



Onus on the CBI

The case against P. Chidambaram is another test for the agency's credibility

The arraignment of former Union Minister P. Chidambaram on corruption charges is a flash-point in relations between the ruling BJP and the principal Opposition party, the Congress, in the run-up to the 2019 Lok Sabha election. It also came on the eve of the debate in Parliament on a no-confidence motion against the four-year-old Narendra Modi government. The CBI has filed a charge sheet against Mr. Chidambaram, his son Karti Chidambaram and 16 others, on the ground that Foreign Investment Promotion Board approval was granted for investments made in Aircel by Global Communication Holdings Service, a Mauritius-based subsidiary of Maxis, a Malaysian conglomerate, in violation of norms. Mr. Chidambaram is accused of cheating and bribery, and having exceeded his authority by clearing investments amounting to ₹3,200 crore, whereas any investment above ₹600 crore needed the clearance of the Cabinet Committee on Economic Affairs. For a case that essentially turns on documentary evidence, the CBI has taken unusually long to come to this conclusion. Mr. Chidambaram's statement on the FIPB approval was recorded in December 2014, and since then his son has been under the scanner. The filing of a charge sheet against Mr. Chidambaram ends the uncertainty about the agency's intentions. The Congress leader had said he was the real target though it was his son and those associated with him who were subjected to repeated searches and questioning.

The two cases are vastly different, but given that the main case against former Union Communications Minister Dayanidhi Maran relating to the Aircel-Maxis investment was thrown out at the pre-trial stage by the Special Court, the CBI has a greater burden of proof to discharge. Mr. Chidambaram has maintained there was nothing amiss about the FIPB approval, which was given only after being processed at various levels. It may not be enough for the agency to prove that the Aircel-Maxis investment supposedly worth ₹180 crore actually had a value of ₹3,200 crore if the premium attached to it was taken into account. It also has to establish a clear link between the FIPB approval and some payments received by companies said to be controlled by Mr. Karti. Special Judge O.P. Saini, before whom the charge sheet has been filed, has a record of not accepting theories of *quid pro quo* behind government decisions without sufficient evidence. Both in the main 2G spectrum case, in which former Minister A. Raja and others were acquitted, and in the Aircel-Maxis case related to Mr. Maran, the judge had rejected prosecution claims seeking to link some transactions with the decisions of the ministers concerned. The case against Mr. Chidambaram will be a test for the CBI not only on merits, but also in disproving the allegations of political vendetta.

Ortega's choice

The Nicaraguan President should call early elections to bring back stability

The anniversary of the 1979 revolution to oust the dictator Anastasio Somoza evokes mixed memories in Nicaragua. The bitter political unrest in the country, now into its fourth month, shows no sign of abating, with President Daniel Ortega digging in his heels. The veteran Sandinista guerrilla leader's refusal to heed pleas to call elections next year, two years ahead of schedule, threatens to prolong the bloody conflict, with the confrontation already claiming more than 260 lives. The trigger for the protests was the recent reform of the social security policy aimed at simultaneously raising individual contributions and reducing benefits. Whatever the economic rationale, the move was perceived by people as needless provocation and a double penalty. But by the time the regime saw wisdom and rescinded the measure, it was already too late. Anger over the social security reform morphed into broad-based opposition against the rule of Mr. Ortega, who has been in office for 11 years in his current spell in power, and his wife Rosario Murillo, who is Vice President. Mr. Ortega has scrapped constitutional limits for high office, and there is speculation that Ms. Murillo is being groomed to succeed him. Students and the business community coalesced under the banner of the Civic Alliance for Justice and Democracy. But their demand for Mr. Ortega to quit and call early elections was met by the paramilitary forces with a heavy hand. Images depicting the savagery behind the refusal to allow the rescue of victims of bullet wounds went viral, rallying human rights groups and volunteers from the Roman Catholic Church. Despite the best efforts of the Nicaraguan Bishops' Conference, the situation has worsened: more than 30 deaths were reported last week alone.

The Central American state, which has seen rapid economic growth in recent times, is forecast to raise output by only around 0.5% to 1.5% this year. This is a substantial reduction by the country's central bank from its initial projection. The modest estimate is ascribed to the economic pain and loss of thousands of jobs from the continuing unrest and the resulting uncertainty. This situation could persist on account of the breakdown in dialogue between the government and protesters. When mass demonstrations erupted in April, commentators expressed serious doubts whether Mr. Ortega would easily relinquish power. The fears have been validated since then, even as the situation has deteriorated. Conversely, Nicaragua's fractured opposition lacks a unified strategy to channel the discontent into a political plan of action. That only strengthens the regime's sense, howsoever misleading, of its own invincibility. Mr. Ortega should know that he cannot sustain the crackdown for too long. The need to call early elections has only grown more urgent.

The French connection on and off the pitch

The players of African origin in the World Cup winning team are quintessentially French in an imperfect republic



EMILE CHABAL

Football is always about more than football. This is especially true during a World Cup, when a staged face-off between national teams concentrates on stereotypes and enflames political tensions.

Who can forget when the U.S. was beaten by Iran in the final minutes of their group-stage encounter in 1998? Or when the reigning world champions France were defeated by Senegal, a former French colony, in their first match of the 2002 tournament? Or when Luis Suárez's handball stopped Ghana from becoming the first African team to reach a semi-final in the only World Cup ever to be held on African soil in 2010?

Talking about identity

The 2018 edition of the World Cup had plenty of similar subplots. There was controversy when a group of Swiss players of Kosovan origin celebrated their goals against Serbia by making the shape of an eagle, a symbol of Kosovan nationalism. And more than one football pundit bemoaned the fact that, by the semi-finals, the remaining teams were all from Europe.

But there has been no bigger political talking-point than the identity of the winning French team.

Through no fault of its own, France's talented squad has found itself in the middle of an ideological battle, which has mostly revolved around its alleged "African-ness".

This debate has a long history. Back in the mid-1990s, the French far-right made much of the fact that the national football team was not really French because it included so many black and brown players with diverse origins. The squad responded to these criticisms by winning the World Cup for France for the first time in 1998 and giving rise to wild hopes that a self-consciously multicultural team would allow the French to embrace its complex heritage.

Unfortunately, this is not what happened. The far-right continued to grow, culminating in the shock presence of the openly racist Jean-Marie Le Pen in the second round of the presidential election in 2002.

At the same time, young French people of African, Caribbean and North African origin complained bitterly about discrimination, unemployment and institutional racism. This led to riots in 2005, when the country's impoverished banlieues (suburbs) erupted into violence.

Some fissures

More recently, several French cities have been torn apart by terrorism as European followers of Islamic State have decided to make an example of a country that, in the eyes of many radical Islamists, is uniquely hostile to Islam.

Not even football could redeem a fractured society. Zidane's infamous headbutt in the 2006 World Cup final, the French team's embarrassing "mutiny" and early exit from the 2010 World Cup, and Karim Benzéma's expulsion from the team in 2015 for blackmailing his fellow players only fanned the flames of those who claimed that the roots of France's ills lay in its proliferation of ethnic minorities.

All of this meant that the French did not have very high expecta-



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tions of their team in this World Cup. Few believed that another multi-ethnic melting pot of star players could solve the country's problems and, even after the French victory, no political commentator has been willing to bet on redemption through football. There is a keen awareness today that the steady trickle of critics who want to use the composition of the French football team as a platform for rampant xenophobia will soon return.

Imagine the surprise in France, then, when radical Twitter and late-night comedy shows started to turn this age-old accusation on its head. In particular, in a much-circulated segment of his enormously successful American TV show, South African comedian Trevor Noah openly congratulated the French by saying that "Africa won the World Cup".

The response was instantaneous. A whole raft of people – especially in France – accused Noah of racism, and even the French Ambassador to the U.S. was moved to write a letter to the comedian to tell him that his comments threatened the integrity of the French Republic. Noah replied by saying that the French should learn to embrace their multiple identities and recognise their colonial heritage.

This awkward stand-off reflects

a well-known peculiarity of French political culture, namely the French state's formal commitment to a colour-blind republican philosophy of integration that consigns questions of race and religion to the private sphere. It is the same logic that led the French state in 2003 to ban the wearing of the Islamic headscarf and other religious symbols in French state schools.

Such a strong public philosophy is often incomprehensible to people outside France. In many parts of the world, the French insistence that race does not exist and that the state should remain rigorously secular seem strange. Would it not be better to celebrate France's multi-ethnic and multi-religious composition? Would this not allow the French to face up to the waves of immigration that are the most visible legacy of a violent colonial past?

On social attitudes

Perhaps it would. But things are not quite that simple. Over the past century and a half, France has received – and successfully absorbed – millions of immigrants from Europe, Africa, Asia, the Pacific and the Caribbean. For better or for worse, almost all of them have wanted to become French and have clung tightly to their French identity. This was true even during moments of crisis, like the Second World War, when the French state tried to strip some of them of their citizenship.

Moreover, large-scale surveys of social attitudes over the past few decades show clearly that the French are becoming more tolerant in their attitudes towards race, ethnicity and origin. The fact that more French people than ever are willing to call their country racist does not mean that France today is more racist than it was half a

century ago.

Has this deep attachment to citizenship and a growing tolerance towards ethnic difference come about because of France's much-maligned colour-blind republicanism? Some would say yes; others would argue exactly the opposite. One thing is for sure, though: the claim that this World Cup-winning team is "African" is factually incorrect.

There is nothing wrong with Noah, or umpteen other people all over the world, supporting France because the team is African, black or simply not-very-white. But this does not reflect the life stories of the players or their own relationship to their country.

Some of the team's most iconic stars like Paul Pogba, N'Golo Kanté and Kylian Mbappé are pure products of contemporary France. They grew up in depressed neighbourhoods on the outskirts of Paris; they went to French schools; and their only footballing dream was to emulate the "great" French team of 1998.

They will know the difficult stories of their immigrant parents and they will have suffered intense racism while growing up, but they almost certainly feel more comfortable in Paris or Lyon than Bamako or Casablanca.

Perhaps most importantly, we need to remember that they are only young footballers. Rather than force on them an African identity they may or may not choose to inhabit, we should leave them to enjoy their spectacular victory and their understandable pride at having represented a country they know does not always live up to its own ideals.

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Fault lines in a 'landmark' judgment

The verdict on the SC/ST Atrocities Act marks the collapse of the constitutional scheme to protect the weaker sections



D. SHYAM BABU

On July 6, the day of his retirement as a judge of the Supreme Court, Justice A.K. Goel defended the verdict that he delivered on March 20, 2018 for the bench – framing guidelines on how to deal with a person accused under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

He had said, "An innocent should not be punished. There should not be terror in society... We do not want any member of the Scheduled Castes (SCs)/Scheduled Tribes (STs) to be deprived of his rights." Leaving aside the extraordinary implication of his comments as well as the judgment that the Atrocities Act is creating "terror in society", no sensible person can question the need to protect those who are innocent from arbitrary arrest.

Before the saga fades from public memory, we must place on record how the Goel verdict symbolises the collapse of the constitutional scheme to protect the weaker sections of society as well as a certain intolerance of persons in high places towards requirements of social justice.

The demand for "an inbuilt pro-

vision" to protect those falsely accused under the Act was first raised by a parliamentary committee in December 2014 and the apex court did so in March 2018. And the government is rather lightfooted in seeking a recall/revision of the verdict. All the three organs of the state are united in their lack of fidelity to both the letter and spirit of the Constitution insofar as it is concerned with the rights of the weaker sections.

The judgment is concerned with a limited aspect of the Act – protecting innocent officers and employees in government and private sectors from the misuse of the Act (especially "when no prima facie case is made out or the case is patently false or mala fide"). But, sadly, the judgment has ended up conveying a false and dangerous message that the Atrocities Act is "a charter for exploitation or oppression," and "an instrument of blackmail or to wreak personal vengeance".

One is reminded of G.K. Chesterton's wise counsel that one must consider why a fence was put up in the first place before pulling it down.

'Minor' infractions

In essence, the verdict is based on a lot we don't know. For example, while the court appears to have mistaken a large number of acquittals in atrocities cases to be false cases, the general consensus is that police apathy, the social and the economic might of the accused and the dependence of SC/STs on



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those accused would have resulted in acquittals. Similarly, there is no precise data on the scale and extent to which the Act has been misused by SC/ST employees. Do these cases of misuse of the Act by SC/ST employees run into the dozens, hundreds or thousands? We don't know.

What happens when a court determines that an atrocity case is false and was filed with mala fide intent? How did the court find that the provisions in the Indian Penal Code (Sections 191 to 195), which prescribe punishment for falsifying evidence, to be inadequate in atrocities cases? We don't know.

Did the Home Ministry (the nodal ministry for both the criminal justice aspect of the Act as well as service rules of Central government employees) assist the Additional Solicitor General who represented the government? We don't know.

But it is unlikely that the ministry even came into the picture as the court was dealing with a criminal appeal against a Bombay High Court judgment.

Therefore, a single case transmogrified itself into a judicial exercise of policymaking. Since the bench obviously saw a broader pattern of misuse of the Act, it had all the power to initiate *suo motu* proceedings to examine the issue, or refer the matter to a larger bench. This could have enabled the court as well as the government to delve into the relevant facts and data. But why didn't the court do so? We don't know.

Procedural lapse

The court's single-minded mission to end "terror in society" rendered it oblivious to the constitutional procedure to be followed in making policies that affect the SC/STs. Article 338 clause 9 stipulates: The Union and every State Government shall consult the Commission [National Commission for Scheduled Castes] on all major policy matters affecting Scheduled Castes.

Article 338A, which created the National Commission for Scheduled Tribes, provides the same procedure (as per Clause 9) in case of STs. Therefore, when the court wears the policy-making hat in matters related to SC/STs, it too is constitutionally-bound to consult these commissions.

One can advance two grounds for not following Article 338. The first is that what the court did was tweaking to issue guidelines and is not a "major" policy matter. But the spontaneous nation-wide protests against the March 20 verdict render such a defence untenable.

LETTERS TO THE EDITOR

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Sabarimala entry

A place of worship is not like any other general and public place that is normally governed by the rights and privileges conferred on it by the statute and the freedom of use associated with it. If the management of the Sabarimala temple in Kerala has its own codes and commandments – however ridiculous they may appear to be – to administer its internal affairs, it is perhaps too sensitive a domain for a government or a court to find these stipulations "inadmissible" ("Sabarimala temple bar unreasonable", July 19). While visiting a temple, the purpose is sacrosanct and intertwined with an inexplicable and invisible

element that is trusted as being auspicious and pervading even if it may not stand to reason or to science (especially to a passive observer). As long as an institution, traditional or otherwise, has its own healthy, transparent code of administration that is not at war with the fundamental laws of a state, there is no prudence seen in meddling with its running. No one is mandated to visit a certain temple and a life can run peacefully without visiting one.

SIVAMANI VASUDEVAN,
Chennai

India is a country where people get carried away when it comes to rules rather than comprehend the spirit behind the rules. There may

have been a good reason why the rule about women was made when in ancient times, thick forests and the issue of wild animals may have been an important factor. While this may not be relevant any more, due caution has also to be exercised when too much rationality is applied to religion.

VENKATA HARISH LINGALA,
Vijayawada, Andhra Pradesh

If menstruation is labelled as being 'impure' and the sole reason why women of a certain age are prohibited from going to the temple, this leads to a counter-argument about men; they too could be impure as many of them may not be observing the necessities during their mandatory fasting. Some consume alcohol and still visit the

temple. Can the authorities prevent such men from entry?

R. SIVAKUMAR,
Chennai

More than this issue, the government and the judiciary should be very concerned about the uncontrolled pollution caused by the Pamba river by the huge influx of pilgrims. The pollution and waste created has to be tackled in a scientific manner as the region is an ecologically sensitive zone. The Pamba should not become the Yamuna of the south.

SARA FATHIMA,
Alappuzha, Kerala

Lynching and the law

Though mobocracy has no place in our secular,

democratic nation, it is disturbing and painful that there has been no let-up in mob lynchings being carried out with impunity (Editorial – "Lynching & the law", July 20). It is a blot as States and law-enforcing agencies seem unmoved. The political class also needs to send out a strong message.

K.R. SRINIVASAN,
Secunderabad

It is not the sense of fear that is to be instilled in people to stop crimes against others, but a sense of respect and fellow feeling towards the rest of mankind. The cause of widespread lynchings across India is due to a lack of social coherence and disrespect for an inclusive social order. It is also the end result of the politics of intolerance most

of our political parties

subscribe to.
SUKUMARAN C.V.,
Palakkad, Kerala

Remembering Mandela

While exhibiting granite-hard strength to dismantle the monolith of apartheid, Nelson Mandela showed extraordinary grace and forgiveness to work on the agenda of a free South Africa with those who were his oppressors. His belief in the law and catholicity of religion formulated an attitude of fairness. What is remarkable about Mandela is that in an age bereft of political morality, he was not power hungry. His life is a lesson to the political class.

A.K. DAS,
Lucknow

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