Coal comeuppance

The coal block allocation case may become a benchmark for other ongoing prosecutions

It is arguably the logical consequence of the 2014 Supreme Court order declaring all coal block allocations made since 1993 illegal and arbitrary. The conviction of three Coal Ministry officials, including former Secretary H.C. Gupta, marks the first case in which individual criminal liability has been fixed on public servants in the coal block scam. Two previous trials had ended in convictions, but those held guilty were officials of private companies who had deceived the authorities into allotting them blocks. Mr. Gupta was the chairperson of the screening committee that recommended allocations. It functioned for years without regard for guidelines, norms or transparency, until the apex court halted its irregular run. He and two other public servants have been found guilty of abusing their positions to procure a coal block for Kamal Sponge Steel and Power Limited. While it was fairly clear that the screening committee route was only a mechanism to push through the applications of all and sundry for coal blocks, especially under the first UPA government, it was not certain if it could be proved beyond reasonable doubt that public servants had manipulated the system to their advantage. Special CBI Court Judge Bharat Parashar has now ruled that Coal Ministry officials deliberately allowed an incomplete application from an ineligible company to be taken up for consideration. Far from 'screening' applications, he finds that the accused actually let all applications pass without any checking so that "they will have an open field to arbitrarily exercise their discretion in favour of any company".

The verdict is a studied indictment of government processes, or the lack of processes, during the period. Looking at the prosecution charges and the defence claims, it appears there was little clarity on whether the guidelines were being adhered to. The former Secretary and Joint Secretary said in their defence they could not verify applications for completeness and eligibility, as it was the job of the section concerned. The section says this is the job of the administrative ministry or the State government to which applications are forwarded. Other omissions include the failure to evolve any *inter se* criteria to decide eligibility, or to do any verification either before or after the screening committee recommended allocations to the Minister. Whether there was a conspiracy between the officials and the company and whether the prosecution proved that these omissions amounted to deliberate abuse of their positions will be matters that will, no doubt, be taken up on appeal; but the significance of the verdict is that it may become a benchmark for other ongoing prosecutions on similar lines. The case also raises questions about the role and responsibility of a Secretary to the government, who is not only the administrative head of a department but also an adviser to the Minister on matters of policy.

Rouhani's moment

His emphatic re-election as Iran's President gives the reformist agenda a chance

The resounding victory of President Hassan Rouhani, who had sought re-election on a platform of moderation and engagement with the outside world, is a strong endorsement by the Iranian people for political change. He won one of the most polarised elections in Iran's recent history, one in which the clerical establishment backed a candidate who was running against a sitting President. The hardliners rallied behind Ebrahim Raisi, who challenged Mr. Rouhani's economic policies, slammed his outreach to the West and even flung corruption allegations against him. Still Mr. Rouhani won 57% of the vote against Mr. Raisi's 38.5%. In 2013, Mr. Rouhani was an accidental candidate of the moderates. It was a time when the moderate movement had not recovered from the 2009 crackdown by the state apparatus after Mahmoud Ahmadinejad's controversial re-election. Then both the moderates and centrists led by former President Akbar Rafsanjani backed Mr. Rouhani as a consensus candidate. This time there was no Rafsanjani; Mr. Rouhani fought on his own. During the campaign, he assailed Iran's deep state in a way no sitting President had done. He reached out to women and the ethnic and religious minorities. The numbers suggest a vast majority of Iranians repose great faith in this cleric who promises them hope and change.

Now that he has won, the spotlight turns on the challenges ahead. In the first term, Mr. Rouhani treaded cautiously. His focus was on the nuclear negotiations Iran was undertaking with six world powers and he was averse to upsetting the conservative establishment. His record in offering more civil liberties fell short of expectations as young Iranians are still waiting for meaningful changes in the clergy-defined social order. The reformist politicians who were put under house arrest in 2011 are still not free, and Mr. Rouhani hardly spoke for them during his first term. And unemployment has not eased under his government. Now that the nuclear deal is done and he has a second term, it is time for Mr. Rouhani to act boldly. It is unrealistic to expect radical changes in a society that is tightly controlled by the Ayatollahs. Though the President is the highest elected official of the republic, real powers lie in the hands of the Supreme Leader. Any attempt to introduce rapid changes will meet with strong resistance from the deep state. But Presidents can pursue a gradualist reform agenda with popular support. Over the years, Iranian civil society, working within several constraints, has kept the moderate current that powers this reform agenda alive, in sharp contrast to several other countries in West Asia where elections are a sham and dissent is a crime. Mr. Rouhani's biggest challenge is to respond to this current constructively, by launching gradual reforms at home that offer more civil liberties and better economic opportunities to the people.

Addressing the court within

India must use this initial victory at The Hague to appeal to our own finest sense of conscience

SUHRITH PARTHASARATHY

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By itself, the International Court of Justice's order, delivered on May 18, imposing provisional measures injuncting Pakistan from executing an Indian national, Kulbhushan Jadhav, is entirely unexceptional. The ICJ has merely arrived at a *prima facie* satisfaction – based on an analysis at first sight – that it possesses the power to rule on India's application, and that India's rights, under the 1963 Vienna Convention on Consular Relations, have plausibly been violated by Pakistan's detention, trial and ultimate sentencing to death of Jadhav. There is now a worry, not without cause, that Pakistan may not comply with the ICJ's direction, despite its explicitly binding status. What's more, the internationalisation of the dispute potentially comes with its political ramifications for India. But much as all these considerations can serve as a basis for cynicism, we mustn't despair at India's choice. Its victory, impermanent as it may ultimately prove to be, must be celebrated for what it is: a vindication of the rule of law.

Dispelling old concerns

Too often ontological concerns encumber the study of international law – questions tend to revolve around whether international law is really law at all, and, if so, whether its principles even matter. Despite consistent empirical evidence which shows that international law positively influences state behaviour, these questions, seeped in scepticism, somehow never seem to go away. India's choice of the ICJ as a legitimate site for dispute resolution, even if it was borne out of self-interest, can help dispel some of these age-old concerns. But for that to happen, India must take on the additional responsibility that comes with its choice, to show us that it possesses the moral authority to charge other nations with a breach of the law. To achieve this, we must drive the Indian government towards greater domestic compliance with its own obligations under both treaty and customary law alike, to demonstrate that our own sense of conscience is stirred by the mandates of the world order.

First, though, let's consider the facts of the present dispute, as they are. Although India and Pakistan disagree over the precise nature of who Mr. Jadhav is and where he was arrested, the crux of India's case, which Pakistan hasn't particularly disputed on facts, is this: that Mr. Jadhav was denied consular access, despite numerous requests from India. Pakistan claims that these actions do not breach the Vienna Convention, as Jadhav was involved in espionage and sabotage. India submits that the treaty creates no such exception and that the denial of consular access is an infringement for which Pakistan must make reparations. To this end, India has sought, among other things, an order that would declare the sentence of the Pakistani military court as violating Article 36 of the Vienna Convention, which both countries as parties are bound by.

This provision defines the rights granted to consular officials, with a view to helping them exercise their consular functions. Specifically, it accords a privilege to officials to not only freely communicate with any national of its state detained in the other country, but also the right of visiting the detained individual, and arranging for legal representation, if the *détenu* so desires. It is India's case that these privileges were denied to it. Pakistan alleges that the Convention's privileges were not only inapplicable, but that the ICJ, in any event, lacks the jurisdiction to decide the dispute. Or, in other words, the court, it says, does not possess the power to make a legal determination on the dispute.

Ordinarily, rows between nations can be taken to the World Court only if both parties consent to the court's jurisdiction. In this case, however, India relies on Article 36(1) of the Statute of the ICJ which accords to the court the power to decide disputes arising out of treaties or conventions that specifically vest the court with compulsory jurisdiction. The Vienna Convention, through an optional protocol that both India and Pakistan are signatories to, is one such agreement.

ICJ in the picture

As India has pointed out in its application, the ICJ has, at least in two notable instances, entertained applications under Article 36(1) of its statute for breaches of the Vienna Convention. In 2001, the court ruled that the United States had violated its obligations to Germany in denying consular access to the LaGrand brothers, citizens of Germany who had been convicted and sentenced to death in the state of Arizona. Similarly, in the *Avena* case in 2004, the court ruled that the U.S. had failed to comply with the Vienna Convention in several instances involving Mexican nationals. The court here directed the U.S. to review and reconsider its convictions and sentences, in a manner that would take into account the breaches made of the treaty.

Pakistan, for its part, has resisted references to *LaGrand* and *Avena*. It claims that the two countries are governed by a 2008 bilateral agreement on consular access, which effectively exempts Pakistan from its obligations under the Vienna Convention, and which also ousts altogether the ICJ's jurisdiction. More ominously, however, it argues that the Vienna Convention does not apply when a person has been detained for offences involving espionage or terrorism, as concerns over national security always trump the demands of consular relations.

The ICJ is yet to rule conclusively on any of these arguments. It has only granted India provisional measures pending a final adjudication. But, on any reasonable final consideration, Pakistan's arguments ought not to pass muster. The 2008 bilateral understanding between the countries no doubt imposes particular responsibilities on them, but by no means does it relieve either country from its obligations under the Vienna Convention. As the opinions in *LaGrand* and *Avena* make clear, once a foreign national is arrested the state making the arrest has a duty to allow the consular officials of the sending state to visit the *détenu* and to render to him all the assistance that he needs. It's easy to see that Pakistan is in breach of this fundamental obligation. Its endeavour to wriggle out of this responsibility citing concerns over national security is also likely to fail. Were such an argument to be accepted, it would potentially lead to a most dangerous situation, where countries can ignore their consular obligations purely because they consider the sending state an enemy.

Whichever way the ICJ's decision might eventually go, the critical question, for now, though remains this: will Pakistan obey the court's provisional measures? Should it choose to ignore the order, it can glean much from the American experience. The U.S., after all, went ahead in executing one of the *LaGrand* brothers despite an explicit injunction from the ICJ, prohibiting it from carrying out the death sentence, pending a final adjudication. Ultimately, in 2005, the U.S. withdrew altogether from the Optional Protocol, which grants the ICJ compulsory jurisdiction over claims made under the Vienna Convention.

A glass already half full

When we see naked expressions of power such as this, it's easy to conclude that international law exists in vacuity, that its principles aren't merely flawed but that they are also law only in their name. However, we can still see the present proceedings as a tunnel that ends with the optimistic light of day. Even if Pakistan were to disregard the ICJ's order, the case shows us that there do exist concrete sources – a treaty in this case – which impose an ethical duty on nation-states to follow the rule of law. It allows us to consider what the scholar Thomas M. Franck described as "post-ontological" questions, to address not whether international law really is law, but the more normative concerns over how best to enforce its commands. We must therefore use this opportunity to shun scepticism, and appeal to our own finest sense of conscience. We can only do this by resisting a push for greater governmental freedom at the domestic level, which invariably tends to carry itself into the sphere of international relations, where our own obligations – think climate change, customary refugee law, fundamental human rights, among others – often stand breached. To set the right moral example we must start from within.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

An opportunity being drained away

Sound policies on wastewater treatment and use are vital to sustainable development

PRAKASH NELLIYAT

Each year a specific aspect of water is highlighted while observing International World Water Day (March 22); this year's theme was "wastewater", which is defined as any water that has been adversely affected in quality by anthropogenic influences and as a result of domestic, industrial, commercial and agricultural activities.

In recent decades, population growth, accelerated urbanisation and economic development have resulted in an increase in the quantity of wastewater and the overall pollution load being generated. Most of our freshwater sources are under threat. When public awareness of pollution is limited, the cost of pollution to our health and the ecosystem is huge. The victims are generally the poor or socially vulnerable communities, and the end result is a high financial burden on the community and government.

Water facts

Globally, over 80% of the wastewater generated goes back to the ecosystem without being treated or reused. Another fact is that 1.8 billion people use drinking water contaminated with faeces which increases their risk of contracting cholera, dysentery, typhoid and polio. Also, 663 million people still lack access to improved drinking water sources.

The opportunities for exploiting wastewater as a resource are enormous. Safely managed wastewater is an affordable and sustainable source of water, energy, nutrients and other recoverable materials. The benefits to our health, and in terms of economic development and environmental sustainability, business opportunities and 'green' jobs far outweigh the costs of wastewater management.

By 2030, the global demand for water is expected to grow by 50%. Most of this demand will be in cities. In low-income areas of cities/towns within developing countries, a large proportion of wastewater is discharged directly into the surface water drain, without or with limited treatment. Traditional wastewater treatment plants may not remove certain pollutants. In India, about 29,000 million l/day (mld) of waste water is generated from class-I cities and class-II towns, out of which about 45% (about 13,000 mld) is generated from metro cities alone. A collection system exists for only about

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30% of the wastewater through sewer lines, while treatment capacity exists for about 7,000 mld.

Industrial water consumption accounts for 22% of the global water used. The industrial sector in India discharges around 30,730 million cubic metres of effluents, without proper treatment, into waterbodies. Unfortunately, most common effluent treatment plants are not performing satisfactorily due to improper operations and maintenance.

Run-off from agriculture fields is another major source of pollution.

India, with 17% of the world's population, 4% of water resources and 2.4% of land area, extracts water significantly for various developmental purposes. Hence, the water flow or storage capacity of water bodies has declined substantially, adversely affecting their waste assimilation/sink functions.

Past experience shows that significant progress has not been achieved despite legislative and policy measures being introduced with huge budgets to solve water pollution issues. Water pollution is not a major topic of political debate as yet.

Management strategies

There is sufficient evidence to suggest that the problem, though complex, is solvable. While it is not realistic to aim for zero water pollution, a level of socially acceptable pollution, respecting the integrity of ecosystems and service provision, can be reached.

At the national and regional levels, water pollution prevention policies should be integrated into non-water policies that have implications on water quality such as agriculture and land use management, trade, industry, energy, and urban development. Water pollution should be made a punishable offence. The effectiveness and power of the "polluter pay principle" should be considered.

Various policies, plans and strategies to protect water resources should be participatory, allowing for consultation between government, industry and the public. At the local level, capacity building enables the community to make decisions and disseminate them to the appropriate authorities, thus influencing political processes. Market-based strategies such as environmental taxes, pollution levies and tradable permit systems should be implemented, and can be used to fight against or abate water pollution. Incentive mechanisms such as subsidies, soft loans, tax relaxation should be included in installing pollution management devices.

In industrial pollution management, technological attempts should be made through cleaner production-technology. Sophisticated pollution management technology developed overseas should be introduced in India. The application of eco-friendly inputs such as biofertilizers and pesticides in agriculture and the use of natural dyes in textile industries can reduce the pollution load considerably.

Since fresh water is increasingly getting scarce, wastewater generated in urban areas can be used for sub-urban agriculture, industry, and even sanitation and certain domestic applications after treatment. Wastewater need not be a burden any longer but an asset instead.

Prakash Nelliyat works with the Centre for Biodiversity Policy and Law, National Biodiversity Authority, Chennai. Statistical references are from various published papers and the insights from a recent paper by the writer. The views expressed are personal. E-mail: nelliyatp@yahoo.co.uk

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.

Hack it yourself

The bold decision by the Election Commission to throw an open challenge to political parties to prove their claims that EVMs can be tampered with should take the wind out of the sails of parties such as the Aam Aadmi Party, whose top leaders have been shouting themselves hoarse levelling allegations ("EVM hackathon from June 3", May 21). A constitutional body such as the ECI opting to nail the lie of the doubting Thomases is an unprecedented step in Indian electoral history. The EC's stock will certainly rise once it succeeds in putting all doubts to rest. Some of our political parties are in for a shock.

C.V. ARAVIND,
Bengaluru

■ While it is obvious for anyone losing to cry foul, the EC's attempt to be transparent should also be used as an occasion to make the political parties concerned apologise should they be proved wrong. With the VVPAT EVMs finding a place in the next Assembly and general elections, one hopes that the trend of ridiculing the EC and EVMs will end.

PRAVEEN PATAVARDHAN,
Bengaluru

Political alignments

After the initial high, O. Panneerselvam now finds his political path riddled with potholes as events are not falling into place as expected. ("OPS camp hints at pact with BJP, retracts", May 21). The confused attempts to patch up with the Edappadi Palanisami (EPS) faction emanate from a lack of clarity on the way forward. It is difficult for a party to survive solely on the basis of issues such as "keeping away a particular family" or ordering an inquiry into the circumstances around Jayalalithaa's demise. As long as the EPS faction has the majority, Chief Minister Palanisami should be allowed to rule. The next elections are some years away and taxpayer money should not be wasted. Corrupt and inefficient governments running their full term is not new either as long as they have the numbers. People will get an opportunity to decide who should govern them. Since both factions have the same ideology, Mr. Panneerselvam should try and get back with the ruling group.

V. SUBRAMANIAN,
Chennai

Bobbitised

Society needs shock treatments periodically ("Kerala girl cuts godman's genitals, ends eight-year ordeal", May 21). The incident may sound bizarre but such a case is bound to happen when there is progressive moral degradation. What sort of a spiritual guide was he?

V. LAKSHMANAN,
Tirupur, Tamil Nadu

Blockbuster

As an ordinary cine-goer who watched the film "Baahubali 2", I think that apart from the graphics or spectacular visuals that the film offers, the main thing that made the film a grand success is its story which is set away from the harsh realistic world that we live in. It is an escape from the challenges, insecurities and fears that we face in day-to-day life and of being part of a complex and corrupt society. It is one film where you don't have to explain to your children about the bad things in life. The director has even upheld respecting women by including a scene where Baahubali chops off the head of a security guard who misbehaves with women. We have not had an Indian superhero for a long time, even after the Shaktimaan era. "Baahubali" has given us one. When we laud Hollywood films such as "Gladiator" or "Troy", even calling them "classic", why not appreciate it when Indian cinema makes a similar attempt ("The Bali of Cinema" and "Very Worst Graphics", *The Hindu* Magazine, May 14 and May 21, respectively)?

NEETHU S. NAIR,
Palakkad

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CORRECTIONS & CLARIFICATIONS:

A sentence in the story headlined "A spectre is haunting GOP lawmakers" (May 21, 2017) read: "... in Virginia, Dave Brat could hardly have a word tossed above the din that didn't stop *until he did not stop*;" It should have been *until he stopped*.

Wrong headline: It was not Netflix that was heckled at Cannes as given in a Life page (May 19, 2017) headline. It was actually the Cannes projection team which was booed for wrong aspect ratio. The correct headline is: "Cannes projection team booed at Okja première".

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, Kasturi Buildings, 859 & 860 Anna Salai, Chennai 600 002, India.
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