



A symbolic victory

Without popular support, the AIADMK will gain zilch by winning back its election symbol

What brings people together is not always enough to keep them together. The struggle for the Two Leaves election symbol may have encouraged the two factions of the All India Anna Dravida Munnetra Kazhagam to come together, but the allocation of the symbol by the Election Commission is not likely to make the prospects of their staying together any greater. While the O. Panneerselvam group formed a separate faction as a protest against the domineering influence of the Sasikala family in the party, the Edappadi K. Palaniswami group distanced itself from the Sasikala family as a survival tactic to seek greater political legitimacy. Both camps have retained their separate identities after the merger. Therefore, the allocation of the symbol risks accentuating the internal struggle for posts and positions within the party. While another split in the near future is unlikely, the competing claims for power and influence by the two factions could put the party under renewed stress. But what the allocation of the symbol does for the ruling combine is to give it an advantage over the Sasikala faction, represented by T.T.V. Dhinakaran, in the R.K. Nagar by-election. With the help of Two Leaves, the camp of ‘EPS and OPS’ might be able to beat back the challenge posed by Mr. Dhinakaran, who has already declared his intention to contest the election for the seat.

The EC was faced with a straightforward issue in deciding the symbol case. The merged factions commanded the support of a majority of the members of Parliament and State legislature and the organisational wings. True, even at the time the case first came up before the EC, the EPS faction, which at that time had the benefaction of the Sasikala family, enjoyed the support of a majority of the party’s members. But with the R.K. Nagar by-election in sight (it was subsequently deferred after instances of voter bribery came to light), the EC had taken the safest option of freezing the symbol and the name of the party. With the symbol case out of the way, the ruling AIADMK combine can once again concentrate on fighting the Dravida Munnetra Kazhagam, its long-time rival. Unlike what they did in the battle with Mr. Dhinakaran, Chief Minister Palaniswami and Deputy Chief Minister Panneerselvam cannot hope to project the malevolence of Sasikala as an issue for fear-mongering in the contest with the DMK. The R.K. Nagar by-election will also be the first electoral test for the State government, which needs to erase the popular impression that it is hurtling directionless without a pilot. A victory for the EPS-OPS grouping could go a long way in establishing the political legitimacy of a government that is still running on the mandate given to Jayalalithaa. Equally, an adverse result in this by-election could undermine the government, bringing it under even greater pressure from inside as well as outside.

The China plan

The devil will be in the detail of the Myanmar-Bangladesh deal on Rohingya repatriation

The agreement reached between Myanmar and Bangladesh to repatriate Rohingya refugees suggests that the Chinese proposal has found some traction as a solution to the crisis. It has been sealed after a three-month military operation by Myanmar in Rakhine, which resulted in around 600,000 Rohingya fleeing the province to Bangladesh, leading to a humanitarian crisis and a war of words between Dhaka and Naypyidaw. It is against this background that China stepped in with its three-point plan. Earlier this month, Chinese Foreign Minister Wang Yi travelled to Bangladesh and Myanmar with the proposal; Beijing later claimed both countries had accepted it. Under the plan, Myanmar and Bangladesh were to hold bilateral talks and reach a repatriation agreement - which has been achieved. However, the first step in Beijing’s approach - which involved a declaration of ceasefire in Rakhine to halt further displacement and bringing immediate relief to the state’s devastated Rohingya - has not taken effect. If this were to happen, the third part of the proposal will presumably take effect, with China providing economic assistance for the development of the Rakhine region as part of a long-term solution.

China, which has historically been wary of stepping into domestic conflicts in other countries, is being proactive in this case. Its own interest is at stake. Beijing enjoys good relations with both Bangladesh and Myanmar; also, Rakhine is an important link in its Belt and Road Initiative. China is building a \$7.3 billion deep-water port in the province and has invested \$2.45 billion to build an oil and gas pipeline connecting coastal Rakhine to Yunnan. China has put pressure on Myanmar because a protracted conflict in Rakhine will be decidedly against Beijing’s economic interests. The signing of a repatriation deal suggests this pressure tactic is working. But details of the agreement, including the number of Rohingya who will be sent back, and the timeline, have not been revealed. It is also not clear whether the refugees themselves want to go back to a place they had fled in such perilous circumstances. Or in the event they do, where they will be resettled. From the details of the plan it is clear that China sees the Rohingya crisis as an economic problem, given that its solution is centred on development. While economic assistance is essential, the real problem is arguably deeply political, and there needs to be an accompanying political solution. Any proposal can only make limited headway unless Myanmar is willing to roll back the institutional barriers that render Rohingya second-class people. Unless they are accepted as equal citizens, there is unlikely to be a long-term solution to the Rakhine unrest.

The mandates of natural justice

Questions for the judiciary on the anniversary of India’s adoption of its Constitution



SUHRITH PARTHASARATHY

It was on November 26, 68 years ago, that the chairperson of the Constitution drafting committee, B.R. Ambedkar, put to vote the following motion at the Constituent Assembly: “That the Constitution as settled by the Assembly be passed.” The motion, as the minutes of the day’s meeting recorded, was adopted amidst “prolonged cheers.” In the ensuing decades, though, the day was scarcely recognised as forming an occasion of any particular note. But, in 1969, the Supreme Court Bar Association declared November 26 as Law Day, “a red-letter day,” in the words of the association’s then president, L.M. Singhvi, which the government has now designated as Constitution Day. But call the day what we might, Singhvi’s intention in declaring it as an occasion for annual observance is certainly worthy of paying heed to. “Our purpose in designating 26th November as Law Day,” said Singhvi, in his inaugural address, “is to emphasise the role and importance of law in the life of our Republic, to review the state of law and administration of justice, to suggest ways and means of improving our laws and our legal and judicial system, to establish better and more meaningful equations between the Bench and the Bar, to strengthen the principle of the independence of the judiciary... and to maintain, reinforce and augment public confidence in our legal and judicial system.”

A necessary appraisal

Were we to today conduct an introspection of the kind that Singh-

vi thought necessary, what might our appraisal be? This question attains particular salience given recent events in the Supreme Court, which have not only sounded a national alarm, but have also threatened the confidence that the public might repose in the judiciary. The court’s collective actions, in undermining every notion of good ethical conduct, has struck a potentially irredeemable blow at the principles highlighted by Singhvi in his speech, each of which goes to the root of the constitutional morality that Ambedkar held so dear.

The firestorm in this case was triggered by a first information report in which a retired Orissa High Court judge, I.M. Qudusi, was implicated for allegedly taking bribes to secure favourable orders from the Supreme Court. As it happened, these matters which Justice Qudusi is alleged to have claimed he could fix were heard by a bench presided by the Chief Justice of India (CJI). These claims supposedly made by Justice Qudusi might well be humbug. But how are we to know their veracity unless a reasonable investigation is conducted? This precisely was the question that a pair of petitions filed respectively by the Campaign for Judicial Accountability and Reforms (CJAR) and the advocate Kamini Jaiswal raised. Given that any involvement of the Central Bureau of Investigation could impinge the autonomy of the judiciary, the petitions suggested that the court might consider appointing a special investigation team to conduct an inquiry into the FIR, under the supervision of a retired CJI, independent of all executive interference.

When the original petition was filed by the CJAR, it might have been reasonable to expect the CJI to recuse himself altogether from the matter, including from any involvement as the master of the ros-



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ter, as the person responsible for both determining which judges hear a case and when they do so. But his failure to do so prompted the filing of a second petition, this time by Ms. Jaiswal. With a view to avoiding any intervention by the CJI, this case was separately mentioned before a bench presided by the court’s second most senior judge, Justice J. Chelameswar, who ordered that the petition be heard by a bench comprising the five most senior judges of the court. This, however, led to a series of other consequences, with the controversy spiralling into successive episodes of unseemliness, each apparently more damaging than the previous. Ultimately, the CJI not only set aside Justice Chelameswar’s order, by constituting a five-judge bench of his own, over which he himself presided, but he also thereby reaffirmed his power and authority to make administrative choices.

Justice seen to be done?

If we were to view the controversy rationally, the entire issue ought to boil down to these questions: under what circumstances does a litigant’s claim in court translate into

a claim that interests a judge? Does the CJI ever have a duty to recuse himself as the “master of the roster”? To determine these questions, the court has no explicitly binding rules to apply; it’s guided partly by precedent, but mostly by discretion. In ordinary circumstances, this discretion would be governed by the general principle expressed by Lord Chief Justice Hewart of the King’s Bench nearly 100 years ago: that “justice should not only be done, but should manifestly and undoubtedly be seen to be done.”

But, on November 14, when a three-judge bench constituted by the CJI, which included a judge who had originally heard the cases that Justice Qudusi claimed he could influence, conducted a hearing, it barely considered the basic tenets of this principle. Instead, it dismissed Ms. Jaiswal’s petition, as an attempt at “bringing disrepute” to the court. What’s more, the bench also held that the petitioner’s request for a recusal by one of the judges hearing the case amounted virtually to a contempt of the court.

The Gajendragadkar way

Here, it may have been instructive for the court to hark back to an incident from August 1964, when a group of intervenors represented by the lawyer Purushottam Trikamdas - a “tiger” at the bar, by Fali Nariman’s reckoning - made what was at the time an odd request to a bench presided by the CJI, P.B. Gajendragadkar, which was hearing a case concerning the validity of a Bombay land acquisition law. Gajendragadkar, they argued, should not hear the case, since its outcome would affect a cooperative housing society of which he was a member.

As Mr. Nariman recounted in his memoir, “Before Memory Fades,” Gajendragadkar eventually agreed to recuse himself from

the case, but he nonetheless expressed an intention to hear a similar dispute that emanated from Madras, where he himself had no personal interest. It was then that the Attorney General, C.K. Daphary, who was appearing for the Union of India, stood up to point out to the judge that it wouldn’t be ethical for him to hear either of the cases, given that any decision in the Madras case would have likely bound the court later when it heard the challenge to the Bombay law.

The next day the bench was promptly reconstituted, with Justice K. Subba Rao presiding. As Mr. Nariman pointed out, there could be little doubt, not then, and not today, and certainly never in Daphary’s mind, that had Gajendragadkar heard the cases, Daphary’s client, the government, would have succeeded. But, as it happened, the two cases - *N.B. Jeejeebhoy v. Assistant Collector and Vajravelu Mudaliar v. Special Deputy Collector* - were both decided against the state. In H.M. Seervai’s words, the Chief Justice, in recusing himself, had thus “affirmed in India the principle, well settled in England, that the requirements of natural justice apply to the most exalted judicial officer as they do the humblest.”

Now, Gajendragadkar’s recusal still leaves certain questions unanswered. In particular, it doesn’t tell us much about the CJI’s role as the master of the roster. But, were we to place the Chief Justice’s position as an administrative head above ordinary mandates of natural justice, we would be violating the basic constitutional morality that holds together the entire structure of our Constitution, the idea that we are a country governed by the rule of law.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

Endgame in Syria

Unless the peace dividend is visible soon, regression to anarchy cannot be ruled out



MAHESH SACHDEV

The seven-year-old Syrian conflict has recently seen a flurry of political activity toward a possible denouement. Following the defeat of the Islamic State (IS) at Abu Kamal, its last Syrian redoubt, military activities are being framed by the tenuous ceasefire between government-allied forces and motley rebel groups mostly confined to four de-escalation zones. Backed by support from the Russian Air Force, Iranian experts and fighters from Hezbollah militia of Lebanon, the former have an upper hand.

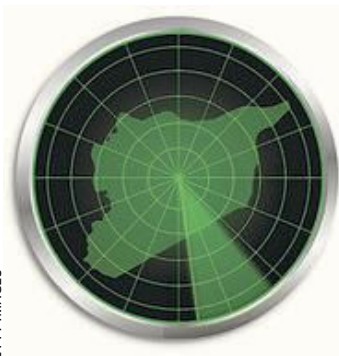
The rebels, with the solitary exception of Kurdish forces, have been losing ground, with their foreign patrons, mainly the U.S. and the Gulf Cooperation Council states, becoming more equivocal. The antagonists have been inconclusively engaged in the Astana Process, sponsored and guaranteed by Russia, Iran and Turkey, and the U.N.-sponsored Geneva Peace Talks. The conflict has taken a horrific toll: over a third of nearly 19 million Syrians have been displaced, nearly a fifth have sought

refuge outside the country, and over 400,000 are dead.

Russia’s role

Russian President Vladimir Putin has pressed the military advantage in Syria to recently launch the search for a lasting political solution. His summit with Syrian President Bashar al-Assad at Sochi, Russia, on November 20 produced the broad outlines of a peace process even as the Syrian leader insisted on foreign non-interference. Following telephonic consultations with his U.S., Saudi, Egyptian and Israeli counterparts, Mr. Putin held a tripartite summit on November 22 with the Presidents of Iran and Turkey. They jointly announced the convening of a Syrian peace congress at Sochi to create a framework for national reconciliation. In tandem with the Russian initiatives, a Saudi-sponsored two-day meeting in Riyadh of over 140 Syrian rebels concluded yesterday with an agreement to field a unified delegation at the Geneva talks on November 28. They reportedly dropped their longstanding demand for the removal of President Assad which could help break the stalemate at the talks.

However, there are still formidable obstacles. First, the bloodletting and intense foreign involvement have created a bitter legacy to be overcome before meaningful



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negotiations can commence. Second, entrenched foreign interests often pursue divergent objectives. For instance, while Turkey demands the ouster of Mr. Assad and regards the Kurdish militia as terrorists, Russia and Iran hold opposite stands. Even though Russia and the U.S. have vowed to obliterate the IS, they hold opposite positions on the continuation of Mr. Assad. Similarly, though Israel and Saudi Arabia have their well-known differences, they are both apprehensive about Iranian gains in the Levant. Third, even as a need for a new Syrian Constitution is widely acknowledged, the prescriptions for a future polity range from a continuation of Ba’ath Arab nationalism (aka an Alawite-dominated military-security apparatus) to a Sunni Khilafat, and from a unitary republic to a loose confederation. At a different level, as Syria is the first instance of Russian mili-

tary intervention abroad since the end of the Cold War, it has provoked speculation about Mr. Putin’s more muscular regional and global agenda. Last but not least, any peace package would necessarily require the injection of huge funds for reconstruction. Unless the peace dividend is visible soon, regression to anarchy cannot be ruled out.

Whiff of optimism

The best one can realistically hope for is a congruence of major players around the incipient political process, and progressive withdrawal of foreign military presence and interests. Left to themselves, exhausted and pauperised Syrians may come around to let bygones be bygones and create new paradigms for peaceful coexistence. There is some room for guarded optimism: Syrians have an ancient civilisation which has always been multi-ethnic and mostly serene. Further, their bitter experience provides a cautionary lesson. The current stalemate also shows the limits of those calling for regime change by force. Indeed, some of them may be bracing themselves for aftershocks as war-hardened fighters come home from Syria’s killing fields. It may be better to de-escalate than risk Syria becoming a crucible for extremism.

At the regional level, the end-

game in Syria puts paid to a decade of the “Arab Spring” without any tangible gains. It also reinforces the unshakable Arab faith in conspiracy theories of foreign powers being the ultimate arbiters of their destiny. Ironically, the Syrian conflict will reach its endgame in the centenary year of the Sykes-Picot Agreement and the infamous Balfour Declaration. As they say, the more things change, the more they stay the same.

A place for India

By keeping a low profile during the conflict, India has earned wider acceptability across the Syrian social spectrum. In normal times, the annual bilateral trade between the two countries was over half a billion dollars, with India enjoying a large trade surplus. In a post-conflict situation, India has a potential role in institution building and reconstruction. Among the possible initiatives to further our prospects could be extending an invitation to Mr. Assad for a return visit to India, holding a session of the joint commission and an Indian line of credit to finance our exports as well as projects and services.

Mahesh Sachdev, a retired Indian Ambassador with specialisation in West Asia, is President of Eco-Diplomacy and Strategies, a consultancy

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.

Symbol and party

The eagerly awaited order by the Election Commission allotting the ‘two leaves’ symbol and the name of AIADMK to the Edappadi K. Palaniswami-O. Panneerselvam group in Tamil Nadu will at last put to rest the nearly nine month-long tussle between these two units and the V.K.Sasikala-T.T.V. Dhinakaran group (“It’s official. EPS-OPS group is AIADMK”, November 24). There are a number of problems in Tamil Nadu such as the agrarian crisis, a shortage of funds with the exchequer, growing unemployment, unsolved grievances of government staff and even a short supply of ration goods.

S. NALLASIVAN,
Tirunelveli, Tamil Nadu

■ The political drama in Tamil Nadu is all set to take a

new turn now. The legacy of the AIADMK, which moved in a new direction under the dynamic leadership of Jayalalithaa, has been greatly eroded and tarnished by unsavoury developments after her death. Instead of working for the development of the people, the various factions are engaged in a game of dirty politics and undermining the other. Can the people of the State finally look forward to good governance from this point on?

VIDHYA B. RAGUNATH,
Thanjavur, Tamil Nadu

An overstep?

The Tamil Nadu Governor’s action in calling for independent review meetings with officials of the State is a case of crossing the line and may not fit in with the role assigned to him under the Constitution that

he is under obligation to uphold. His action closely follows that of the Puducherry Lieutenant Governor who is said to have also locked horns with the elected Chief Minister there. How is it that Governors in Bharatiya Janata Party-ruled States do not indulge in such “theatrics and one-upmanship” that we seem to find only in States ruled by non-Bharatiya Janata Party parties?

V. PADMANABHAN,
Bengaluru

Gubernatorial activism, just like judicial activism, needs to be welcomed. It is a different matter that in the past, Governors in the State were content to be ceremonial heads. In a vibrant and mature democracy such as India, people’s welfare should be uppermost in the minds of

rulers as also the guardians of the Constitution.
P.K. VARADARAJAN,
Chennai

Altruism and business

It is heartening that Bharti Airtel’s founders have decided to donate 10% of the family’s wealth, or ₹7,000 crore towards philanthropy in the education sector (‘Business’ page, November 24). That this came about during a “fireside family chat” and was triggered by the younger generation of the family is welcome. This prompts one to ask how much money is required for someone to ensure a decent living. Happiness or contentment can never be bought. Philanthropy empowers the receiver and emotionally enriches and invigorates the giver. The company has sent out a message to the rich and the famous in India, especially

those in India Inc. May this idea gather momentum.

C.G. KURIAKOSE,
Kothamangalam, Kerala

Safer travel to school

It is welcome that the Madras High Court has taken note of schoolchildren travelling in unsafe conditions while using public transport based on photographs published in the media which showed schoolchildren travelling not only on the footboards of government buses but also standing on window frames holding on to the roof (Some editions, “Why no special buses for schoolchildren asks

HC”, November 24). In the U.S., government schools admit children who reside in and near the locality concerned and school bus services are available to students who live beyond a few kilometres. Traffic wardens and the police control traffic before the opening and closing hours of schools. Priority is given to school buses and safety is ensured. In India, there is little control over the way children travel to school.
A.J. RANGARAJAN,
Chennai

MORE LETTERS ONLINE:
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CORRECTIONS & CLARIFICATIONS:

A Gujarat election special page story headlined “Peeves, pet projects and poll talk in Vadodara” (Nov. 24, 2017) erroneously said the polling there would be on December 18. It is on December 14.

The report, “Panel calls Naga interlocutor” (Nov. 23, 2017), talked about a meeting in October in Nagaland’s capital Dimapur. The capital of Nagaland is *Kohima* - not *Dimapur*.

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