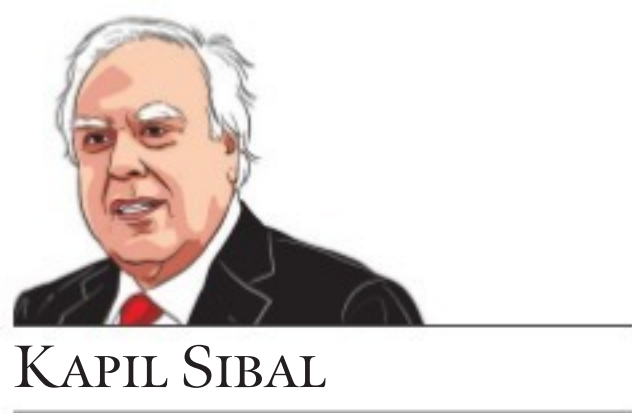


# On Rafale, facts a casualty

Supreme Court judgment has not settled the issue. In fact, it has raised more questions than it has answered



**KAPIL SIBAL**

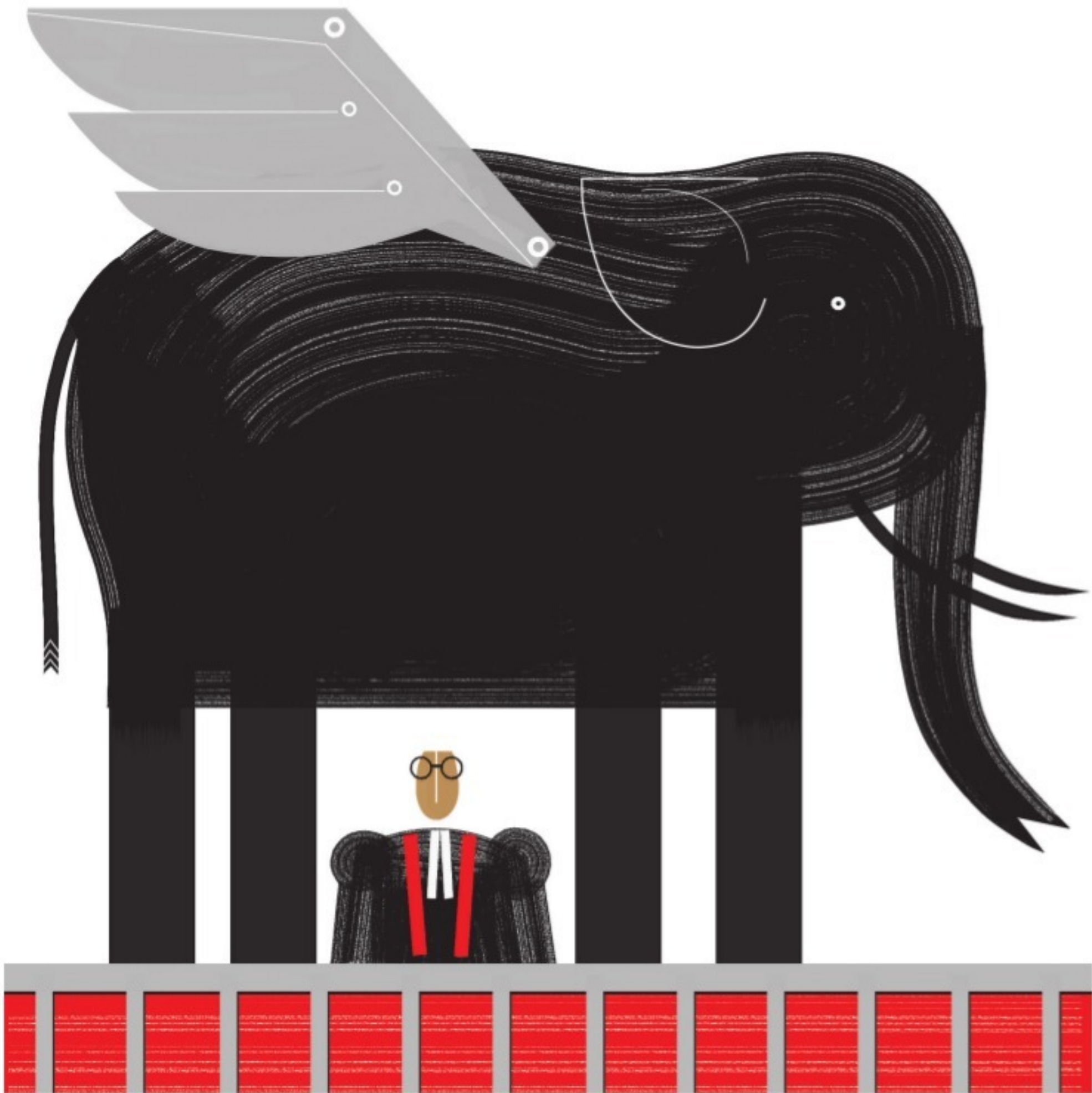
WITHIN THE LIMITED contours of its jurisdiction under Article 32 of the Constitution, the Supreme Court chose not to question the purchase of 36 Rafale fighter aircraft. Defence procurements, according to the Court, impacting India's security interests, unlike other contracts, require a somewhat different standard of scrutiny. Within the contours of that standard, the Supreme Court was broadly satisfied with the government's position.

There are several undisputed facts in the public domain, which make the Rafale purchases highly suspect. Let me state some of them. On March 13, 2015, Dassault and Hindustan Aeronautics Ltd. (HAL) finalised the work-share contract thereby signalling that the deal was through. On March 25, 2015, Dassault CEO, Eric Trappier was in Bengaluru with the chairman, HAL and Chief of Air Staff ready to take the contract forward. In a press conference in France wherein our ambassador was present, Trappier stated that 95 per cent of the deal had been finalised and the balance 5 per cent would follow soon.

These facts militate against the Court's opinion that problems between Dassault and HAL led to the prime minister's decision on April 10, 2015 when he announced the purchase of 36 Rafale off the shelf. The chairman of HAL has publicly stated that there was no impediment in the deal between Dassault and HAL, and that the notings on the file, if made public, would clarify all issues. It is also a matter of public record that the sub-stratum of the contract had been modified from a private arrangement to an Inter-Governmental Agreement (IGA). Under the guidelines, before entering into an IGA, its terms and conditions would have to be negotiated through a Contract Negotiating Committee and the Price Negotiating Committee, after which it required clearance from the Defence Advisory Council. Thereafter, it had to be approved by the Cabinet Committee on Security. None of this happened on April 10, 2015 when the prime minister made the public announcement.

The Court recognises that Reliance Defence Ltd (RDL) was incorporated on March 28, 2015, just a couple of weeks before the prime minister's announcement. The Court erroneously came to the conclusion that Reliance was in negotiation since 2012 not realising that at that time Reliance Industries wished to diversify its operations from gas exploration to manufacturing the wings of the Falcon aircraft — a project which was given up, and had nothing to do with RDL. Another matter in the public domain is that Reliance Aerostructure Ltd. (RAL), the joint venture partner of Dassault was incorporated on April 24, 2015. Trappier publicly stated that this joint venture was entered into in April, 2015. Obviously, the venture must have been put in place between April 25 and April 30. RAL, upon incorporation, had no assets, no capital, no experience and no land. Why would Dassault, within five days of incorporation of RAL, agree to a joint venture unless it was pre-meditated and concluded under instructions?

Trappier justified the joint venture on the basis that Reliance had land near the airport, making the operation easier. HAL, said



C R Sasikumar

Trappier, had no such facilities near the airport in Bengaluru. Both the statements are false. Reliance applied for land only on June 16, 2015, whereas HAL already had huge tracts of land near the airport, much prior to April, 2015.

The files would, in fact, tell a story of their own. They might show that key stakeholders including the defence minister, insisted on a Letter of Guarantee. They might also reflect opposition to the PMO's attempts to interfere in the process. In any event, the truth would have emerged had the Supreme Court summoned the files and taken note of the proceedings reflected in their movement. Once the prime minister had already committed himself to the purchase of 36 Rafale fighter aircraft, the process that followed could not have overridden his unilateral decision. How can this process ever be deemed to be consistent with any guidelines?

Another serious issue that needs attention is why the Supreme Court opined that former French President François Hollande's statement has been denied by President Emmanuel Macron, who, on the contrary, when asked, could not comment on it since he was not present at the meeting. Surprisingly, Hollande's statement has not been denied by the prime minister. I am sure, minutes of this bilateral meeting, which are normally recorded, will reflect what happened. Trappier, who also was not present in the meeting, cannot possibly be privy to any such statement. Therefore, for the Supreme Court to say that President

Without doubt, the waters are muddled and the truth is yet to be told — how and when, only time will tell. The Supreme Court judgment has, in no way, settled the issue. In fact, it has raised more questions than it has answered. The Court has always upheld principles of transparency and maintained that every decision must be informed, otherwise it cannot pass the test of reasonableness.

Hollande's statement is denied is not borne out by any record.

The fact that the prime minister made this announcement without the knowledge of the defence minister, the foreign minister or the Indian ambassador in France or, for that matter, Dassault, suggests that the prime minister took this decision unilaterally without taking into confidence key stakeholders. Once the nature of the contract was changed to an IGA, then willy-nilly there had to be a government guarantee for the execution of the contract instead of a letter of comfort.

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In the past, Article 32 has not constrained the Supreme Court to direct investigations after en-masse cancellation of telecom licenses and coal allocations. I guess, both public perception and the perception of judges change from time to time. Consistency in decision-making may not be a virtue but inconsistency, sometimes, may also not be a sign of judicial wisdom. Judicial wisdom, in changed circumstances, must not be at the cost of the Court's credibility.

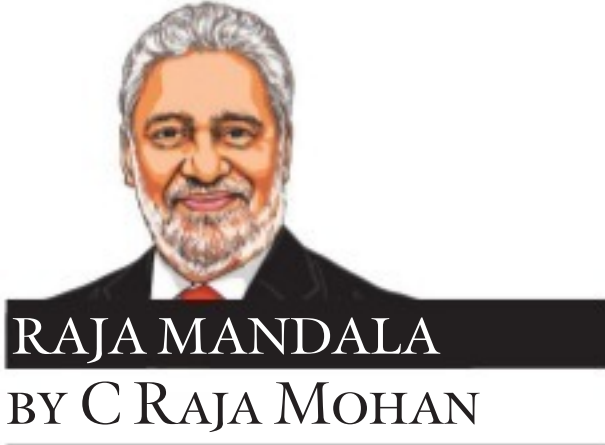
*The writer, a senior Congress leader, is a former Union minister*

## WHAT THE OTHERS SAY

“The president (Trump) should make clear to Moscow that any aggression in Ukraine would trigger a strong response.”  
—THE WASHINGTON POST

# Integrating the island

PM's visit to the Andamans should be an occasion for India to realise the geopolitical significance of the islands, given China's presence in Indian Ocean



RAJA MANDALA

BY C RAJA MOHAN

PRIME MINISTERS of India rarely travel to the Andaman and Nicobar Islands. Narendra Modi's visit to the islands over the weekend is only the fourth over the last many decades. Indira Gandhi and Rajiv Gandhi visited in 1984 and 1986 respectively and Manmohan Singh went there in early 2005 to review the tsunami relief operations.

For political Delhi, the island chain was at best a remote outpost acquired by default from the departing British Raj. That attitude filtered down the entire system of governance in Delhi. For India's continentalist security establishment, weighed down by difficult land borders to the north and the west, the Indian Ocean is a distant domain. The nation's island territories — the Andaman and Nicobar Islands to the east and the Lakshadweep to the west — barely figure on Delhi's mental map.

Modi's visit will hopefully begin to change India's national narrative on the Andamans. Three imperatives beckon. The first is about history. Modi's decision to time his visit with the 75th anniversary of Subhas Chandra Bose flying the tricolour in Port Blair has helped highlight the role of Andaman and Nicobar Islands in India's freedom struggle. But it should also draw attention to the complexities of India's pre-Independence engagement with the world in the 20th century.

The PM's immediate political motivation may be seen as part of the BJP's strategy to claim the non-Nehruvian legacy of the Indian National Congress. But the focus on Bose inevitably draws attention to the fragmented response of the national movement to the Second World War. The Indian National Congress, led by Mahatma Gandhi, refused to support the British war effort and opposed the mobilisation of Indian resources to defeat the Axis powers. The Communist Party of India, which initially declared Second World War as an “inter-imperialist war”, chose to actively support the war effort when Nazi Germany invaded Soviet Russia in 1941. Bose, in contrast, chose to align with Berlin and Tokyo to fight the British colonial rule. His Azad Hind government in Port Blair was founded on imperial Japan's occupation of the Andaman Islands. Japan's support for Bose was part of Tokyo's mobilisation of Asian nationalism against European colonial powers.

Today it is not a question of judging the different political choices that the Indian leaders made during the War. All of them were for early Indian liberation from the British rule. But they saw the relationship between ends and means somewhat differently. They certainly did not agree on the appropriate balance between the struggle for independence and the larger question of defeating fascism.

Rather than sweep this complex story under the carpet, India must take a dispassionate look at these divisions. Delhi should also reflect on how the political split diminished emerging India's leverage with the great powers. The Muslim League's unreserved support for the War gave it considerable leverage in the domestic politics of undivided India and translated after Partition into enormous goodwill for Pakistan with Britain, US and the West.

Second, the story of Bose, Japan and the Azad Hind government underlines the enduring geopolitical significance of the Andaman Island chain and its waters. In the 17th and 18th centuries, they were the site of contestation between European colonial powers — Portugal, the Netherlands, France and Britain. After the Napoleonic wars in Europe, the Indian Ocean turned into a British Lake through the 19th century.

Britain, which occupied the islands at the end of the 18th century in search of a permanent military base, put them on the back burner in the 19th. From a potential platform for power projection, the islands became a penal colony for the Raj. The challenge for Britain came this time from the first Asian great power in the modern age — Japan. The imperial Japanese forces raced through Malaya, ousted Britain from Singapore, Burma and the Andaman Islands.

It took the combined efforts of the British Empire, the US and nationalist China to reverse Japanese aggression. After the Second World War, the partition of India and the Cold War between America and Russia, the Andamans became marginal to the new geopolitics. Today as a rising China projects its economic and military power into the Indian Ocean, any strategy for regional balance would necessarily involve the economic and military development of the Andaman and Nicobar Islands. As in the Second World War, so in the current juncture, it would involve considerable cooperation between India and its major strategic partners.

That in turn leads us to the third imperative — of ending the deliberate isolation of the island chain and promoting economic development, tighter integration with the mainland, strengthening military infrastructure, regional connectivity and international collaboration. The Modi government has initiated some important steps in that direction, including on internet connectivity, visa liberalisation, tourism, building new ports, agreements for cooperation with neighbouring countries in South East Asia.

Finally, any large-scale development would inevitably raise questions about preserving the pristine environment of the Andamans and protecting its vulnerable indigenous populations. As the NDA government seeks to accelerate economic development and enhance the military potential of the Andamans, there will be many challenges ahead. But none of them are unique to India.

As it tries to turn the outpost in the Andamans into a strategic hub, Delhi can draw much from the wealth of international experience on the sustainable transformation of fragile island territories.

*The writer is director, Institute of South Asian Studies, National University of Singapore and contributing editor on international affairs for The Indian Express*

## LETTER TO THE EDITOR

### MeToo's OMISSIONS

THIS REFERS TO the article, 'Stories beyond MeToo' (IE, January 1). The writer's arguments that journalists should be writing about everyday violence against women of marginalised sections of the population is a valid one. Records of the National Crime Records Bureau attest to the prevalence of such crimes. However, reporting on violence against marginalised people should not preclude women journalists from talking about the ways in which workplaces have become unsafe for them.

Aditi Roy, Patna

### RAJASTHAN'S PATH

THIS REFERS TO the report, 'Rajasthan scraps education criteria for civic poll candidates' (IE, December 30). When MPs and MLAs do not have any education-related criteria for contesting elections, why impose such a criteria for local body elections? This provision automatically excludes good leaders at the local level who may not have had access to educational opportunities. Other states which have a similar provision should follow Rajasthan's example.

Shaikh Jamir Munir, Bengaluru

### PEACE TIME

THIS REFERS TO the article, 'A shot at peace' (IE, December 29). The recent

### LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to [editpage@expressindia.com](mailto:editpage@expressindia.com) or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

THE WINNER RECEIVES SELECT EXPRESS PUBLICATIONS

change of guard in Pakistan backed by the country's military presents India with another opportunity to resume talks. Political parties in India should refrain from using the Pakistan issue in the upcoming elections. However, we should also exercise caution keeping in view Pakistan's past track record.

Larson Singla, Patiala



## VIEW FROM THE RIGHT

### BLINKERS OF BELIEVERS

THE EDITORIAL IN *Organiser* says that the expression of insecurity by prominent persons, from people holding high constitutional positions to so-called celebrities and the arrest of Islamic State-inspired individuals by the National Investigation Agency (NIA), may be independent events, but there is a common thread that connects them — the fundamentalism of “believers” who do not consider other religious practices or sages who propounded different paths to be true. Unless we address this root cause, we cannot find the way out of the fabricated intolerance and insecurity, the editorial says. In a veiled attack on actor Naseeruddin Shah for his recent remark in the context of the mob lynching of a police officer in Bulandshahr, the editorial says that expressing intolerance and disdain for living in Bharat in the name of perceived insecurity and intolerance is in fashion nowadays. “No act of violence can be justified in a democracy on any ground, but when the same voices expressing concern over an incident and express their insecurity, simultaneously stand for terrorists, Maoists and the criminals or justify their acts in the name of same insecurity, then their intention definitely comes under the scanner,” the editorial contends. Referring to the recent arrest of 11 IS-inspired radicalised Muslims by the NIA while busting a module called

Harkat-ul-Harb-e-Islam as well as such arrests in the past, the editorial points out, “From Bihar to interiors of Kerala many youths are influenced by this menace”. The editorial further says that unfortunately, being believers and not seekers of truth, the same “intellectuals and eminent people who talk of insecurity and intolerance either turned a blind eye towards this radicalisation or blame others (non-believers/seekers) for pushing these youths towards the IS. The sad ghettoised mindset is the root cause of radicalisation, insecurity and intolerance”.

The editorial in *Panchjanya* criticises actor Naseeruddin Shah for his remark by saying that actors like him appear to build up a narrative with contentious facts about an incident. It is surprising when such people who speak about “fear” and “intolerance”, are not fearful about the increasing interest in India of IS-like outfits and the arrests of terrorists, claims the editorial.

### AFTER THE POLLS

AN ARTICLE IN *Organiser* says that a simple takeaway from the recent polls in five key states is that local candidates, local conditions and perhaps more importantly, regional issues and aspirations matter in the heat and dust of the electoral battle. “It is due to these factors, in the ultimate, we see Telangana Rashtra Samithi (TRS) doing well in Telangana and in Madhya Pradesh and Rajasthan, both national parties, the Congress and the BJP, falling short of majority of their own by a rather narrow margin,” the article contends. Giving figures of poll results, the story says that in Madhya Pradesh, Congress fell short of two MLAs to touch the magic figure of 116 and the BJP's tally of 109

was seven short of the simple majority mark. With a mere 99 seats, the hyped Congress victory in the 200-member Rajasthan assembly is actually only a wafer thin majority, the article contends. “This brings us to the importance of regional parties,” it says.

The article claims that a section of the TDP leaders have cautioned party supremo N Chandrababu Naidu to tread cautiously on the path of his new found friendship with Congress President Rahul Gandhi. In context of Uttar Pradesh, the article says that the Samajwadi Party has indicated more than once that it is not comfortable doing business with the Congress. Yadav virtually snubbed DMK chief M K Stalin and said Rahul Gandhi was not acceptable to him as a prime ministerial candidate. He also rejected the Congress demand for a Public Accounts Committee on Rafale. Notably, the DMK's suggestion was snubbed also by the Trinamool Congress. Even the Congress demand for a JPC on Rafale came a cropper when Sudip Bandyopadhyay clearly dissociated his party from it on the floor of the Lok Sabha. The CPM is also cautious about Rahul as the leader of a united Opposition. Importantly, it must be noted that besides the TRS and Biju Janata Dal there will be a few more parties (in a non-Congress opposition alliance). The TRS leadership has played things safe. The article further says that in 2007, BSP chief Mayawati's social engineering won her party Brahmin votes but that was short lived. Mayawati was gradually sidelined in UP's political arithmetic. In fact, the BSP was decimated in the 2017 assembly polls in UP. The article also claims that a powerful section of regional players are not comfortable with the Congress.

### FARMER'S FOE

AN ARTICLE IN *Organiser* says that the return of the Congress to office in Rajasthan has rudely shaken the farmers out of their stupor. The naïve optimism for prosperity that had arisen after farm loan waiver and other unviable freebies in the state of Rajasthan has diminished. The report says that the first body blow to the farmers came in the form of a lathi charge. Quoting media reports, the *Organiser's* report says that Rajasthan farmers who stood in long queues for buying urea in freezing temperatures were lathicharged by the police. The worst sufferers were farmers from Kota, Bundi, Baran and Jhalawad which comprise Hadauti regions. “Eventually, the farmers' unrest and their disenchantment with the new dispensation is spreading across the State with more and more farmers venting their fury while the newly-formed government is at a wit's end to diffuse the urea crisis,” the report says.

The article presents a similar picture for Madhya Pradesh. Within days of the Congress government taking charge, the farmers in the state expressed outrage after the government created a crisis by mismanaging the supply of urea. “The Rahul Gandhi-led Congress which came to power in the State promising several sops of loan waivers, high MSP to the farmers seems to have started on a very bad note. Meanwhile, two farmers have also lost their lives in the state of Madhya Pradesh after failing to repay the farm loans, as the Congress party brought in new conditions for waiving off loans contrary to Rahul Gandhi's claim of unconditional loan waivers,” the report says.

Compiled by Lalmani Verma