



The Indian EXPRESS

FOUNDED BY

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BECAUSE THE TRUTH INVOLVES US ALL

For a free and fair game

Conflict of interest controversy is not about individuals, but about rules that must account for rule-benders



SANDEEP DWIVEDI

CHECK & IMBALANCE

Delaying, not asking questions, on J&K — this doesn't match SC tradition of speaking up for those who cannot

THE CENTRE'S MOVE in Kashmir, a defining one for the Narendra Modi government, is also turning out to be a critical moment for the judiciary. On October 1, responding to a raft of petitions challenging the constitutional validity of the August 5 decision to abrogate the special status of Kashmir, a five-judge constitution bench of the Supreme Court refused to order a stay, and adjourned the hearing to November 14 — that is, until well after the scheduled implementation of the Centre's order has carved up the state into two Union Territories on October 31. Earlier, addressing a separate batch of petitions questioning the restrictions on movement and communication that have accompanied the Centre's decision, another SC bench held that "personal liberty will have to be balanced with national security". The court has deferred such petitions, including one filed by CPM general secretary Sitaram Yechury questioning the detention of his colleague Mohammed Yousuf Tarigami, for hearing on October 16. Something is seriously amiss in the response of the country's apex court, and it is this: The court, which is the centrepiece of the system of checks and balances that keeps the political executive honest and accountable, that ensures due process and is the custodian of individual rights, is showing a striking lack of urgency. In fact, deferring and delaying, not asking questions that need to be asked, giving the government the benefit of the doubt — serious doubt — on the drastic curbs on fundamental freedoms, doesn't quite match the apex court's own stellar tradition of speaking up for those who cannot.

This is especially troubling in habeas corpus cases where delay can have a costly human rights toll. The court's dithering here recalls its most forgettable moment. In the ADM Jabalpur case during the Emergency, four judges out of five, with the honourable exception of Justice H R Khanna, had handed out virtual good conduct certificates to the government, expressing the hope, "diamond bright, diamond hard", that the fears of the detainees would prove to be uncalled for. Of course, it made amends, overruled that embarrassing decision, in 2017. Yet, today, two years later, the judiciary's lack of urgency in pronouncing on the validity of citizens' detentions and the constitutional legitimacy of the government's decision, is made worse by its apparent glibness in imposing gag orders of its own. Last month, the J&K High Court allowed two National Conference MPs to meet Farooq Abdullah and Omar Abdullah, detained in Srinagar, but barred them from speaking to the press about the meeting. Earlier, a CJ-led bench of the SC had allowed Yechury to meet Tarigami after hedging the permission similarly.

On very many occasions, the Supreme Court has protected and expanded citizens' liberties. For its own sake, and that of the people who look up to it, especially those men and women — and in J&K, children, too — who are denied their rights in the name of "national interest", it needs to step up to its role.

SEIZE THE OPENING

Iran's president indicates that French plan for talks with US is acceptable. Washington mustn't squander the opportunity

ON SEPTEMBER 7, the spokesperson for Iran's nuclear agency announced that the country had the ability to enrich uranium up to 20 per cent and it had launched advanced centrifuge machines, further violating its commitments under the Joint Comprehensive Plan of Action (JCPOA) or the Iran nuclear deal between Tehran and the US, France, Germany, Britain, Russia and the European Union. The move was an escalation of the brinkmanship underway since US President Donald Trump withdrew from the JCPOA in May 2018. This week, President Hassan Rouhani has indicated Tehran is amenable to the plan for talks proposed by French President Emmanuel Macron, with the US. It is a diplomatic opening.

The 2015 JCPOA came into being after arduous negotiations and placed restrictions on Iran's nuclear programme while removing the harsh economic sanctions on the country. Since the US's withdrawal from the deal, the Trump administration has ramped up the sanctions, and its anti-Iran rhetoric, while Tehran has flouted the limits placed on its nuclear programme. The logic behind Washington's plan appears to be that the sanctions would increase disaffection in Iran to such a degree that the government and the Ayatollah would be overthrown. It is, however, more likely that the moderate, democratically-elected Rouhani government has suffered due to the sanctions. Rouhani staked considerable political capital in pushing through the nuclear deal, particularly with the recalcitrant sections of the Islamic state opposed to any accord with the US.

Rouhani has said in a publicly-broadcast cabinet meeting that the deal proposed by Macron entails that Tehran will not pursue nuclear weapons and that sanctions would be lifted, allowing Iran to resume oil sales. The Iranian president has, however, expressed concern over Donald Trump's alleged doublespeak: "The American president on two occasions... said explicitly that we want to intensify sanctions... Should we accept your (European leaders') word that America is ready (for talks)?" The ball is now in Washington's court. New Delhi has thus far managed to walk the diplomatic tightrope between the US and Iran. Given the goodwill that PM Narendra Modi enjoys with President Trump, as well as India's close historical and trade ties with Iran, Delhi could join Paris and other world powers in nudging both countries towards talks. The alternative — the path of calibrated escalation — a slippery slope.

WRITING ON THE WALL

Banksy, artist of the masses, envy of high art, foe of commercial art, has opened a shop. There's a twist in the tale

THE MARKET ASSIMILATES all, even the most anti-market. British street artist Banksy, who turned anonymity into a virtue and the anti-original stencil into an instrument of high art on par with the palette knife, has opened a shop in Croydon, south London. He has been forced to this step by a greeting card company which is appropriating his name, one of the creative world's most valuable brands, to sell fake Banksy merchandise. Legally, it is a laughable ploy, since it seems to be trying to use a parallel from the world of patents — a patent which is not worked by the owner can be compulsorily licensed to keep a product on the market. But a brand is not a patent, only similar, and the case is likely to collapse.

In the meantime, to retain control over his name, Banksy has opened a shop to put his home products on the market. Some are all heart, like doormats made out of life jackets worn by migrants in the Mediterranean, stitched by other migrants interned in Greece. But the name of the shop, Gross Domestic Product, suggests that many products will be awful by design.

Two decades ago, Banksy had energised the counterculture by putting the Mona Lisa, wearing headphones and armed with an RPG launcher, on a building off Oxford Street, London's retail Mecca. Now, while going commercial with his own retail premises, Banksy is keeping the spirit of protest alive. GDP isn't really a shop. It's actually an installation featuring Banksy's art in a disused carpet shop. Its doors will never open, and it is as transient as a flashmob. Before it dissolves back into the mind of its creator, you could order its wares online, but only through a website which does not yet exist. Perhaps it never will.

IF YOU THINK there is conflict of interest, there probably is. Indian cricket these days is dealing with this brutal, but undeniable, truth.

Sourav Ganguly has been told that he can't sit in the Delhi Capitals dugout and also be in charge at Eden Gardens. Sachin Tendulkar and V V S Laxman, because of their IPL connections, can no longer be on the all-powerful committee that picked Ravi Shastri as coach. Rahul Dravid can't be the vice-president at India Cements — the company that owns Chennai Super Kings — and also be the man in charge at the BCCI's National Cricket Academy.

The downgrade hasn't gone down well with the game's superstars. As always it was Ganguly, the voice of the Golden Generation, who took the lead in expressing the collective disgust of those with more pies on their table than their fingers could fit into. "New fashion in Indian cricket... conflict of interest... Best way to remain in news. god help indian cricket..." he tweeted.

Ganguly's immediate provocation was the BCCI ethics officer's notice to Dravid but his own angst of choosing just one of the four influential positions he then occupied — Cricket Association of Bengal president, BCCI's cricket committee member, Delhi Capitals advisor and television pundit — also seemed to have triggered this apocalyptic outburst. Ganguly's "new fashion in Indian cricket" has been a corporate norm for ages now. While the world was swearing their exclusivity to their employers by signing thick water-tight contracts, on the island that houses cricket's cozy club, "conflict of interest" was still an alien concept. Inside that bubble lived a close-knit community, and it was fashionable to wear more than one hat.

The Committee of Administrators (CoA), assigned by the Supreme Court to dismantle the old cricket edifice, has unknowingly promoted this system by being soft towards the omnipresent legends enacting multiple roles. A couple of years ago, historian Ramachandra Guha, in his resignation letter from the CoA, had, while describing this as cricket's "superstar culture", written: "The more famous the player (former or present) the more leeway he is allowed in violating norms and procedures... One famous former cricketer is con-

tracted by media houses to comment on active players while serving as President of his State Association."

Guha's red flag was ignored, the CoA didn't find anything wrong in Ganguly signing a MoU with the Kolkata Knight Riders as Cricket Bengal president for hosting their home games at Eden Gardens and later getting into a contract with Delhi Capitals as their advisor. In his own backyard, Eden Gardens, the Prince of Kolkata would sit in the away dressing room. The picture of him assessing the Eden pitch wearing a Delhi jersey summed up Indian cricket's conflicted hierarchy.

Ganguly continued to push the envelope. During the IPL, he would be seen giving a bear hug to his team's star player, the young wicket-keeper batsman Rishabh Pant and within days, as a World Cup commentator, questioned M S Dhoni's place in the team. Maybe, it was what Virat Kohli's India desperately needed and a fair call, but Ganguly, after his seamless switch from the Delhi Capitals jersey to the sharp suit of a pundit, didn't sound convincing. He might be the man solely responsible for sweeping regionalism out of the Indian cricket when he was the captain, but as a committed cricket administrator, and an impartial commentator, he had failed.

Casting aspersions on the country's superstars has never been popular. Their glorious cricketing deeds and unblemished life in public have given them a well-deserved squeaky clean image. So, to even think that Dravid would be biased towards the players of CSK, the IPL franchise owned by his employers, India Cements, would amount to blasphemy. That's where the players and fans misunderstand the concept of conflict of interest.

BCCI's ethics officer, former SC Judge D K Jain, in a detailed order that restricts Ganguly to just one BCCI post, has a line that should be read out repeatedly to those who get pained when reminded of the possibility of them availing personal benefits because of their official position.

"Generally speaking, the concept of Conflict of Interest is not necessarily a question about something one does or intends to do but a question of what one could do," Jain writes. It's not about judging an individual, it is about understanding the scope of his

power. So, maybe, Ganguly wouldn't influence the curator at Eden or Dravid would never even think of pushing CSK players but in the days to come, someone in these powerful positions can.

Institutions aren't governed by rules meant for a handful of conscientious individuals, they need to factor in the worst rule-benders. While aspiring to put in place a set of principles that are over-arching, if the constitution is a shade idealistic, so be it. There are lessons to be learnt from the past.

Siding with the players, the CoA has often lamented about the serious dearth of players with stature while explaining why the same set of cricketers end up being on important committees, commentary panels or even in IPL dug outs. It's a flawed idea since this has resulted in the concentration of power in a few hands, which is at the core of Indian cricket's biggest crisis for the last three years.

When Lalit Modi went selling the IPL franchise more than a decade back, there were few takers of this untested format. Modi would rope in family and friends. The BCCI would strike out the "conflict of interest" clause from the constitution, allowing N Srinivasan to have commercial interests in cricket by way of pocketing an IPL team. Again, power rested in a few important hands. This inadvertently laid the foundation of the Indian Parivar League, where there was always an uncle, a father or a father-in-law that could be trusted to bail one out if caught pulling a fast one.

Based on the findings by Justice R M Lodha, the SC called the amendment of the "conflict of interest" clause, the true villain of the piece. That's why Lodha wanted an extensive background check for those wanting to be under the BCCI umbrella. The recent cases of cricket corruption in franchise T20 leagues have shown that the sharks are out there waiting to sneak into the system.

So, however much the players want, the new rule book can't have a conflict of interest clause with an asterisk at the start and a fine print below that reads: Tendulkar, Dravid, Ganguly, Laxman and all others with Test batting averages of 50 and more exempted, since we know they can do no wrong.

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MINAKSHI BURAGOHAIN

ON NRC, ARE WE LISTENING?

Supporters and opposers must engage each other with empathy

IN HIS ARTICLE 'Fakir in the detention camp' (IE, September 9), S Gopalakrishnan argues that an administrative register based on material proof of origin won't be able to record the nuances of the cultural roots of a land and its people. While it is true that an administrative register cannot be the base of identity, his views reflect only on one side of the story.

The National Register of Citizens (NRC) has evoked considerable discussion, and two persistent lines of argument have occupied centrestage: One that opposes the NRC tooth and nail; the other, appeals to look at the history and conditions leading up to the NRC. The first line of argument comes from mainstream civil society members who have criticised it, primarily on three fronts. The first is on the lines of "Hindutva". The NRC came to be seen as a case of "xenophobia" against Assam's Muslims in the light of the Citizenship Amendment Bill of 2016. However, this argument couldn't sustain owing to the fact that the people of Assam have been protesting against "illegal immigration" not because of religion but on grounds of culture and geography. The Hindutva argument has been followed by another line of argument which looks at the global precarity of labour created by globalisation. It is based on the fact that globalisation benefits from the vulnerability of labour. Now, after the release of the final list, around 19 lakh people have

been left out of it and they have to appeal to the Foreigners' Tribunal in order for their case to be reconsidered: The excluded people will be given 120 days to file an appeal before the Tribunal. Finally, there is the issue of the composition of those Foreigners' Tribunals as well as their capacity to solve those issues.

Another argument has surfaced, primarily from the civil society of Assam — who have been making appeals to understand the history and conditions leading to the NRC, conditions over which the Assamese hardly have control. They have also been pointing towards multiple layers of the issue while challenging the "ready made" structures which most of us use. Though there have been attempts at hijacking the process by a few politically motivated groups, yet, when it comes to sharing responsibility, people from the "mainland" can no longer afford to stay aloof from the concerns of scarce resources and land. Hireen Gohain, the renowned scholar, has pointed out that the NRC process was impersonal and its machine-like operation pre-empted the targeting of any particular community. While there may have been errors, he added, the allegations of bias are unfounded. One also needs to understand the colonial roots whereby migration from East Bengal took place in the early decades of the 20th century, and the conditions that led to 1971 being set as the cut-off year to verify citizenship in Assam.

Whose voices are we to listen to? We have to start by acknowledging that there has been an attempt to hijack the entire process by a few politically motivated groups. Yet, the many nuances of the problem need to be understood. Added to these nuances is another complexity: The 19 lakh people who have been excluded from the list. If rumours about detention camps being built are true, we need to not remain silent, and be vocal about it instead — something like a detention camp evokes unpleasant, inhuman images that we have only read about in our history books.

Members of the civil society, instead of clinging to drastically different viewpoints, need to discuss the next concrete steps that need to be taken: The objective should be to solve the issue in a humane way instead of sitting in their respective cocoons and arguing out their cases. It is also important to note that while deportation is not an option, we need to work out viable solutions. If we are looking for a workers' permit, what would be the nature of that permit? If those excluded are to be settled in the country, then let not Assam bear the pressure alone, all the other states should come forward. And before all of these, it is important to frame a few common minimum points of agreement.

The writer is assistant professor, IP College for Women, University of Delhi



OCTOBER 4, 1979, FORTY YEARS AGO

JANATA-CONGRESS PACT

THE POSSIBILITY OF a secret electoral understanding between the Janata Party and the Congress (I) is not ruled out at least in one state, Kerala. The possibility will become a certainty once an alliance is forged between the state's ruling alliance and the Marxists. A secretary of the state Janata party said that everyone was of the view that it should try to secure more representation in the Lok Sabha even if it meant an understanding with the Congress (I). Interestingly, he disclosed, this view is held by the members of the erstwhile Jana Sangh more than any other group. Their main objective is to array all possible forces against the CPM, which they regard as a

prime enemy.

MP FAMINE

FAMINE MAY BE faraway in Madhya Pradesh but vultures have already arrived — vultures in human form, who feed on human misery. The politicians are trying to make political capital out of "the worst drought of the century", which has been officially compared to the great famine of 1896. Labour contractors are exploiting cheap labour. Traders and hoarders, largely responsible for the skyrocketing prices, are making huge profits. In response, some bureaucrats are planning foreign tour to "negotiate" the purchase of drought-fighting equipment.

ONGC STRIKE

THE THREATENED COUNTRY-WIDE agitation by the officers and workmen of the Oil and Natural Gas Commission, beginning with mass casual leave on October 9 and strike from October 15, was deferred following "negotiations" between the officials' association leaders and the petroleum minister, A Bala Parjanor. President of ONGC Association of Scientific and Technical Officers, A K Dixit, told newsmen that an agreement on their long-standing demands including retaining the existing pattern of dearness allowance and implementation of the newly-revised personnel policy, was reached at their talks with Parjanor.

WHAT THE OTHERS SAY

"The prime minister (Boris Johnson) says he wants a deal, but his priority is still whipping up support among hardline Eurosceptics." — THE GUARDIAN

Gandhi in need

He helped me in a personal crisis — reading him made me understand that the world opens many doors when we watch in silence



PERUMAL MURUGAN

JANUARY, 2015 WAS an important time in my life. I was compelled to take a very important decision. The controversy over *Madhorubhagan* (One Part Woman) had turned my own people against me. A false propaganda had insinuated that my writing had discredited my native village and the women there. There were no takers for my opinion. Instead, my life was in danger; my family was facing a crisis. Circumstances were forcing us to shift out of our home; we were about to be robbed of our livelihood. Those unfamiliar with the ground situation had much advice to offer. I realised that they would not work in my case. Most of them were swayed by ideological considerations. I listened to them, but did not respond. This led to more confusion and I was unsure of my next step.

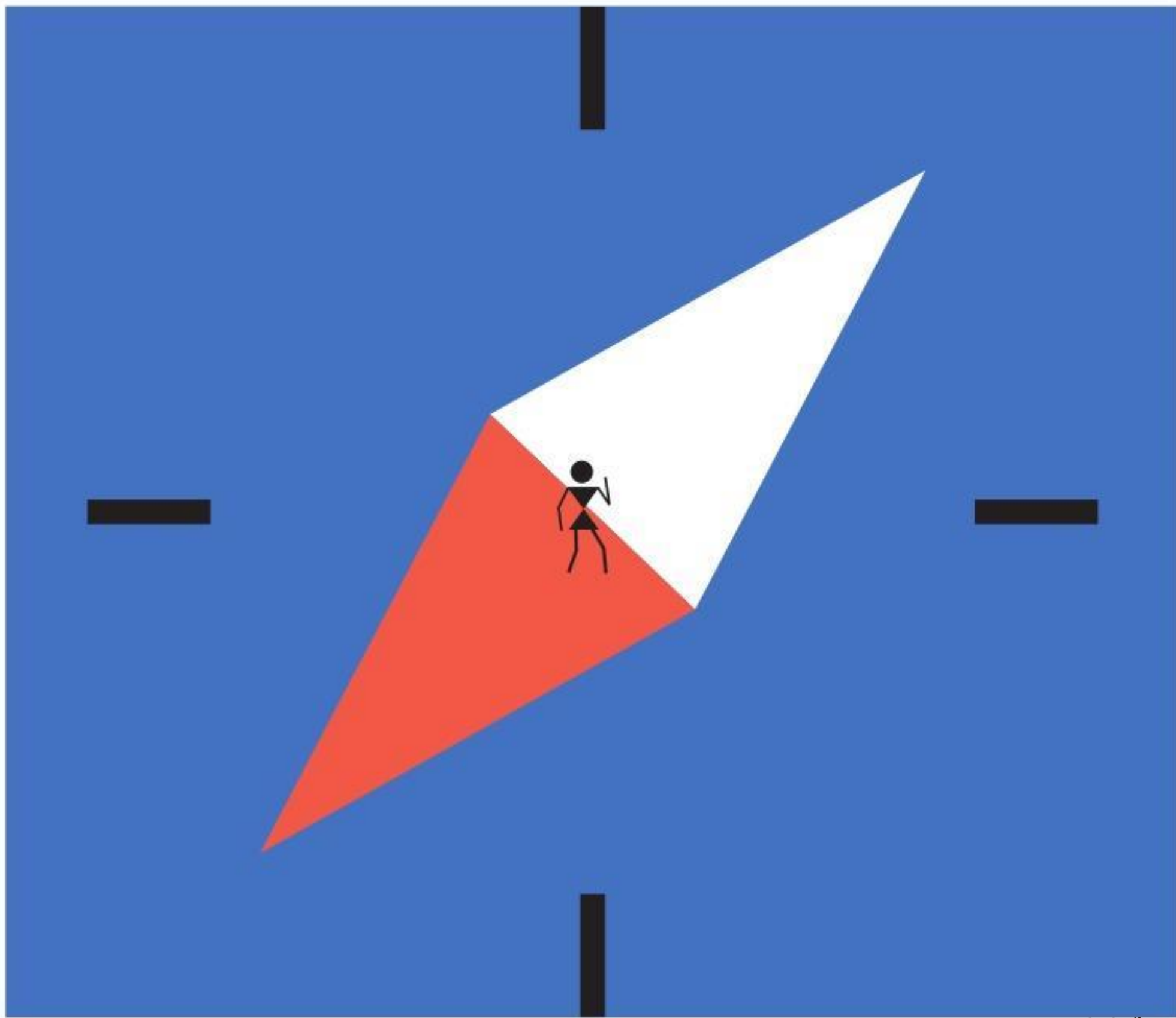
Then, on a night of pristine darkness, after pacing on our terrace for a long time, I visualised a man trapped in a flood. It was impossible to swim, or rise above the flood waters. The only option that seemed feasible was to go with the flow. Then I decided to listen to my heart. It was saying I was not wrong. But my voice was drowning in the cacophony of opposition. I decided not to compromise the value of my voice; I had to save it somehow. So I chose to respect the sentiment of the opposition. Forgiveness is no sin, it is merely an expression of a mellowed-down heart. I wrote a letter seeking forgiveness from those who claimed to be hurt by my book and signed it.

I was now done with respecting the opposition. But I could not erase that part of me which had not committed any mistake: I had to protect the sanctity of my own voice. I arrived at two decisions: To withdraw all my works and to not write in the future. These decisions, however, triggered unexpected consequences. So I chose not to talk in public.

Many questions were raised over my choices. While others argued and debated my discussions, I too was searching for answers within. I scrutinised the different strands of the position I had taken and realised that they were premised on forgiveness, the need to withdraw from the public and the desire for silence. How did these factors that influenced my decisions reach me? I can say with certainty that it was because of Gandhi's words and Gandhian principles. Even as I learned about Gandhi as the "father of the nation" in school textbooks at a young age, I had the opportunity to read his autobiography, *Satya Sodhanai* (My Experiments with Truth).

While in Class 8, I had participated in several poetry competitions as a representative of my school. I got *My Experiments with Truth* as a gift at one such competition. I came from a family that could not afford books. For someone like me, who took great interest in even reading a pamphlet, the book was a source of great joy. Around the same time, I also had the opportunity to read *Vanavasam* (Exile in a Forest) — the autobiography of lyricist Kannadasan. In his foreword, Kannadasan, referring to Gandhi's statement, "my life is my message", would speak about his work thus: "*My Experiments with Truth* is an example of how to live. *Vanavasam* is an example of how not to live." I was more attracted to his views on *My Experiments with Truth* than *Vanavasam*. I read Gandhi's autobiography again, and, several such times thereafter.

Later, I read some of Gandhi's works available in Tamil. I have also understood Gandhi through the interpretations of "Thanthai" Periyar. Periyar has often been critical of Gandhi, and occasionally praised him. When



CR Sasikumar

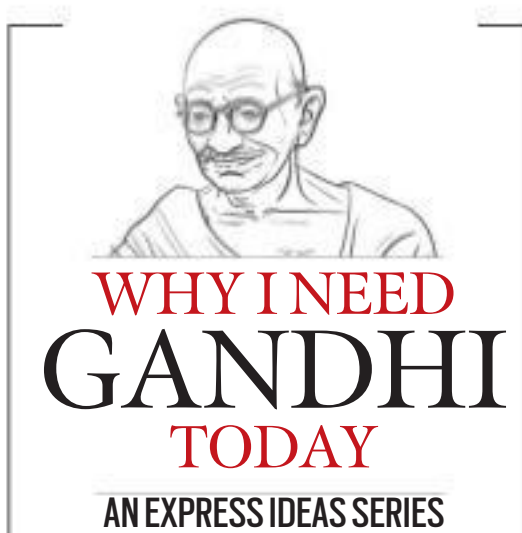
Gandhi passed away, Periyar had several recommendations to memorialise his life. One such was to rename India as Gandhi nation. He said it would have a positive impact.

Even when Periyar differed with Gandhi on many principles, he followed Gandhi in his political struggles. Periyar had learnt of Gandhi's ways while holding positions in the Congress early in his political career. Gandhi preferred legal ways of protest with no space for violence. When evolving his own form of protests, Periyar did not give up on the fundamentals of Ahimsa.

Having absorbed Gandhi in these ways, I believe it was what helped me in my hour of crisis. Gandhi showed me the merits of the path of forgiveness, solitude and silence. Our society as a whole cannot bring itself to seek forgiveness. Caste, age, position and responsibility come in the way. It is in our nature to push back the heart that comes forward to seek forgiveness. The society built on caste hierarchies professes to expect only those lower in the hierarchy to seek forgiveness for no fault. Gandhism is capable of questioning this premise and altering it. In several circumstances, Gandhi has stressed the importance of forgiveness. He believed that seeking forgiveness and granting it were high virtues.

"Distancing" oneself is also a way of Gandhi, at times when protests spiral out of control. Gandhi practised it even in his private life. It could immediately bring a turbulent situation under control. Distancing could put a spoke in the plans that people would devise to use an issue for their convenience. It was not necessary for someone involved in something to go on till the end. Distancing is about realising the gravity of problems that might arise in the process, and take appropriate measures to avoid them. Distancing will render the weapons of the opposition futile. I see my announcement to withdraw from writing as one such act. Not just in personal issues, but this approach also helps to avoid negative consequences in the public arena and redirects the focus.

Silence is the sharpest of Gandhi's



Gandhi showed me the merits of the path of forgiveness, solitude and silence. Our society as a whole cannot bring itself to seek forgiveness. Caste, age, position and responsibility come in between. It is in our nature to push back the heart that comes forward to seek forgiveness. The society built on caste hierarchies professes to expect only those lower in the hierarchy to seek forgiveness for no fault. Gandhism is capable of questioning this premise and altering it. On several circumstances, Gandhi has stressed the importance of forgiveness. He believed that seeking forgiveness and granting it were high virtues.

weapons. He had a deep interest in vows of silence, which bestowed the mind with great strength. He had practised silence on many important occasions. Silence yields benefits in personal as well as public spaces. One cannot be sure if one's words in a public space will always be taken in the intended spirit. Because of tone, background and many external reasons, it could assume other meanings. There were chances of them being grossly misunderstood. It was not possible for a person who uttered those words to always offer explanations. It was important to think things through before uttering a word. It was not possible to take a word back. Silence was not so, it was more an armour that could withstand any kind of attack.

When I decided to not talk in public, I never had such thoughts. Only when I understood the impact of silence, did I realise its armour-like nature. Often, people who want us to speak want to hear their thoughts in our voices. Sometimes, they would want to spin controversies. Silence gave me protection against all this. Even now, I am not so keen to talk in public. The world opens many doors when we watch in silence.

Gandhism had a rare influence on me: It helped an ordinary writer like me find a way to handle a crisis. I can say without doubt that it might have more to offer society as a whole. It has given society and individuals ways to live in harmony and to maintain a sense of self and to not hurt others even when one has been hurt. In a world where forces that use divisiveness to hold on to power continue to dominate, Gandhism, which teaches us to think of others, has much to do. Fasting, sloganeering, rallying and yatras are some forms of protest given to us by Gandhism. We are yet to find more powerful ways to express dissent, protest and take our demands to the authorities. Gandhi and his ideas are still needed in our private lives, our societies and our times.

Murugan has published many works of poetry, fiction and essays. Translated from Tamil by Kavitha Muralidharan

A taxing time for states

Subdued GST collections and lower tax devolution will impact state finances, pose macro risks



JAYANTA ROY AND ADITI NAYAR

THERE ARE GROWING concerns that the two major sources of tax revenues for state governments, the state goods and services tax (SGST) and central tax devolution, are likely to fall well short of their budget estimates for 2019-20. This may result in large fiscal slippages or cutbacks in expenditure at the state level towards the end of this financial year. The latter is a risk for the economic growth outlook of the country, and for the liquidity position of corporates that are engaged in projects at the state level.

Tax revenues earned by state governments are classified as own tax revenues and devolution of central taxes. Own tax revenues of the states are now dominated by SGST, which is budgeted to account for over 40 per cent of the states' own tax revenues in FY20, while tax devolution to states is governed by the formulae prescribed by successive Finance Commissions, and takes its cue from the actual collections of the central government.

There are multiple concerns building up related to SGST collections. First, there are substantial discrepancies in the data available from the Rajya Sabha questions and the states' own budget on revenues related to SGST and GST compensation received by them in FY19. Our analysis suggests that several states had over-estimated such revenues in their revised estimates for FY19.

This optimistic forecasting of SGST collections seems to have persisted in the budget estimates for FY20. State governments, in aggregate, have estimated their SGST to expand by 11 per cent in FY20 (budget estimates) relative to their FY19 revised estimates. However, the growth in headline GST collections was only 5 per cent in the first half of the financial year. If the pace of growth of GST revenues doesn't pickup in the second half, SGST collections may trail what states had forecast by around Rs 350-400 billion.

Compounding this concern, the GST compensation cess collected in FY20 (April to September) has fallen short of the compensation released to the states this year. Moreover, many states continue to require compensation. This is becoming an acute concern as the five-year compensation period for GST losses will end in 2022. At that point, states will have to reset their expenditures in line with their actual SGST collections, unless the compensation period gets extended. With the axe unlikely to fall on social sector spending, infrastructure creation at the state level may get compressed.

Moving to tax devolution, as per the recommendations of the Fourteenth Finance Commission, 42 per cent of the shareable central taxes of the central government are being devolved to states for the period FY16-FY20. But, shareable tax collections

exclude surcharges and cess collections. Thus, in effect, the taxes devolved to states are closer to 35 per cent of the gross central tax collections.

The "provisional actuals" published by the Controller General of Accounts indicate that the Govt's tax revenues in FY19 stood at Rs 20.8 trillion, a considerable Rs 1.7 trillion lower than the revised estimates for that year. Presumably, the taxes devolved to the states in that year were based on the Centre's estimates of tax collections in revised estimates, which suggests that the devolution of taxes to states year was higher than mandated. We estimate this excess transfer at around Rs 0.6-0.7 trillion. A portion of the adjustment for this excess devolution in FY19 appears to have already been undertaken during April-August 2019, with a year-on-year reduction of 4 per cent or Rs 117 billion in tax devolution to states in these five months.

Moreover, the pace of growth of the Centre's gross tax revenues stood at a subdued 4 per cent in April-August 2019, sharply lower than the target of 18 per cent enshrined in the budget estimates relative to the "provisional actuals". We thus estimate that the gross tax revenues of the Centre would need to expand by a sharp 25 per cent in the remainder of this financial year to meet the budget estimates for FY20. This appears challenging given the subdued economic outlook as of now.

In addition, the recently announced corporate tax cut would result in a revenue loss which the government has pegged at Rs 1.45 trillion. This would be shared by the Centre and states. Thus, in our assessment, based on the shortfalls in central tax collections in FY19 and the estimated gap in FY20, the aggregate tax devolution to states may be as much as Rs 1.5-2 trillion lower in the current year than what was budgeted by the government.

To avoid a substantial fiscal slippage at the state government level, a sizeable expenditure reduction or deferral is likely to be required, given that the borrowing limit set by the central government acts as a soft constraint to the size of the states' fiscal deficits. Some states may resort to cutting productive and capital expenditure towards the end of this year which poses a key risk to the economic growth outlook, in our view. Moreover, such cutbacks or deferral in state government spending could have serious implications for liquidity levels of corporates that are engaged in projects at the state level.

Looking ahead, a key factor that will influence state tax revenues is the percentage of central taxes that the Fifteenth Finance Commission recommends as devolution to the states for the period FY21-25. Will this be the same as the 42 per cent recommended by the Fourteenth Finance Commission? Or will it be higher or lower? Some states seem apprehensive that the terms of reference of the Fifteenth Finance Commission signal that the percentage may be reduced from the prevailing 42 per cent which would constrain their fiscal space over the medium term. The answer will be known in a few months.

Roy is group head corporate sector rating, Nayar is principal economist, ICRA Limited

LETTERS TO THE EDITOR

RAIN AND DROUGHT

THIS REFERS TO your editorial, "Writ in water" (IE, October 10). The monsoon is a regular feature of the country's climate. Several governments have come and gone since Independence but none of them has ever taken steps to control the monsoon's recurring fury. Its high time the government takes serious note on this issue and puts in place measures to control floods. Moreover, some areas in North remain dry in the monsoon season resulting in water shortage. The government's need to address this issue as well.

Sanjay Chawla, Amritsar

FOR SALT WORKERS

THIS REFERS TO the article, 'A legacy, in a salt pan', (IE, October 3). The plight of salt pan workers of Kutch is an example of the poverty trap. The salt traders act as a cartel to trap the salt workers by dictating the terms of business. The merchant class in the salt supply chain make very limited value addition, but they corner sizeable share of the price paid by the consumers. The cooperative model for the salt workers has been a failure to ensure even the minimum wages to them. A different business model based on Gandhian philosophy of trusteeship where salt farmers can go beyond their subsistence level of engagement with the trade is the need of the hour.

Sudip Kumar Dey, Kolkata

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 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

POLITICKING

THIS REFERS TO the article, 'Bypassing Gandhi' (IE, October 2). It was surprising that while writing about the legacy of Mahatma Gandhi, the author could not resist airing his preconceived notions about Jawaharlal Nehru. He forgot that his party has a legislator at the Centre who had described Nathuram Godse as a patriot.

SZA Hussain, Delhi

Compiled by Seema Chishti

THE Urdu PRESS

HOUSTON CALLING

ON SEPTEMBER 24, *Siasat* carried an editorial which noted that the Houston event was "synonymous with the political friendship between Prime Minister Narendra Modi and US President Donald Trump. Trump has tried to secure votes of Indian immigrants for 2020 after attending Howdy Modi. The event was a product of mutual agreement, it was well planned and took months to organise people of Indian-origin people to display India's greatness".

The paper believes that this "secures both (Modi and Trump's) futures". It says "there are no two opinions that such grand jamborees are a part of political diplomacy, domestic politics and political recreation (*siyasi tafreeh*). Modi needed to distract people from the criticism he was facing on the economic slowdown within India and took advantage of being on the US's shores. Trump needed this to start his 2020 campaign". The paper believes this was done to demonstrate the "popularity of Trump amongst American-Indians and Modi wanted Trump to believe that they were with him and this support could be turned into reality in 2020".

The AIMIM daily, *Etemad*, on September 26 writes: "It should be a matter of great pride

for any people that their prime minister is being praised worldwide, and is winning awards and accolades. But if all this is like a 'film excerpt', pre-planned and it is being projected that no one else before this got this kind of support then it is wrong." It goes onto say: "There is no doubt that India is receiving praise internationally. But facts are also being suppressed about the downside of decisions like those on demonetisation, GST implementation and now Kashmir." The editorial questions "why did Modi, who had gone to attend the UN General Assembly, feel the need to participate in this event and why did he lower corporate taxes before leaving? Did these corporate houses help organise Howdy Modi?"

Inquilab on September 26 focuses on Democratic Congressman Stephen Hoyer's speech in Houston. It terms it as natural justice, the fact that Nehru and Gandhi were mentioned in the Modi-Trump show when they were least expected to be brought up. "In Modi's presence, the Democratic Congressman spoke and praised Gandhi and Nehru". The paper believes that Hoyer's championing of democratic norms and human rights was an act of great courage. "Hoyer went ahead to cite these leaders and pay his tributes to those who made India democratic, secular and guarded its plural fabric," the editorial adds.

SYSTEM AND SOCIETY

MUNSIF ON SEPTEMBER 27 speaks of the "misuse" of power and investigative agencies. It does a systematic listing of what it sees as the main accused in after political opponents of the BJP. It speaks of the imprisonment of Karnataka Congress leader, DK Shiva Kumar and income tax notices to Election Commissioner Ashok Lavasa's wife, sister and son. On Lavasa, who was in favour of issuing notices to Prime Minister Narendra Modi and Home Minister Amit Shah during the course of the 2019 general elections, the paper writes, "he will be targeted by Shah and Modi". In a similar vein, it talks of Justice Akil Kureshi's transfer. It says: "a worrisome phase is currently on in India".

Inquilab's editorial on September 27 is titled "Celebrations on the release of a murderer". The comments are in the context of the main accused in the murder of UP cop Subodh Singh being granted bail by the Allahabad High Court. It writes: "If murderers are feted then the society will crumble. In a country where innocents don't get justice, society is praising those who inflict pain and injustice. Those who are kind and humane are being looked at as suspects. If those speaking the truth are silenced and the media's voice is stifled, people will start hating

their rulers." The paper rues that the Allahabad High Court's decision to grant bail resulted in celebrations. It notes that "the main accused, Yogesh Raj, a Bajrang Dal leader was arrested with much difficulty. Police had hesitated to take action against him and acted only after being cornered by the media."

KASHMIR OMISSIONS

ETEMAD ON SEPTEMBER 30 marks 59 days of the shutdown in Kashmir and asks "if Kashmir is being projected as an internal issue, why is the government not taking the state's people into confidence and restoring normal life there?" The editorial rues the lack of any credible proof about "normalcy", assertions about which have been made by the Centre. It asks: "What is being hidden?" All those asking questions are sought to be isolated under the garb of national security and termed pro-Pakistan, the editorial notes. This has been done to Opposition leaders." The editorial ends by asking: "The Home Minister is trying to convince people that a historical wrong committed by Nehru is being sought to be corrected. Is this the case or is the government making a historical error?"



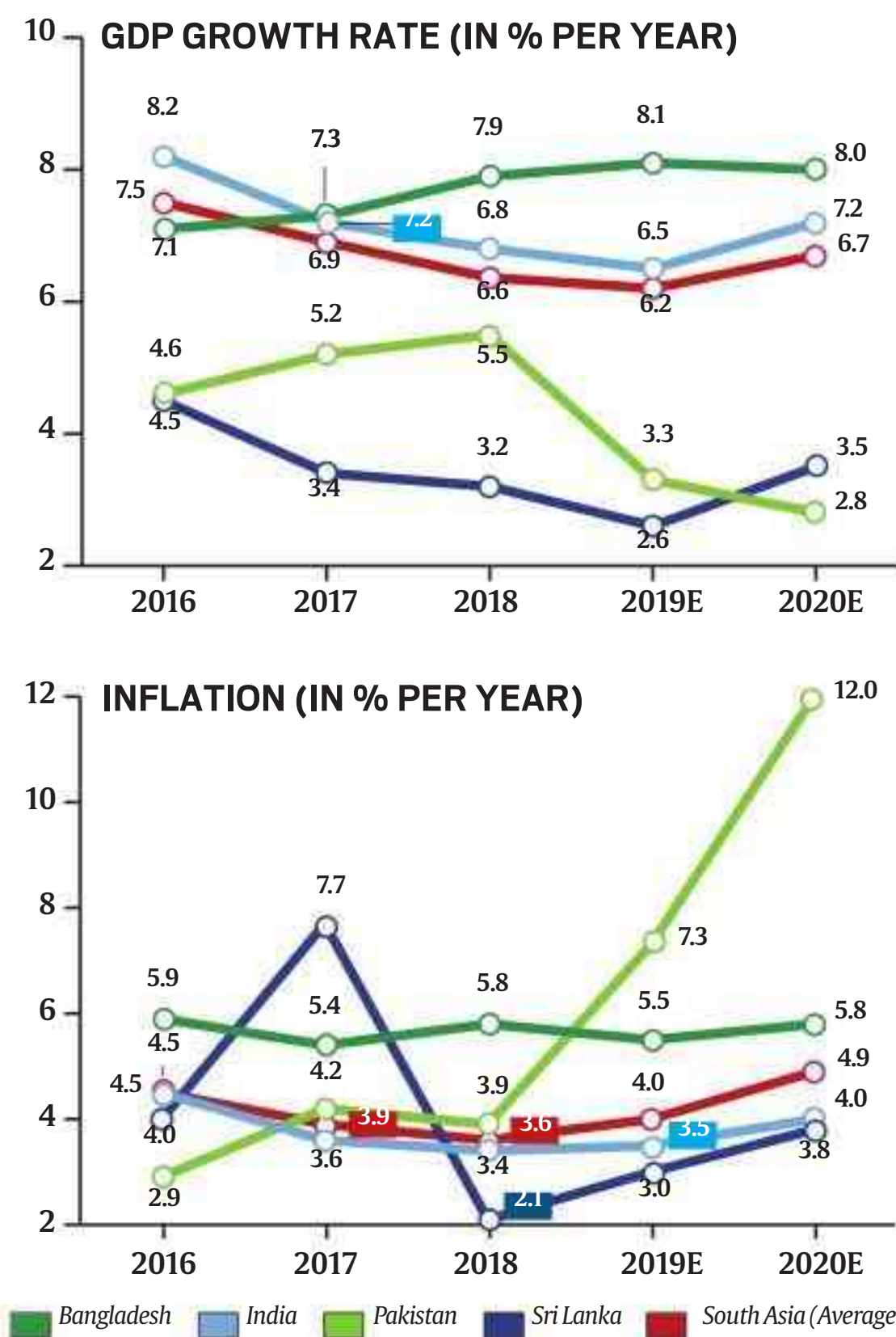
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If there are questions of current or contemporary relevance that you would like explained, please write to explained@indianexpress.com

TELLING NUMBERS

In economic growth, Bangladesh leads S Asian pack, says ADB



BANGLADESH IS currently the stand-out South Asian economy in terms of growth, shows the Asian Development Bank's latest economic outlook update. As the charts show, Bangladesh has been seeing high and consistently rising growth rates, while its levels of inflation have remained stable.

Since 2016, Bangladesh has been growing at 7%+ every year, and its growth is likely to cross the 8% mark both in this and the coming year, according to the report. Over this same period, India has seen a secular decline in growth rates, even though an uptick is expected in the coming year.

Sri Lanka has been the worst performing South Asian economy in terms of growth, according to the report. The South Asia average has been falling since 2016, mainly on account of the poor performance of the Sri

Lankan and Pakistani economies.

The performance of the Bangladeshi economy has been boosted by a booming industrial sector, which leads to significant job creation. This is different from the situation in India, where the bulk of the population is stuck in the agriculture sector (which contributes the least to the GDP), and services is the major growth engine. Bangladesh's robust domestic industry has ensured that the country's exports have grown from 6.7% in 2018 to 10.1% in 2019.

"Growth in garment exports rose from 8.8% to 11.5%, reflecting strong demand from the US and newer markets... like Australia, Canada, India, Japan, the People's Republic of China, and the Republic of Korea," says the ADB report. Garments accounted for 84.2% of exports, the report says.

ANNUAL GROWTH RATES OF DIFFERENT SECTORS IN BANGLADESH'S ECONOMY

Sector	2016	2017	2018	2019
Agriculture	2.79	2.97	4.19	3.51
Industry	11.09	10.22	12.06	13.02
Services	6.25	6.69	6.39	6.50

* Provisional

Source: ADB, Bangladesh Bureau of Statistics

SIMPLY PUT

India, Pakistan and £35 million

Hyderabad Funds Case, finally ruled on by UK court, was not as much about the money as it was about the state of the relationship between India and Pakistan over the 70 years that the case played out

NIRUPAMA SUBRAMANIAN
MUMBAI, OCTOBER 3

THE RULING on a dispute over a sum of £35 million in a NatWest Bank account in London, known as the Hyderabad Funds Case, removes one contentious issue from the long list of India-Pakistan problems, but one that was only a minor headache in a bilateral relationship with painful migraines.

On Wednesday, the British High Court ruled in favour of India and the heirs of the seventh Nizam of Hyderabad in the dispute over the sum, belonging to the Nizam at the time of Partition.

How the funds reached bank

The story is well known: on the orders of the Finance Minister of Nizam Osman Ali Khan, a sum of £1,007,490 and nine shillings was transferred to the account of Pakistan's High Commissioner Habib Ibrahim Rahimtoola on September 20, 1948, a day after the Nizam's forces surrendered to Indian troops. The troops had been sent in to bring to an end the long standoff over the princely state's accession to India. In 1954, India sued for the return of the money (and the Nizam himself wanted the money back) but the case went up to the House of Lords, which stayed the case against the bank and granted Pakistan sovereign immunity, which meant that legal proceedings could not be brought against it. The bank said it would keep the funds until an agreement was reached among all three parties — the Nizam, the government of India and the government of Pakistan — on who the money belonged to.

There the matter lay for more than six decades. It was Pakistan that decided to go back to the court in 2013 leading to Wednesday's judgment, but it was really not about the money, which even after its 35-times increase due to accumulation of interest is not a meaningful amount for either country, as about the state of ties between them at the time.

Attempts at settlement

In fact, through the years, there were several efforts to arrive at an out-of-court settlement, but "Pakistan always backed off



Osman Ali Khan, 7th Nizam of Hyderabad; court ruled in favour of his heirs. Wikipedia

when it came to biting the bullet", said a former Indian diplomat. Indeed, five years earlier, in April 2008, soon after the first democratically elected government took office after 10 years of military rule — it was a Pakistan People's Party-Pakistan Muslim League (Nawaz) coalition — the government of India announced that it would negotiate an out-of-court settlement with Pakistan on the matter.

An April 11, 2008 press release from the Press Information Bureau said the Union cabinet had given its approval for the government to pursue an out-of-court settlement with Pakistan and the heirs of the Nizam. "The Cabinet also gave its approval to the negotiating strategy. This would release funds lying locked up with a British Bank for the last 60 years and also resolution of one long standing item on the India-Pakistan agenda. The negotiations would be conducted over a period of 18 months," the release said. The negotiations were to decide a three-way division of the money.

But it never took off. Bilateral ties were in crisis management mode by July that year, when the Indian Embassy bombing in Kabul

took place. The plan sank along with the rest of the relationship after the 26/11 attacks in Mumbai that year. Since then India-Pakistan relations have gone from bad to worse.

Revival and closure

It was against this bilateral background that, just before the elections of 2013, the then Pakistan High Commissioner to the United Kingdom, Wajid Shamsul Hassan, a PPP loyalist and confidant of then President Asif Ali Zardari, revived the Hyderabad Funds Case, waiving Pakistan's sovereign immunity to sue for the ownership of the money.

"I as Pakistan High Commissioner filed a case in 2013 seeking English High Court ruling as to the rightful ownership of the money as it was lying in the account of Pakistan High Commissioner since 1948. Before filing the case much correspondence was exchanged between me as PHC and the MoFA. Red tape in the MoFA was responsible for delayed action," Hassan told *Pakistan Today* in June 2016. Pakistan applied to withdraw the suit months later, but the court dismissed the plea. Hassan said the new Nawaz Sharif-led PML(N) government had "put pressure" on

him to withdraw the case.

"[S]oon after the transfer of power to the new government of Prime Minister Sharif, I was directed to withdraw the case as MoFA (Pakistan's Ministry of Foreign Affairs) at that time claimed that it was a 'bilateral issue' between India and Pakistan," said Hassan.

As the case continued, India tried to get Pakistan's "beneficial claim" dismissed as "hopeless". The court ruled against India in June 2016, raising hopes in Pakistan about a victory. After this, Pakistan argued in court that there were documents to prove that the Nizam had asked Pakistan's founder Muhammad Ali Jinnah to procure weapons from and send them to him for defending Hyderabad against India, and that a British pilot, Frederick Sidney Cotton, had made 35 trips from Karachi to Hyderabad to drop off the armaments. The money, Pakistan argued, was payment for these arms.

In 2018, the government of India and the Nizam's grandsons arrived at a settlement to fight the case jointly. Wednesday's ruling that pronounced that "the Nizam VII was beneficially entitled to the Fund and those claiming right of Nizam VII — the Princes and India — are entitled to have the sum paid out to their order" closed a 70-year-long chapter in the complex India-Pakistan saga.

Why it took so long

Writing about the case in his 2017 book *The People Next Door*, TCA Raghavan, who was posted in the High Commission at Islamabad twice, first as Deputy High Commissioner and later as High Commissioner, noted that the reason the stalemate could not be broken over decades despite efforts "by prime ministers downward at different levels of government" was certainly not because of the money, but perhaps because both sides saw much more at stake.

"For Pakistan, the issue is of Hyderabad's forced accession following a military intervention when its ruling Muslim prince wanted independence and a closer relationship with Pakistan. The fund thus represents that symbolic relationship... For India, equally, the issue is of principle — what possible claim can Pakistan have to the funds of the erstwhile Hyderabad state?"

THIS WORD MEANS: ELEPHANT ENDOTHELIOTROPIC HERPESVIRUS

What is the disease that killed 5 elephants in Odisha?

SAMPAD PATNAIK

BHUBANESWAR, OCTOBER 3

SINCE THE middle of August, a rare disease has killed five elephants in Odisha. Four calves between the ages of six and 10 have died in Nandan Kanan Zoo in Bhubaneswar, followed by the fifth elephant that died in Chandaka forest this week.

The disease is caused by a virus called EEHV, or elephant endotheliotropic herpesvirus. The four deaths in Nandan Kanan Zoo are the first reported cases of EEHV-related deaths in an Indian zoo, state government and Central Zoo Authority (CZA) officials said, while the death in the forest too is the first known such case in the wild in India.

How the virus works

An EEHV information website, a resource conceived in 2011 at the the 7th Annual International EEHV Workshop in Houston, describes EEHVs as a type of herpesvirus that can cause a highly fatal haemorrhagic disease in young Asian elephants.

"Most elephants carry just as most humans carry a cold virus. When EEHV is triggered, the elephant dies of massive internal bleeding and symptoms which are hardly visible," said Dr SP Yadav, CZA member-secretary. Some elephants show symptoms such as reduced appetite, nasal discharge and swollen glands, researchers say.

The disease is usually fatal, with a short course of 28-35 hours.

No true cure yet

There is no true cure for herpesviruses in animals or in humans, the Washington-based Smithsonian's National Zoo and Conservation Biology Institute says on its website. "Because herpes viruses go latent, we won't be able to find a 'cure' but we hope to collaborate in refining effective treatments and help in the development of a vaccine to prevent EEHV."

Because the disease has a short course, "this means we have to take a very quick call on a suspected EEHV case and kick off treatment protocols. This treatment is a combination of anti-viral therapy, aggressive fluid

therapy (to counter haemorrhaging), immuno-stimulant drugs (selenium and Vitamins C, E), anti-pyretics and analgesics (to bring down fever)," said senior veterinarian Alok Kumar Das, who treated the four sick elephants at Nandan Kanan.

The diagnostic detection of active EEHV infections in Nandan Kanan was carried out at the Indian Veterinary Research Institute (IVRI) in Bareilly.

Why it is a concern

The death of the Chandaka forest elephant has worried officials in Odisha. "If elephants in the wild start falling prey to the virus, then treatment will be very difficult," HS Upadhyay, Principal Chief Conservator of Forests and Chief Wildlife Warden, told *The Indian Express*. It will be extremely hard to track down every wild elephant in the state and test whether they are positive for EEHV, and the state government cannot afford the manpower, he said.

EEHV is lethal for young elephants between the ages of one and 12. If a young elephant dies before reproducing, it affects the

population of the species as a whole in the concerned geography.

The way forward

An Asian elephant calf's recovery after falling ill due to EEHV in Chester Zoo, UK, has raised new hope. In June, the BBC reported that two-year-old Indali Hi Way's recovery has been hailed as a "momentous step". This was after a treatment regimen including nine anaesthetic procedures, blood plasma transfusions, interferon therapy, anti-viral medications and immune boosting treatments, as well as very large amounts of intravenous fluids. The BBC quoted researchers as saying that the case would help "find answers" to the virus.

In India, the CZA will set up a national committee of scientists from Guwahati, Kerala, IVRI and Nandan Kanan to develop protocols for the country lest an EEHV outbreak occurs elsewhere in the future. "The timeline may be around two months. One of the aims will be to develop a detection centre in Odisha. Currently it can only be done in Guwahati and IVRI," Yadav said.

The Lord as a juristic person: What legal rights do deities enjoy?

YASHEE

NEW DELHI, OCTOBER 3

AMONG THE parties in the Ayodhya title suit appeals now being heard by the Supreme Court is Lord Ram himself — Ramlalla Virajman — represented by His "next friend", the late Deoki Nandan Agrawal, a former judge of Allahabad High Court.

The other 'Hindu' party in the case is the Nimohi Akhara which, after initially arguing for the dismissal of the Lord's plea, told the court on August 27 that it would not "press the issue of maintainability of Suit Number 5 of 1989 (filed by the deity through Agarwal) provided they (lawyers for Ramlalla) do not dispute the *shebait*' right of the Akhara".

How is Lord Ram a litigant in court — that too against His devotees who are claiming the right to worship Him?

God as a juristic person

A juristic person, as opposed to a "natural person" (that is, a human being), is an entity whom the law vests with a personality. In *Shiromani Gurdwara Parbandhak Committee vs Som Nath Dass and Others* (2000), the Supreme Court said: "The very words juristic

Person connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such." Gods, corporations, rivers, and animals, have all been treated as juristic persons by courts.

The treatment of deities as juristic persons started under the British. Temples owned huge land and resources, and British administrators held that the legal owner of the wealth was the deity, with a *shebait* or manager acting as trustee.

In 1887, the Bombay High Court held in the Dakor Temple case: "Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person." This was reinforced in the 1921 order in *Vidya Varuthi Thirtha vs Balusami Ayyar*, where the court said, "under the Hindu law, the image of a deity... (is) a 'juristic entity', vested with the capacity of receiving gifts and holding property".

This idea is now established in Indian law. "A juristic entity or person is one in whom the law reposes rights or duties in its own name. A company is a juristic person, who can hold or deal with property in its own name," Senior Advocate Sanjay Hegde



Ramlalla Virajman, seen in the make-shift temple in Ayodhya on December 8, 1992, is a litigant in the title suit.

Express Archive/RK Sharma

said. "While God as an abstract concept is not a juristic entity, deities in Hindu law have been conferred personhood, as capable of being bestowed with property, or leading it out or suing to take back possession."

"Thus, by a legal fiction", Hegde said, "installed deities at Hindu places of worship have been treated like other real persons for the purpose of law."

However, not every deity is a legal person. This status is given to an idol only after its public consecration, or *pran pratishtha*. In *Yogendra Nath Naskar vs Commissioner Of Income-*

Tax (1969), the Supreme Court ruled: "It is not all idols that will qualify for being 'juristic person' but only when it is consecrated and installed at a public place for the public at large."

The rights deities have

Apart from owning property, paying taxes, suing, and being sued, what else do deities as 'legal persons' do?

In the *Sabarimala case (Indian Young Lawyers Association & Ors. vs The State of Kerala & Ors, 2018)*, one of the arguments presented against allowing women of menstruating age entry into the temple was that this would violate the right to privacy of Lord Ayyappa, who is eternally celibate.

Advocate Nehmat Kaur, who worked with Senior Advocate Indira Jaising in the case, said: "Deities have property rights, but not fundamental rights or other constitutional rights." This was upheld by Justice D Y Chandrachud in the *Sabarimala* judgment: "Merely because a deity has been granted limited rights as juristic persons under statutory law does not mean that the deity necessarily has constitutional rights."

Representative of God

Generally, the *shebait* is the temple priest,

or the trust or individuals managing the temple. In the 2010 Allahabad HC judgment in the Ayodhya title suit, Justice DV Sharma had said: "As in the case of minor a guardian is appointed, so in the case of idol, a *shebait* or manager is appointed to act on its behalf."

What if some parties feel that the *shebait* is not acting in the interest of the deity? In *Bishwanath And Anr vs Shri Thakur Radhaballabhji & Ors* (1967), the Supreme Court allowed a "suit filed by the idol represented by a worshipper" in a case where the *shebait* was found "alienating the idol's property". The court held that if a *shebait* does not discharge their duties properly, a devotee can move court as "friend of the deity".

In the Ayodhya case, the Nimohi Akhara argued against the plea filed by Deoki Nandan Agrawal on the ground that "no one has ever accused them of not discharging their duties as *shebait* properly", advocate Fuzail Ayyubi, who is representing the Sunni Waqf Board, said.

Other than Hinduism

A mosque has never been held as a juristic person, because it's a place where people gather to worship; it is not an object of worship itself. Neither has a church.

Not just deities

In May, the Punjab and Haryana High Court held that the "entire animal kingdom" has a "distinct legal persona with corresponding rights, duties, and liabilities of a living person". On March 20, 2017, the Uttarakhand High Court declared that the Ganga and Yamuna would be legally treated as "living people," and enjoy "all corresponding rights, duties and liabilities of a living person". The order was stayed by the Supreme Court in July that year because it "raised several legal questions and administrative issues".