, it's difficult to conceive how a citizen can meaningfully participate in political and public life. As Ornit Shani's wonderful book, *How India Became Democratic*, shows us, the institutionalising of equality through the principle of one person one vote, and through the creation of the universal adult franchise, was critical to building India's republican structure. When the power of that vote is diluted through opacity in political funding, democracy as a whole loses its intrinsic value.

Ultimately, therefore, to borrow from English jurist Stephen Sedley's formulation, the electoral bonds scheme suggests two possibilities: one, that the government doesn't understand the Constitution; or, two, it does, and has expressly set out to transgress it.

Suhrit Parthasarathy is an advocate practising at the Madras High Court

# End this long trauma

It is time to repeal the Habitual Offenders Act, which has only ended up re-stigmatising marginalised communities



A.P. JITHENDER REDDY

Consider this. Fifteen crore individuals, better known as the Denotified Tribes (DNT) of India, continue to be considered 'criminal by birth'.

The term, 'De-notified and Nomadic Tribes', can be traced to the Criminal Tribes Act (CTA) of 1871. The colonial government notified nearly 200 tribal communities to be hereditary criminals, cementing their societal identity as outcasts and subjecting them to constant harassment by the administration. After India gained independence, these tribes were 'de-notified' from the list of Criminal Tribes, and, hence, the term.

### Many reasons

Several reasons can be ascribed to state-sanctioned stigmatisation of the DNTs in India under British rule, including the strategy to identify their allies and at the same time, subdue and monitor activi-

ties of rebellious tribal communities in India.

The CTA allowed for close supervision and control over the mobility of the tribes which were notified by the provincial governments. The Act was amended in 1897, 1908 and 1911 to give sweeping powers to the authorities, some as draconian as allowing the state to remove any child of the age of six and above from its 'criminal' parents. By 1924, certain provisions were amended, and the Act was finally applicable to the whole of British India. Along with the introduction of laws such as the Forest Acts and the Salt Tax Act, the British threw a noose around the lives of DNTs using stringent regulations.

It is only in independent India that the need was felt to shift the collective burden of criminality to the individual, which led to the CTA being repealed and the Habitual Offenders Act (HOA) being enacted in various States. Not all States enacted it. Currently, a variant of the HOA Model Bill as proposed by the Union Government then stands enforced in 10 States across the country, having been enacted in many more.

However, the HOA functioned



as a mere extension of the CTA. Nomadic and semi-nomadic communities continued to face harassment at the hands of law enforcement agencies. Certainly, the mere repeal of the CTA could not change the mindset of government officials or members of society. The fact is that even in the 21st century, DNTs continue to face ostracism by society at large. Given their centuries-old tradition of constant movement, they often do not possess any residential proof, which leaves them out of the majority of the government's developmental schemes. Those deemed eligible for such schemes were randomly grouped under the Scheduled Castes, Scheduled Tribes or Other Backward Classes categories. As a result, most members of the DNTs continue to be out of the orbit of steps being taken to end discrimi-

nation (picture shows DNTs staging a demonstration in Madurai, Tamil Nadu).

To address these issues, the first National Commission for Denotified, Nomadic and Semi-nomadic Tribes (NCDNT) was constituted in 2003, and reconstituted two years later under the chairpersonship of Balkrishna Renke, which submitted its report in 2008. The recommendations found an echo in the Idatte Commission, constituted with the similar mandate in 2015, and currently withholding public release of its report. However, denied funding by the Ministry of Social Justice and Empowerment in fulfilling its mandate of carrying out survey and field validation work, the Idatte Commission Report lacks the scientific data necessary to introduce reforms to address the plight of DNTs.

The NCDNT report clearly recommends repealing the various HOAs. This has also been the constant refrain of community leaders, representatives and civil society organisations – as the Act still casts its shadow on the state on communities. The onus is thus upon us, lawmakers at the helm of democratic institutions that govern the country, to finally bring

down the curtains on this age-old, state-sanctioned stigmatisation, and act upon the demands put forth by the DNTs.

### A chance to make amends

However, it is important to learn from previous mistakes. A mere repeal of the law will not address their need for establishing society-wide changes to gain access to political-social-economic welfare. Thus, the repeal of the HOA has to be accompanied by a slew of legal reforms to address the multitude of issues DNT communities face. Their unique lifestyle requires positive affirmation and development policies that cater to their long-standing and overlooked needs. It should be the duty of the government to be proactive and reach out to the DNTs since the latter would understandably refrain from seeking state help. As the sun sets on the 16th Lok Sabha, let us ensure that it also marks an end to the oppression of the nomadic and semi-nomadic tribes of India.

A.P. Jithender Reddy is the Member of Parliament from Mahabubnagar, Telangana, and is the floor leader for the Telangana Rashtra Samithi. Research assistance by Paritosh Mulay

## 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.

### AgustaWestland deal

The extradition of Christian James Michel, an alleged middleman in the AgustaWestland VVIP helicopter deal, for which the CBI appears to have sweated it out, and also coming as it does before the general election, is a great headway for the Narendra Modi government. Merits or demerits notwithstanding, it appears to be a shot in the arm and advantage NDA/BJP (Page 1, "CBI confronts Michel with documents", December 7).

R. SAMPATH,  
Chennai

The extradition only highlights the Congress party's track-record of running scam-tainted regimes. On the contrary, the BJP government has so far not been proved to be involved in any major scam. One hopes that with time, more facts about political corruption involving the Congress are revealed.

N. VISVESWARAN,  
Chennai

While it is a welcome development that the Narendra Modi government has been able to secure the extradition of Christian Michel rather expeditiously, one wishes the government had also shown the same speed and resolve to secure the extradition of fraudsters such as Mehul Choksi and Nirav Modi from their perches abroad to answer questions in connection with loans from public sector banks. If their extradition is delayed inordinately, an impression may gain ground that the speedy extradition of Mr. Michel was motivated more by electoral calculations than the need for unravelling the facts relating to alleged kick-backs in the helicopter deal (Page 1, "CBI confronts Michel with documents", December 7).

M.P. MURALIDHARAN,  
Bengaluru

There is an attempt now to make a differentiation in the narrative on corruption. Who are middlemen? Are they not brokers? India has

had brokers at almost every level. But what about corporates cheating banks and thumbing their noses at the law? Did they not have political support?

J.R.D. RAJAKUMAR,  
Chennai

### Toxic air

It is disheartening to learn from the data published in *The Lancet Planetary Health* that 26% of the global premature death and disease burden by air pollution occurs in India ("Air pollution cause of 1 in 8 deaths", December 7). The absence of rural industrialisation has resulted in a great exodus to the metros. There is bound to be a strain. To top it all, unchecked vehicular emission is bound to aggravate the issue. It is a shame that air quality is particularly alarming in north India. Health issues as a result of respiratory and other lung disorders should be checked.

E.S. CHANDRASEKARAN,  
Chennai

### Impact of social media

The polarisation of society is not a new phenomenon. What social media is doing now was done in previous eras and centuries by divisive forces such as race, colonialism, religion and political ideologies. The only difference is that social media's reach is wide and its real-time dissemination of information creates instant feedback loops. When we think of remedies to check social media's deleterious impact of the society, we will have to reckon with a catch-22 situation. The Internet's strength is its openness and democratic architecture where prince and pauper have the same rights to create content but without any concomitant responsibility to exercise self-restraint. The Internet is not a self-regulating platform and its users are not constrained in any way except the law of the land where they live which will step in only in the case of serious wrongdoings. The only probable solution

to end the misuse of the social media is external regulation, which if applied will kill the Internet as we know it. Till the time global cooperation finds a way to balance the Internet's democratic ethos with user responsibility, we will have to depend on conscientious behaviour to keep the civility of online conversations (OpEd page, 'Yes, No, It's complicated', December 7).

V.N. MUKUNDARAJAN,  
Thiruvananthapuram

### At Adelaide

There are two lessons from India's batting performance on day one of the first Test at Adelaide as far as team

management is concerned.

That Cheteshwar Pujara is a class act and he should never be dropped and Rohit Sharma needs to be given a break. What is intriguing is that Pujara has been left out of the Test squad in favour of Sharma many a time under Virat Kohli's captaincy. That Pujara is closely following what Rahul Dravid has achieved in terms of cricketing milestones is interesting. Perhaps the team management should promote Rishabh Pant to the opener's slot.

SAURABH SINHA,  
Bhilai, Chhattisgarh

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

### CORRECTIONS & CLARIFICATIONS:

A report headlined "Big bird" to take Internet to villages (Dec. 6, 2018) erroneously gave the number of transponders in the Ku band being carried by GSAT-11 as 38. It should have been 32.

In a Sports page report headlined "Azhar leads fightback" (Dec. 5, 2018), in the scorecard one wicket was wrongly ascribed to the New Zealand bowler, de Grandhomme. Pakistan had lost only three wickets and not four.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturba Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com