Legally enabling

The HIV/AIDS Bill provides a solid base for further empowerment and treatment access

The HIV and AIDS (Prevention and Control) Bill passed by Parliament does not guarantee access to anti-retroviral drugs and treatment for opportunistic infections, but there is no denying that it is a good base for an active health rights movement to build upon. Understandably, HIV-positive people in the country, estimated at over 21 lakh, are disappointed that the Centre's commitment to take all measures necessary to prevent the spread of HIV or AIDS is not reflected in the Bill, in the form of the right to treatment. The law only enjoins the States to provide access "as far as possible". Beyond this flaw, though, the legislation empowers those who have contracted the infection in a variety of ways: such as protecting against discrimination in employment, education, health-care services, getting insurance and renting property. It is now for the States to show strong political commitment, and appoint one or more ombudsmen to go into complaints of violations and submit reports as mandated by the law. Here again, State rules should prescribe a reasonable time limit for inquiries into complaints, something highlighted by the Standing Committee on Health and Family Welfare that scrutinised the legislation.

Access to insurance for persons with HIV is an important part of the Bill, and is best handled by the government. The numbers are not extraordinarily large and new cases are on the decline, according to the Health Ministry. Data for 2015 published by the Ministry show that two-thirds of HIV-positive cases are confined to seven States, while three others have more than one lakh cases each. Viewed against the national commitment to Goal 3 of the UN Sustainable Development Goals – to "end the epidemic of AIDS" (among others) by 2030 – a rapid scaling up of interventions to prevent new cases and to offer free universal treatment is critical. Publicly funded insurance can easily bring this subset of care-seekers into the overall risk pool. Such a measure is also necessary to make the forward-looking provisions in the new law meaningful, and to provide opportunities for education, skill-building and employment. As a public health concern, HIV/AIDS has a history of active community involvement in policymaking, and a highly visible leadership in the West. It would be appropriate for the Centre to initiate active public consultations to draw up the many guidelines to govern the operation of the law. Evidently, the requirement for the ombudsman to make public the periodic reports on compliance will exert pressure on States to meet their obligations. In an encouraging sign, the Supreme Court has ruled against patent extensions on frivolous grounds, putting the generic drugs industry, so crucial for HIV treatment, on a firm footing. The HIV and AIDS Bill may not be the answer to every need, but it would be a folly not to see its potential to make further gains.

Mr. Erdogan rising

The stage is set for Turkey's strongman to assume even more power

The path is now clear for Turkey to be transformed from a parliamentary democracy to a presidential republic, after a referendum on constitutional reforms proposed by the ruling Justice and Development Party (or AKP) gave the nod for handing sweeping powers to President Recep Tayyip Erdogan. The "Yes" campaign won by a relatively narrow margin, with a little more than 51% of the vote, and the opposition Republican People's Party (CHP) cited irregularities, including the use of unstamped ballot papers. The three biggest cities, Istanbul, Ankara and Izmir, voting "No" also indicates that much work remains to be done by the incumbents to bridge the rift within the polity. However, the head of the electoral body said the vote was valid. This remarkable turn of events, which will echo through the region and beyond, marks a step change from Turkey's historical tryst with representative democracy. The idea of major constitutional reforms of this sort has been in the making at least since 2014, when Mr. Erdogan became Turkey's first directly elected president. Nevertheless, many in Turkey and elsewhere, including anxious liberals across the EU, will watch with concern as the 18 major reforms on the table now will centralise power to an unprecedented extent in Mr. Erdogan's hands, raising valid questions about the separation of powers in the Turkish government.

The new executive powers that will accrue to Mr. Erdogan if he wins the 2019 elections, a very likely outcome, include the abolition of the post of Prime Minister and the transfer of that power to the President; authority to appoint members to the judiciary; and the removal of the bar on the President maintaining party affiliation. These changes could presage overwhelming AKP control of state institutions, which in turn could lead to, for example, a purge in the judiciary and the security forces. Mr. Erdogan has in the past accused the judiciary of being influenced by the U.S.-based Islamic preacher, Fethullah Gülen, besides attacking members of the security forces in the aftermath of the failed coup in July 2016. That these fears are not exaggerated is clear from the fact that tens of thousands of officials have been dismissed and dozens of journalists and opposition politicians arrested since that time, not to mention Mr. Erdogan's diplomatic spats with the Netherlands and Germany during the harsh campaign leading up to the referendum. Turkey today faces myriad problems, many stemming from the civil war in Syria. But the greatly empowered Mr. Erdogan would do well to design his future policies not only as a reaction to these forces but also as the means to enhance Turkey's unique effort in reconciling pluralist democracy with political Islam, and Western-style liberalism with populist nationalism.

Why the Jayalalithaa case matters

By dismissing Karnataka's review petition, the Supreme Court might have struck a blow against public interest

B.V. ACHARYA

The late Chief Minister J. Jayalalithaa's 20-year-old Disproportionate Assets (DA) case is no ordinary one. Its ramifications, legally, in the country are wide-ranging and severe. A case regarding acquisition of disproportionate assets by a public servant, under the Prevention of Corruption Act, stands on a slightly different footing from an ordinary criminal case. In the case of possessing disproportionate assets, the allegation is that a public servant amasses wealth by illegal means and the object of law is not merely to punish the offender but also to see that the offender or his/her legal representatives do not own or enjoy such illegally acquired assets.

The Chief Minister passed away on December 5, 2016. Orders in the DA case had been reserved six months prior to this, after all hearings had concluded on June 7, 2016. On February 14, the Supreme Court upheld the 'guilty' verdict of the Bengaluru trial court, sending the other three accused – V.K. Sasikala, J. Ilavarasi and V.N. Sudhakaran – to jail, with a penalty of ₹10 crore each. The first accused, Jayalalithaa, was no more and hence the court held that the charges against her had abated.

On March 21, the State of Karnataka filed a review petition challenging that part of the order which held that the case against Jayalalithaa had abated. Our argument was that when the death of the accused takes place long after the arguments are concluded but before a judgment is pronounced, there will be no question of abatement of appeal.

But the Supreme Court, by dismissing on April 5 the review petition filed by the State of Karnataka, missed an opportunity to settle this issue. Consequentially, what the highest court of the country has done is to set a bad precedent in helping corrupt public servants.

Take the instance of an accused public servant choosing to commit suicide after acquiring huge property by illegal means. Legal representatives or heirs of the accused, according to the Supreme Court, can later enjoy the benefits of the illegally accrued wealth and property left behind, as the case against the accused public servant abates. This is a retrograde step in the march towards eradication of corruption in public life.

The question of abatement

Apart from the question as to whether a criminal appeal filed with leave under Article 136 of the Constitution of India will ever abate on the death of the accused, this particular case raised other equally important questions regarding alleged abatement where death has taken place after conclusion of the arguments and the judgment was reserved.

It is settled law that there is no hiatus (a break or a gap) between the date of conclusion of arguments and the date on which the judgment is ultimately delivered. A judgment is expected to be pronounced immediately after the conclusion of the arguments and pronouncing the judgment on a later date is only for the convenience of the court. Any event occurring between the date the judgment is reserved and the actual date it was delivered on could not have any effect on the judgment which is ultimately pronounced.

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Order XXII Rule 6 of the Code of Civil Procedure in unambiguous terms states that there will be no abatement of an appeal if the death is after judgment is reserved. It further clarifies that such judgment pronounced shall have the same force and effect as if the judgment was delivered on the date on which the arguments were concluded.

The Supreme Court itself has constitutionally applied this rule in quite a few civil appeals by holding that there is no abatement of appeal where the death is after the judgment was reserved. The Supreme Court rules also provide that in the case of an election petition, the proceedings will not abate on the death of a candidate if death is after judgment is reserved once arguments are concluded.

There is no principle or authority which can be pressed into service to hold that a different view is possible in the case of a criminal appeal. The Supreme Court, in clear terms, held that the provisions of the Code of Criminal Procedure are not applicable to the appeals filed before the Supreme Court, by applying for Special Leave under Article 136 of the Constitution, though for the purpose of uniformity principles therein can be applied in suitable cases. The Supreme Court rules also do not provide for abatement of any criminal appeal. It can therefore be safely concluded that there is no constitutional or statutory provision providing for abatement of appeal, especially in a case where death has taken place after the judgment is reserved.

The abrupt conclusion of the Supreme Court that the appeal against Jayalalithaa has abated ignores the above said principle of law. It is also relevant to note that the case was never posted for further hearing after the death of the accused.

When judgment was pronounced on February 14, the court stated that the case against Jayalalithaa had abated, without any discussion on the questions involved. This finding was recorded without hearing the parties. Under the circumstances, it would have been appropriate for the Supreme Court to at least afford an opportunity to the parties to address arguments on this question and take a suitable decision. However, the court dismissed the review petition on merits, rejecting the request for oral hearing.

The legal implications arising out of the death of the accused after the judgment is reserved was not debated but the dismissal was recorded based on an erroneous view of law. The principle of *sub silentio* (action taken without notice, in legal terms) is thus applicable to the facts of the present case.

Reasons for review petition

In a section of the media an erroneous impression has been created that the State of Karnataka, in its greed to collect the fine amount of ₹100 crore imposed on Jayalalithaa by the trial court, has filed the review petition. The DA case was originally filed by the State of Tamil Nadu and Karnataka had to step into the case only after the direction of the Supreme Court, which transferred the case on a finding that the process of justice was being subverted in Tamil Nadu as the main accused held the post of Chief Minister of the State at the time.

The Supreme Court declared that the State of Karnataka is sole prosecuting agency in the case. It is only in obedience of the order of the Supreme Court that Karnataka has performed its role as sole prosecuting agency, so that there was a fair trial of the case. The State of Karnataka has no individual interest in the matter. The fine amount collected as also the confiscated assets could only benefit Tamil Nadu. Karnataka is not a beneficiary.

The right of the State of Karnataka is only for reimbursement of the expenses incurred in connection with the litigation (legal expenses) as ordered by the Supreme Court. Karnataka filed the review petition as it felt that an important question of law has been erroneously decided. It has chosen to do so only to fulfil its constitutional obligations. Now that the review petition has been dismissed, the case has ultimately reached its logical end. Karnataka can have the satisfaction of knowing that it has effectively performed the obligations imposed on it by the Supreme Court.

B.V. Acharya served as special public prosecutor and special counsel in the disproportionate assets case involving the late Tamil Nadu Chief Minister Jayalalithaa and AIADMK general secretary V.K. Sasikala

Understanding crowd dynamics

In human-animal conflicts, there is little reflection on the role of people in inciting a wild animal

NEHA SINHA

Anyone scanning the headlines for the past month would conclude that India is in the throes of irrevocable human-wildlife conflict. In this time period, a tiger was crushed by a JCB machine near Corbett while a mob screamed on, a leopard was burnt in Sariska by a crowd which also stoned forest department personnel, and a 33-member herd of elephants is being teased daily by a mob in Athgarh, Odisha.

Close encounters

In the encounters between a wild animal and a group of people, there are casualties on both sides. The question is, is conflict truly irrevocable? In several cases of conflict this year, it has been noted that groups of people have prevented the forest department from carrying out its duties. Rather than only focussing on a wild, snarling animal, a greater understanding of crowd dynamics is also called for.

A group of people is often defined as a mob if the group becomes unruly or aggressive. One must also consider if the mob has a collective conscience or whether it simply follows the cues by leaders within it. How it gets composed, and what it wants are also important.

PTI

After a leopard entered a school in Bengaluru last year, a group of about 5,000 people surrounded the school. The fact that it is dangerous to be in the vicinity of a panicked leopard is belied only by the absurdity of the fact that most wanted to see the animal and take pictures. In the case of elephants in Athgarh, conservationists have documented a mob of people attacking the elephants almost daily. Activists say this is a form of entertainment for the people concerned, as the elephants are not always harming people. While there is potential for serious conflict or injury, the mob also feels safe in its numbers.

Other mobs that have gathered around wildlife have clamoured for instant 'justice', gratification or resolution – in the form of killing the animal, beheading it, or parading it after its death. In Sariska last month, a leopard, blamed for killing a man, was burnt alive; the mob also hurt forest department officials. In a case last November, a leopard was bludgeoned to death in Mandawar, Haryana. The symbolic control of an animal by killing it and then parading the carcass has not escaped judicial attention. A December order of the Uttarakhand High Court said that if animals were (legally) put down, their dead bodies could not be displayed or shown in the media.

But in perhaps the most visceral and tragic human-wildlife conflict of recent times, a tiger was crushed by a JCB near Corbett after a mob demanded 'justice' for deaths. Two people from a labour camp working in forests near Corbett died after being reportedly attacked by the tiger. The forest department was caught in a human conflict situation – a crowd of people did not allow officials to do their difficult job of catching the tiger. The terrain was undulating. In its haste, the forest department brought in a JCB to capture the animal. The JCB attempted to 'pick up' the tiger, akin to sandpaper being used to snatch up a protesting butterfly. The results were gruesome – the tiger was hit repeatedly by the JCB, and crushed to death, all part of its 'rescue'. In a video made documenting this, one can clearly hear a group of people around the animal, with a voice shouting "*dabao, dabao*" (press it down).

Human-human conflict

The Corbett story is telling. When going into an area inhabited by an obligate carnivore like a tiger, very few precautions are taken. Most labour camps are not provided with protocol, proper toilets, or monitoring to avoid work in the early morning or late night, and to move about only in groups.

Many cases of conflict or aggression towards animals are exacerbated by carelessness and existing human-human conflict or tensions. The question is also linked to control and which groups or classes are interested in being dominant. In 2012, when a tiger was spotted near Lucknow, members and volunteers of the Samajwadi Party declared they would catch it. This was framed as 'public interest'. Needless to add, one needs training, not bravado, to catch a wild tiger.

The discourse around a wild animal, especially as it comes closer to people or human habitation, is that it is a criminal, a rogue, a stray, or a killer. There is, however, very little reflection on the role of people in inciting a wild animal.

We need proper cordoning off of areas when wildlife comes close to people, with animal capture being done with full police involvement and not just with a helpless forest department. We need investigations and action against groups that deliberately incite a panicked wild animal. To not do so would be to allow future situations to become even more dangerous; and to privilege revenge over solutions.

A general mob mentality is on the rise in India. Mobs are involved in attacks related to race, food preferences, and various forms of moral policing. In the face of such 'mobocracy', does wildlife stand a chance?

Neha Sinha is with the Bombay Natural History Society. Views expressed are personal

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.

Army's human shield

The Indian Army is known for its discipline and high degree of professionalism. Its mandate is to protect fellow citizens and not to humiliate them. Having force at your disposal is not an excuse to misuse it. The incident, of the Army allegedly using a human shield, will not deter stone pelters in Kashmir but will only increase their hatred towards the Army in particular and the government in general. For the aggrieved populace, every step of the Army will now be presumed to be an act by the state. The Army and the administration must apologise and mend their ways. The solution to the Kashmir problem lies in developing trust with all sections of society, and not through the mindless application of force (Editorial – "The rights thing", April 17).

DIVYANK SINGH,
Bhopal

■ Such acts, which must be condemned, are bound to further alienate Kashmiris. It is common knowledge that the sweeping powers given to the Army to counter insurgency are being widely misused. The situation in the Kashmir Valley is extremely volatile and our defence forces must exercise restraint, despite provocations. It is the responsibility of everyone to bring down the temperature in the troubled Valley.

VIJAI PANT,
Hempur, Uttarakhand

■ The names of several terrorist organisations which have used human shields in combat situations have been cited. But how could the very relevant example of stone pelters and militants in the Kashmir Valley themselves using innocent children and women as human shields have been missed? The media and other observers should stop applying the human rights yardstick selectively.

PRADEEP KOTHARI,
Rajgarh, Churu, Rajasthan

■ There seems to be hasty judgment of the actual ground situation prevalent at the time of incident. There has been no objective report on the use of "hybrid" methods being used by terrorists and misguided youth in Kashmir which include the use of minors as human shields. How can the lofty principles of the Geneva Convention on human rights be applied to these totally unconventional proponents of violence, hatred, separatism and mindless destruction? It would be refreshing if this daily, with its tremendous appeal, goodwill and sense of perceived fairness across the country, makes a similar impassioned plea to the youth of Kashmir to eschew their path of self-destruction.

SRIKANTI SUBRAHMANYAM,
Hyderabad

Case of Justice Karnan

The shocking behaviour of Calcutta High Court judge Justice C.S. Karnan in summoning judges of the Supreme Court judges to his 'residential court' for a hearing is unbecoming of the high office he holds (Editorial – "Outrageous defiance", April 17). Next to our defence personnel, members of the judiciary are seen as role models by the people for their discipline and dignified demeanour and fairness in action. However, we are witnessing a gradual decline. Justice Karnan's grouse, that he is being victimised on the basis of his caste, is an idle excuse. If this was the case, he would not have risen to the present position.

Y.G. CHOUKSEY,
Pune

■ As a law-abiding citizen, I am baffled and appalled by what is happening in Justice Karnan's case. I want to ask the honourable judges of the Supreme Court this: why are you treating Justice Karnan with kid gloves even after all the outrageous statements he has made in the media? I cannot imagine the common man not landing up in jail for saying half the things that Justice Karnan has said. Contempt of court is a necessary tool at the disposal of courts but it should be applied in a fair manner to all citizens.

ADITYA SHIKHAR,
Lucknow

■ The editorial was extremely biased. The substantive question raised by the honourable judge has been about corruption at high levels within the judiciary which has possibly been witnessed by the judge at close quarters. Many appear to be diverting from the issue. There is no mention of the need to address the issue of corruption. The honourable judge knows that the law is the final authority. He needs to be given a hearing.

T. MALLAN,
Mumbai

Justice denied

While every country has the right to deal with anyone indulging in anti-state acts, it has been clear *ab initio* that the so-called due process of law, if any, followed by Pakistan in the sentencing of Kulbhushan Jadhav is farcical. The speed with which the trial was carried out, and the manner in which India has been denied consular access to Mr. Jadhav indicate that something is seriously amiss in the events leading to his sentencing for alleged subversive activities. The warning by the Lahore High Court Bar Association that it would act against any lawyer who extended services to Mr. Jadhav is a black mark on the legal profession anywhere in the world. The Bar Association and the Pakistan government should be reminded of the fair trial given to Mohammed Ajmal Kasab, the gunman who took part in the 2008 Mumbai terror attacks despite his undeniable involvement and objections from sections of advocates in India.

B. HARISH,
Mangaluru

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