



THURSDAY, JULY 3, 2014

Speaking up for the judiciary

Chief Justice R.M. Lodha deserves appreciation for breaking away from the secrecy surrounding the process of appointment of judges and disclosing that the government had unilaterally segregated the name of Gopal Subramaniam from a four-member list it had recommended for appointment as Supreme Court judges. The disclosure that the separation of one name for reconsideration, while sending up the other three for appointment, was done without his knowledge and concurrence has placed the onus of explaining the rejection of Mr. Subramaniam's candidacy squarely on the government. When Mr. Subramaniam went public with his letter to the Chief Justice of India withdrawing his consent to be made a judge, the immediate upshot was that it stirred up a controversy over what he had the country believe was an affront to judicial independence. For a few days, there was an impression that the collegium, which recommends all appointments in the higher judiciary, had acquiesced in the government's decision to overrule its recommendation. On the contrary, Chief Justice Lodha's statement now makes it clear that had Mr. Subramaniam not hastily withdrawn his consent, it may have reiterated its recommendation. In the final analysis, it would appear that Mr. Subramaniam himself has contributed to the undermining of the judicial collegium process by denying it an opportunity to evaluate the government's reservations and take a final call. He needs to introspect whether his accusation that the judiciary did not stand up to the executive is really valid.

The Chief Justice's stand has had a salutary effect, with Union Minister for Law and Justice Ravi Shankar Prasad affirming the government's commitment to an independent judiciary. The executive is quite confident that it has not undermined prescribed procedure while segregating Mr. Subramaniam's name and that it had valid reasons. However, it continues to speak anonymously through unattributed briefings to the media while seeking to clarify its position. It has been silent on the reason why it found the former Solicitor General unsuitable, and why it did not apprise the collegium about its reservations before segregating his name. In the backdrop of Mr. Subramaniam alleging that he was not chosen because he was too independent to "toe the government's line" and seeking to link his resignation with his role as *amicus curiae* in the Sohrabuddin encounter case, the government's continued reluctance to speak out is not helping its case. For, while the Gopal Subramaniam episode has revived the debate on the present system of judicial appointments, it has also raised the question whether the NDA government wants to revert to the 1970s practice of seeking to appoint only committed judges.

An unenviable task

A week before he presents the first budget of the NDA government, Union Finance Minister Arun Jaitley faces the unenviable task of reining in the fiscal deficit, the excess of aggregate government expenditure over total income. Along with reviving growth and boosting infrastructure, controlling the deficit will most likely be a focus area. Always a difficult task for any finance minister, Mr. Jaitley's role has become especially onerous for two reasons. According to figures released by the Controller General of Accounts, the fiscal deficit during the first two months of fiscal 2014-15 exceeds 45 per cent of the amount budgeted for the whole year in the February interim budget. In contrast, during the first two months of 2013-14 the figure was slightly over 33 per cent. An unanticipated increase in the fiscal deficit obviously reduces the elbow room available to stimulate growth. The second factor adding to the complexity of the forthcoming budget exercise is the fact that the interim budget's estimates of key fiscal numbers have been based on unrealistic assumptions, which, as the early deficit numbers for the current year show, do not stand scrutiny.

In the interim budget for the current year, the then Finance Minister P. Chidambaram estimated the fiscal deficit for 2013-14 at 4.5 per cent of the GDP, significantly lower than the budget estimate of 4.8 per cent and even lower than the revised estimate of 4.6 per cent. For the current year, the target was pegged at 4.1 per cent. Quite obviously, the attainment of such an ambitious target is dependent on how realistic the underlying assumptions have been. Even in February, doubts were raised and more detailed studies now have reinforced the earlier scepticism of the UPA-II's handling of public finance. Its claim of bringing down the deficit and simultaneously moving towards fiscal consolidation sounds incredible at a time of slowdown. Gross tax revenue fell short by about Rs.97,000 crore, increasing by only 10 per cent as against 19 per cent aimed for in the interim budget. Indirect tax collections under different heads were also sharply lower. Under those circumstances, the seemingly impossible containment of deficit at manageable levels has been possible only by bringing revenue receipts forward, shelving some expenditure to the next year and making unsustainable cuts in capital expenditure. None of this is possible or recommended for Mr. Jaitley whose important task will be to restate the financial position in a transparent manner. It is extremely unlikely that the fiscal deficit target of 4.1 per cent for the current year can be maintained but that will be a small price to pay for more transparent government finance.

The geopolitics of the Islamic state

Vijay Prashad

Abu Bakr al-Baghdadi welcomed this Ramadan by declaring the formation of the Caliphate, with him as the Caliph — namely the successor of the Prophet Mohammed. It is the first return of a Caliphate since Kemal Atatürk's Turkish National Assembly abolished it in 1924. Al-Baghdadi, the *nom de guerre* for the leader of the Islamic State of Iraq and al-Sham (ISIS), has now announced that borders inside the *dar al-Islam*, the world of Islam, are no longer applicable. He has been able to make this announcement because his fighters have now taken large swathes of territory in northern Syria and in north-central Iraq, breathing down on Baghdad, the capital of the Abbasid Caliphate (750-1258).

Al-Baghdadi's declaration comes after ISIS threatened to make its presence felt outside the territory it now controls. Bomb blasts in Beirut, Lebanon, hinted at ISIS' reach. Jordanian authorities hastened to crack down on " sleeper cells " for ISIS as soon as chatter on social media suggested that there would be a push into Zarqa and Ma'an. Private Kuwaiti funding had helped ISIS in its early stages, but now Kuwait hinted that it too is worried that ISIS cells might strike the oil-rich emirate. When ISIS took the Jordan-Syria border posts, Saudi Arabia went into high alert. There is no substantive evidence that ISIS is in touch with al-Qaeda in Yemen, but if such coordination exists (now that al-Baghdadi has fashioned himself as the Caliph) it would mean Saudi Arabia has at least two fronts of concern. "All necessary measures," says the Kingdom, are being taken to thwart the ISIS advance.

Jihad hub

Several months ago, two intelligence agencies in the Arab region had confirmed that ISIS is a genuine threat, not a manufactured distraction from the war in Syria. Many of those associated with the rebellion in Syria had suggested that ISIS was egged on by the government of Bashar al-Assad to allow his preferred framing of the Syrian war — that his is a war against terrorism and not against a civic rebellion. While it is true that Assad's government released a number of *jihadis* in 2011, there is no evidence to suggest that he created ISIS. ISIS is a product of the U.S. war

Both the West and the Gulf Arabs suggest that the terrorism that they dislike against themselves is acceptable to others. The history of their policies also suggests that their intervention leads inexorably to the creation of police states and terrorist emirates. A lack of basic commitment to people's movements will always lead to such diabolical outcomes

on Iraq, having been formed first as al-Qaeda in Iraq by the Jordanian militant Abu Musab al-Zarqawi. Deeply sectarian politics, namely an anti-Shia agenda, characterised al-Qaeda in this region. Funded by private Gulf Arab money, ISIS entered the Syrian war in 2012 as Jabhat al-Nusra (the Support Front). It certainly turned a civic rebellion into a terrorist war. Political support from the West and logistical support from Turkey and the Gulf Arab states allowed it to thrive in Syria. It became a hub for international *jihad*, with

the ascendancy. It is of course true, as I saw first-hand, that the actual fighters in the *jihad* groups are a ragtag bunch with no special commitment to this or that ideology. They are anti-Assad, and they joined Jabhat al-Nusra or Ahrar ash-Sham because that was the group at hand with arms and logistical means. Nevertheless, the fighters did fight for these groups, giving them the upper hand against the West's preferred, but anaemic, Free Syrian Army. The Islamic State's breakthrough in Iraq has inspired some of these

gered its citizens. In March, the Governor of Hatay province, Mehmet Celalettin Lekesiz, called upon the government to create a new policy to "prevent the illegal crossing of militants to Syria." His report was met with silence.

Blowback

An ISIS billboard in Mosul depicts the flags of the states in the region. All are crossed out as being traitorous regimes. Only the ISIS black flag stands as a sentinel for justice. Among the regimes to be overthrown is the Kingdom of Saudi Arabia. Saudi Arabia has used its vast wealth to influence the region, and to outsource its own problems with extremism. In 1962, the Kingdom created the Muslim World League as an instrument against secular Arab nationalism and Communism. Twenty years later, the war in Afghanistan provided the opportunity for the Kingdom to export its own disaffected youth (including Osama bin Laden) to fight the Afghan Communists rather than their own royal family. The 1979 takeover of the Mecca mosque by *jihadists* was an indication of the threat of such youth. Saudi policy, however, did not save the Kingdom. Al-Qaeda, the product of this policy, threatened and attacked the Kingdom. But little was learned.

Saudi policy *vis-à-vis* Syria and Iraq repeats the Afghan story. Funds and political support for *jihadis* in the region came from the Kingdom and its Gulf allies. Saudi Arabia tried to stop its youth from going to the *jihad* — a perilous mistake that it had made with Afghanistan. On February 3, the King issued a decree forbidding such transit. But there is no pressure on Saudi Arabia and its Gulf allies to stop their tacit support of ISIS and its cohort. Nor is there pressure on it to stop its financing of the harsh repression in Egypt, sure to fuel more conflict in the near future. The Arab world, flush with hope in 2011, is now drowning in a counter-revolution financed by petrodollars. Saudi Arabia's response to the rise of ISIS misleads — no intervention to help the Iraqi state. "We are asked what can be done," wrote its Ambassador to the U.K., Prince Mohammed bin Nawaf bin Abdul Aziz. "At the moment, we wait, we watch and we pray."

No age-old conflict

The fact is that both the West and the Gulf Arabs are doing more. They continue to finance the *jihadi* rebels in Syria (all promises of vetting by the U.S. are comical), and they continue to see the Assad government as an obstacle to peace in the region. Both the West and the Gulf Arabs suggest that the terrorism that they dislike against themselves is acceptable to others. The history of their policies also suggests that Western and Gulf Arab intervention leads inexorably to the creation of police states (as in Egypt) and terrorist emirates. A lack of basic commitment to people's movements — anchored in unions and in civic groups — will always lead to such diabolical outcomes.

Meanwhile, sectarian lines are being hardened in the region. The battle now does not revisit the ancient fight at Karbala. This is not an age-old conflict. It is a modern one, over ideas of republicanism and monarchy, Iranian influence and Saudi influence. Shadows of sectarianism do shroud the battle of ordinary people who are frustrated by the lack of opportunities for them and by the lack of a future for their children. What motivates these fights is less the petty prejudices of sect and more the grander ambitions of regional control. Al-Baghdadi has announced that his vision is much greater than that of the Saudi King or the government in Tehran. He wants to command a religion, not just a region. Of such delusions are great societies and cultures destroyed.

(Vijay Prashad is the Edward Said Chair at the American University of Beirut, Lebanon.)

CARTOONScape



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.

Name segregation

The Chief Justice of India, R.M. Lodha's statement blaming the Centre for "unilaterally segregating" senior advocate Gopal Subramaniam's name for elevation as Supreme Court judge raises many doubts (July 2). It is difficult to assume that such a segregation of one or more names is illegal. It must be noted that the CJI found impropriety with the executive for what it did as it was without his knowledge and concurrence. The government only returned his case to the collegium for "reconsideration." Admittedly, this is a part of a consultative process and admissible under the law. It is not known whether a consultation is binding even before the file is returned. Moreover, the segregation by itself does not prevent the collegium from reviewing its stand. Thus, the fear of a "compromise of the independence of judiciary" seems to be out of place.

The order of the nine Judge Supreme Court Bench of October 10, 1993 unambiguously says that "the role of the Chief Justice of India in the matter of appointment of judges of the Supreme Court is unique, singular and primal, but participatory *vis-à-vis* the executive on a level of togetherness and mutuality. And neither he nor the executive can push through an appointment in derogation of the wishes of the other." The present episode shows the absence of the stated "togetherness and mutuality."

P.R.V. Raja,
Pandalam, Kerala

The CJI has delivered a sharp rap on the knuckles of the BJP/NDA government. The government's meek admission that the issue has

no valid status now as Mr. Subramaniam has already withdrawn his candidature cuts no ice as the government had done enough to drive Mr. Subramaniam to a situation where withdrawal was the only way he could salvage his reputation.

The efforts of the government to denigrate Mr. Subramaniam by endeavouring to dig out the dirt on him is a sordid chapter in the judiciary-executive relationship and speaks very poorly of the government in general and the Law Minister in particular. The CJI's stand is one that has struck a blow for the judiciary.

C.V. Aravind,
Bangalore

The independence of the judiciary has a much wider connotation than spelling mere independence from the executive. In his book *Unspeakable Anecdotes*, Justice V.R. Krishna Iyer, while commenting on judicial appointments, refers as to how the then CJI once opposed his elevation to the Supreme Court only on the ground that he was a Communist. He also refers to how Mr. Justice Mathews, then a sitting Judge of Supreme Court, told Justice Krishna Iyer how lonely he felt when he found that judges are not in favour of socialist thinking. Therefore, we will have to closely examine the selection and appointment of judges on the basis of how far they fulfil the socialist credentials of the Constitution. When these appointments were in the air, the only talk was about how much income these lawyers were making and the sacrifice they would be making by accepting judgeship. I think appointments should not be based on income but on outcome.

N.G.R. Prasad,
Chennai

The CJI's remark, though belated, has caught the Centre off guard. However, it is not clear why he has chosen to express his views at a function instead of formally communicating his strong views to the government through a letter. Will the government, which has shown utter disregard for the judiciary's formal recommendations, care for such an off-the-cuff remark? It would appear as though the judiciary has become wary of asserting its independence.

G. Radhakrishnan,
Thiruvananthapuram

NSA snooping

The U.S. has assumed the role of a self-appointed human rights champion of planet earth and arrogates to itself the right to keep vigil over nations of its choice, especially those that have fallen out of favour with it for one reason or other ("Government to seek U.S. explanation after reports of snooping on BJP," July 2). Why should the government be caught off guard then? The fact is that one can be assured that the U.S. is constantly engaged in deep-rooted espionage. If the ruling dispensation in Delhi thinks that it can put the U.S. in the dock over these charges of snooping, it is sadly mistaken in its assessment of the U.S.'s sensitivity in such matters. Cornering Big Brother is next to impossible.

Sivamani Vasudevan,
Chennai

MP's remarks

Trinamool Congress MP Tapas Pal's "deeply insensitive" remarks against supporters of the CPI(M) are in bad taste and deserve strong condemnation (July 2). And to make matters worse are his alleged remarks in another videotape

propagating violence. This amounts to State-sponsored hooliganism and violence. Even though West Bengal Chief Minister Mamata Banerjee has expressed her disapproval of his remarks (July 2), this does not spell closure. He has to be punished by Parliament.

J. Anantha Padmanabhan,
Tiruchi

Such brazen and shameless remarks must be severely condemned. It does not require much intelligence to think of the repercussions of such words/thoughts. The political class must realise that it has to be careful about what it says in the public domain. The law must run its course and an FIR filed against him for using "hate speech," and advocating both threat and coercion in order to create a divide.

Kamishka Pathak,
Dhanbad, Jharkhand

It is unfortunate that State and national level politics have now reached a state of nadir in terms of morality and language. Mr. Pal appears to have caused great harm to the Mamata Banerjee government; his narrow thinking reveals his deep moral bankruptcy. His hate speech must be condemned by one and all. Even though Ms. Banerjee has cautioned the politician, the State government and the party must move a step ahead and expel him.

Janga Bahadur Sunuwar,
Bagrakote, Jalpaiguri

Civil code

The idea of a uniform civil code could bind the country as a whole but we cannot afford to neglect religious perspectives too ("The importance of piecemeal reforms," July 2). India is a diverse nation with many religions and a variety of

cultures and traditions. So, we should respect religious sentiments and a code of conduct. In a country like India, such a code may not work well in a practical sense.

Saba Fatmi,
New Delhi

It is most desirable to have a uniform civil code. The fear that it will encroach on religion/religious rites is unfounded. For example, the point about rites of death and fears over what could happen are unwarranted. False information should be ended by having continuous dialogue among all the leaders and the learned in every religion. The roll-out of a uniform civil code can be done in stages and then consolidated. People must be more receptive to reforms. It is a decade argument to say that personal law has no relationship with the development or backwardness of a community.

K. Rajendran,
Chennai

Virtual courses

While the advantages of Massive Open Online Courses (MOOC) are praiseworthy ("Virtual courses for a knowledge-based society," July 1), the writer has failed to understand and explain the reason for the high enrolment of Indians in MOOCs worldwide but with a minimal rate of course completion. They seem to be sought after by students who are not academically inclined yet eager to have a course certificate. Second, there are a number of short-time online courses offered by bogus educational institutes — very popular again, being affordable. If MOOCs are to succeed in India, they must be under the supervision of the HRD Ministry, the UGC and the AICTE.

Sumeet Mahendra,
New Delhi