



Nudged into action

After long delays, a Supreme Court push is needed to establish the Lokpal

It should have never come to this on the Lokpal. That it requires a Supreme Court order to nudge the government to make any progress towards establishing the anti-graft institution is a poor commentary on its functioning. The court has asked the eight-member Search Committee under the Lokpal Act to recommend a panel of names before the end of February. This shortlist has to be sent to the Selection Committee, headed by the Prime Minister. It has taken five years since the Lokpal Act, 2013, received the President's assent on January 1, 2014, for a Search Committee to even begin its work. It was formed only on September 27, 2018, after Common Cause, an NGO, filed a contempt petition against the government over the delay in constituting the authority despite a Supreme Court verdict in April 2017. It is true that setting up the Search Committee requires some groundwork, as its composition should be drawn from diverse fields such as anti-corruption policy, public administration, law, banking and insurance; also, half its membership should consist of women, backward class, minority and SC/ST candidates. However, it is the government's duty to expedite this process and not cite it as a reason for delay. Even after it was formed, the Search Committee has been handicapped because of lack of office space, manpower, infrastructure and a secretariat. The court has now asked the government to provide the required infrastructure. In the past too, the court has admonished the Centre for the delay in creating the institution. In its April 2017 verdict, the court brushed aside the reason that the government was awaiting the passage of an amendment based on a parliamentary committee report and said there was no legal bar on the Selection Committee moving ahead with its work even if there was a vacancy in it.

There is a good deal of politics behind the delay. The Selection Committee, which includes the Lok Sabha Speaker, the Leader of the Opposition, the Chief Justice of India and an eminent jurist, has met in the past without Mallikarjun Kharge, who heads the Congress in the Lok Sabha. He has been skipping meetings, as he is aggrieved that the government has not made him a full member, and has roped him in as a 'special invitee'. The government sticks to its view that he has not been recognised as the Leader of the Opposition by the Speaker. This minor issue has been resolved in respect of appointments to other posts such as CBI Director and Central Vigilance Commissioner by a simple amendment to treat the leader of the largest Opposition party as the Leader of the Opposition for this purpose. This amendment has not been brought about despite a parliamentary committee report endorsing the idea in December 2015. Nothing except the lack of political will to establish the Lokpal can explain years of delay.

Shape of the slowdown

China's capacity to manage its economic transition has implications the world over

The Chinese growth juggernaut is slowing down. The world's second-largest economy has reported that its exports for December fell by 4.4%, the sharpest fall in two years amidst rising trade tensions with the United States and fears of a global economic slowdown. China's trade surplus with the U.S. has increased to \$323 billion, its highest level since 2016 and up 17% from a year ago. This is likely to put added pressure on Chinese exports to the U.S. Besides, China's factory activity contracted to a two-year low by the end of December while car sales in 2018 dropped for the first time since 1990, pointing to faltering demand from Chinese consumers. There are increasing fears that the Chinese government may further drop its growth target to 6% this year, from 6.5% last year. Given its implications for global growth, markets across the world have naturally been worried about the fate of the Chinese economy. Its stock market, in particular, was the worst-performing among major economies last year. Apple, Jaguar Land Rover and other companies have warned of weak earnings due to a slowdown in their sales in China. Responding to fears of a serious slowdown in the economy, the People's Bank of China on Wednesday injected cash worth \$83 billion into the economy through open market operations in order to boost bank lending and overall economic growth. It is believed that the Chinese government may be prepping for a stimulus worth trillions of yuan to step up spending in the economy.

China has been struggling to transition from its earlier growth model led by cheap exports and huge capital investments into a more domestic consumption-led economy. In particular, the government and the central bank have in recent years tried to wean the economy off cheap debt that fuelled its impressive growth run. The Chinese central bank fully opened the credit taps of the economy in the aftermath of the 2008 global financial crisis that threatened to derail growth. But even as it tries to steer the economy towards more consumption-led growth, the state has been wary of allowing economic sectors like real estate that were earlier boosted by the availability of cheap credit to go bust. A true restructuring of its export- and state-led economic model will not be possible until China allows the liquidation of uneconomic projects that were begun only because of the availability of ample amounts of cheap credit. This will be the first step towards building a more market-driven economy. But it is not clear whether China is willing to bite the bullet and stop feeding its economy with cheap credit. It may be tempted to go further and look at socialising the losses coming from defaults on business loans. None of this will be good for the long-term health of the Chinese or the global economy.

Some call it democracy

To call for the overthrow of a stale and fearful social system is not sedition. It is democracy



NEERA CHANDHOKE

Sedition and conspiracy charges have been filed against three former students of Jawaharlal Nehru University (JNU), and seven others. If these charges are established, 10 young Indians could be sentenced to life-term imprisonment. A great deal has been said and written about the need to banish a 19th century law, introduced by Lord Macaulay, from the statute books. It may be time to ask another question: what kind of a government wages war on its own students? History tells us that short-sighted governments do precisely this.

The spirit of 1968

In May 1968, students in universities across France rose in revolt against hide-bound, patriarchal and class-governed structures, from the family, the capitalist market, to the government ruled by the conservative President Charles de Gaulle. In early 1968, students at the campus of the University of Paris at Nanterre, located on the outskirts of the capital city, had launched a protest. They campaigned against the involvement of Western governments in the Vietnam War, against sexual unfreedom, and for the realisation of liberty that the French had, less than 200 years ago, fought for. In May, students at the Sorbonne expressed solidarity with their fellow students, and revolted.

Young women and men took to the streets, and as a result were beaten up by the police. Hundreds of them were arrested. This led to

the closing down of the prestigious university. Ironically, police brutality incited even more students to join the movement. The police assaulted young people with tear gas and swinging batons. But students were determined to re-enact the spectacular 1789 revolution that had been left unfinished in some respects. They constructed hundreds of barricades in the Latin Quarter of Paris. The slogan that inspired them to defy the police was: politics is the art of the impossible.

On May 13, workers from the Renault factory joined the protests and struck work. Factories were closed, trains ground to a halt, and the French government came to a standstill. De Gaulle had not taken student demonstrations seriously; he had to pay for this serious lapse of judgment. He dissolved Parliament and mobilised hundreds of supporters to counter the protest. His party came back to power after the elections, but in the following April he resigned after his government lost a referendum. He had thought the results would demonstrate his acceptability to the people of France. The French did not forgive him for going to war against his own students.

Fifty years later, May 1968 is remembered as the month and the year when university students launched a political, cultural and sexual revolution. And the world recollected the words of the English poet William Wordsworth, who in *The Prelude* wrote of the 1789 French Revolution: "Bliss was it in that dawn to be alive, But to be young was very heaven! O times... When Reason seemed the most to assert her rights." Wordsworth was perceptive. The vision, the energy and the language invented by rebellious young people injected a breath of fresh air into our jaded



and bankrupt political discourses. If the young do not struggle for emancipation, who will?

Three years ago

Students assembled on the grounds of JNU more than three years ago spoke of liberation from a caste-ridden and inegalitarian society. They reiterated the need to abolish capital punishment, which many fine legal minds have also condemned. They pointed out that the government should address escalating tensions in the Kashmir Valley. Some elements, reportedly outsiders, shouted anti-India slogans. This is hardly sedition. Will our great country and ancient civilisation collapse because of some idiotic slogans? We ought to have confidence in the capacity of India to endure youthful indiscretions, the country has survived infinitely more serious attacks on its territorial integrity. It is ridiculous to charge students with sedition when all that they were asking for was the breaking of shackles.

There was no violence, no call to use force or grind the capital city of Delhi to a halt, no suggestion that the gathering lay siege to official institutions, or ask for the resignation of the government. The conversation was in perfect conformity with the spirit of public

universities. The public university is not a teaching shop. Within the metaphorical walls of the university we find classrooms and libraries. We also find open spaces where students assemble and discuss political predicaments, cafes and *dhabas* where they interact with co-students who come from different regions of the country, and statues of leaders that form a rallying point for protests. The Vivekananda statue outside the main library in the North Campus in Delhi University has been a fulcrum of student politics since my student days.

Through these activities, students become familiar with the notion of citizenship. They connect with others, they learn that they have the constitutional right to challenge the power of elected representatives. It is in the university that they absorb the virtue of solidarity. It is here that they learn that in a democracy they have the right to make their own histories, even if they make these histories badly.

University students have the right to acquaint the public and the government with depressing tales of how lives are led in an inegalitarian society. In a representative democracy we are supposed to communicate opinions and demands through elected representatives. But representatives, we have found, are too busy manipulating public opinion to get power. Fairly early in the biography of representative democracy, citizens realised that they would have to put forth their needs, their interests, and their aspirations into the public domain through networks of associations. The intent is not to contest elections or take over the state – the idea is to raise issues, and provoke debates on what the good society is, and how it can be

brought into existence.

This is precisely what young people were doing some years ago, and more of them should be discussing problems that have been left unresolved by unresponsive governments all this while. People in power should recognise the importance of political debate in civil society, they should learn to heed demands catapulted into the public domain by student associations. If some hotheads shout objectionable slogans, ignore them as long as these do not lead to harm. This is how mature democracies behave.

The political impulse

The age when young people were infatuated with the politics of the impossible, 1968, ended, but it threw up several movements that changed the world. They re-cast gender relations, emphasised civil liberties, empowered alternative sexualities, and familiarised us with the tyrannies of power. That was fifty years ago. Once again, the young need to experience the "blissful dawn" and call for the overthrow of caste discrimination, inequality, patriarchy and other remnants of an oppressive order in India. This will complete the objectives of our freedom struggle, for political equality is inadequate without social and economic equality.

To call for the overthrow of a stale and fearful social system is not sedition. We call it democracy. We fight for democracy not, in Wordsworth's words, "in Utopia, subterranean fields, Or some secreted island... But in the very world, which is the world/ Of all of us, the place where in the end/ We find our happiness, or not at all."

Neera Chandhoke is a former Professor of Political Science at Delhi University

The danger of reciprocity

It is vital the Supreme Court collegium remains firmly independent



FAIZAN MUSTAFA

Independence, impartiality and fearlessness of judges are not private rights of judges but citizens' rights. Ultimately judicial legitimacy/power rests on people's confidence in courts. We have yet another controversy surrounding the Supreme Court, with the collegium revisiting decisions made at an earlier meeting and recommending the elevation of two junior judges to the Supreme Court. No one has any doubts about the competence or integrity of Justice Sanjiv Khanna and Justice Dinesh Maheshwari, but the manner in which it was carried out puts the spotlight once again on the controversial collegium system of judicial appointments.

This seriously undermines the independence of judges and raises unnecessary doubts about the credibility of the highest court as the government is not only the biggest litigator but also the greatest threat to the abuse of power. Judicial review as a concept is supposed to control the government and keep it in check.

How has this panned out in the past? Let's look back at the Justice K.M. Joseph case. He had struck

down the Modi government's imposition of President's rule in Uttarakhand and saw the government returning the recommendation for his elevation to the Supreme Court to the collegium last April – his appointment was cleared in August. This time the government not only did not return the recommendation to the collegium for reconsideration, but approved the appointments instantly.

Learnings from the past

Take the case of Justice A.N. Ray, who was appointed Chief Justice of India (CJI) in 1973 superseding three senior judges, or Justice M.H. Beg, who was appointed CJI superseding Justice H.R. Khanna in 1977. Both Justice Ray and Justice Beg were excellent judges, but favoured the government. They were considered not forward-looking judges but judges who looked forward to the office of the CJI.

In the bank nationalisation case (1970), while as many as 10 judges went against the government, Justice Ray approved the government's action. Similarly, Justice Beg, in the Indira Gandhi election case, held that while democracy is the basic structure, free and fair election is not.

The National Judicial Appointments Commission (NJAC) was struck down by the Supreme Court because it would have compromised the independence of the CJI and given a role to the government in the appointment of judges.



es. Unlike in the U.S. where judges are appointed by the President and are known to be leaning towards the Democrats or Republicans, Indian judges are not supposed to have any political affiliation. But is it possible to completely insulate judges from governmental influence? The answer is no – as George Orwell pointed out in 1984, the government is everywhere, and judges as fellow human beings do get influenced by it. The judiciary asserts its position only when the government is weak. This collegium system was asserted when we had weak Central governments in the 1990s.

Power and influence
"Power" and "influence" are fundamental concepts in society. "Influence" is sometimes considered to be an aspect of "power". Indira Gandhi was influential because she was powerful. Prime Minister Narendra Modi is, similarly, not only powerful but hugely influential. According to the American sociologist, Alvin Ward Gouldner, the universal norm in human so-

cieties is that individuals are obligated to reciprocate favours received. Gouldner articulated the "norm of reciprocity" in the following manner: "people should help those who have helped them" and "people should not injure those who have helped them".

In his NJAC judgment (2015), Justice J.S. Khehar discussed the issue of reciprocity at length in striking down the commission. He referred to Laura E. Little's work on American judges who felt obliged to the President for nominating them and Senators who helped them in the confirmation process. Justice Khehar therefore preferred exclusion of the political executive from the appointment of judges as a feeling of gratitude towards the government impacts the independence of the judiciary. It was for this very reason that even B.R. Ambedkar wanted to insulate the judiciary from political pressures.

In his autobiography, *Roses in December*, the former Chief Justice of the Bombay High Court, M.C. Chagla, who also served as a Minister in Indira Gandhi's Cabinet, boldly stated the adverse impact of supersession when he said, "the effect of these supersessions was most deleterious on the judges of the Supreme Court who were in the line of succession to the Chief Justiceship. Each eyed the other with suspicion and tried to outdo him in proclaiming his loyalty to the Government either in their

judgments or even on public platforms." A similar depiction of the apex court was made by Justice H.R. Khanna, who himself was superseded, in his book, *Neither Roses Nor Thorns*, when he recalled, "one of the new trends was the change in the approach of the court with a view to give tilt in favour of upholding the orders of the government. Under the cover of high sounding words like social justice the court passed orders, the effect of which was to unsettle settled principles and dilute or undo the dicta laid down in the earlier cases."

The Hindu right's opposition to the Constitution is an open secret. The prospect of a 15-judge bench overturning *Kesavananda Bharati v. State of Kerala* (1973), which outlined the basic structure doctrine of the Constitution, does not look too remote in the near future if the government continues to exert pressure on the collegium and if the collegium, due to reciprocity, does not effectively assert its power and independence. Most governments prefer pliable judges but many of our judges remain wedded to their oath and decide cases without fear or favour. True reciprocity affects humans but since our judges are addressed as 'Lords', let them not have any feeling of gratitude towards anyone.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, Hyderabad. The views expressed are personal

LETTERS TO THE EDITOR

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Rafale cost inflation

The exclusive report by N. Ram on the Rafale fighter aircraft deal has nailed several lies (Page 1, 'Exclusive', "Modi's decision to buy 36 Rafales shot the price of each jet up by 41%", January 18). The report establishes that the devil is in the detail. The government has to accept the fact that the configuration and capabilities of the jets negotiated by the United Progressive Alliance government and those renegotiated and procured by the National Democratic Alliance government were practically the same. Whether the accoutrements – couched in flowery terms such as "design and development of India-specific enhancements" – were needed to make the aircraft battle-ready is still open to contestation.

Dassault Aviation would not have been allowed to make a windfall out of the deal without some quid pro quo. There is nothing called a free lunch in the business world. Further, the report has made it amply clear that the confidentiality clause applied to technical details. Instead of clinging onto the Supreme Court's inexplicable clean chit, the Modi government should agree to have a JPC probe. Transparency and accountability are vitally important for a democracy.

G. DAVID MILTON, Maruthancode, Tamil Nadu

After the detailed report, it has become necessary to order a thorough probe by a parliamentary committee into the deal. In any case, it is taxpayers' money which is being spent to procure these aircraft. A long-term solution lies in appointing an

ombudsman such as a Lokayukta before whom even the Prime Minister should be made answerable.

MOHD ABDUL SATTAR, Hyderabad

The report only validates the argument of the Opposition that there is something fishy about the whole deal. It is a fit case to be referred to a JPC.

C.A.C. MURUGAPPAN, Kothamangalam, Tamil Nadu

Interspersed with facts and figures, the exclusive is sure to embarrass the present political dispensation. It will become effective ammunition for the Congress party and the rest of the Opposition. It is very apt that the last sentence says, "What seems guaranteed is that we have not heard the last of *l'affaire Rafale*."

SANKARANARAYANAN R., Chennai

The exclusive report misses the fact that the deal was a distress purchase as the power of the Indian Air Force was dangerously below critical level. It is no surprise that the price per jet is now more after the number ordered went down to 36, as is the case in any business deal. Even then it should be noted that the government could arrange for a 9% discount on the 'barebones aircraft'. A 20% discount offer by Eurofighter, even while negotiations with Dassault were progressing, could be just another common tactic adopted by a rival business firm; one cannot be sure if the government had indeed applied the alternative offer as leverage for bargaining. Anyhow, the responsibility for the financial loss to the exchequer should also be shared by the United Progressive Alliance regime

which delayed the acquisition.

HARI ARAYAMMAKUL, Kozhikode, Kerala

There is not one new fact under the sensational banner headline. That India-specific modifications came at an extra cost has been repeatedly highlighted by the Defence Minister in Parliament and in television interviews.

The Hindu has brought down the stature of a noble newspaper of a 140-year-old vintage by becoming the vehicle of the Congress president's prejudices and undeserved ambitions. I am stopping my subscription to the version of a daily now masquerading itself as the

legatee of a glorious past.

R.S.V. SUBRAMANIAN, Pudukcherry

At the Meghalaya mine

After nearly a month a body has been located in a rat hole mine where 15 miners have been trapped since December 13 ("Navy robot locates body in Meghalaya mine", January 18). One can only say that this shows the frivolous attitude towards the safety and well-being of people. Why couldn't the government have attempted a coordinated rescue much earlier despite having ample resources?

RANANJAY YADAV, Allahabad, Uttar Pradesh

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CORRECTIONS & CLARIFICATIONS:

>>>A story headlined "Cdr. Tomoy eger to get back to sea" (Jan. 18, 2019, some editions) erroneously called him *Commandore* Abhilash Tomy. Actually he is a *Commander*.

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