

Discord in Puducherry

The CM's protest against the L-G raises key issues that must be resolved early

This round of conflict between Puducherry Chief Minister V. Narayanasamy and Lt. Governor Kiran Bedi has been more serious than those in the past. Mr. Narayanasamy sat in protest for six days, before the two could meet to hold talks to resolve a set of issues he raised in a letter earlier this month. He has been opposing what he calls Ms. Bedi's "high-handedness" and tendency to interfere in the administration. The two have had differences on many issues over the last two years. Such problems are an obvious consequence of the political structure of Union Territories, in which the Administrator, as the nominee of the President, enjoys powers superior to the Chief Minister and the Council of Ministers. The trigger for the latest standoff seems to have been Ms. Bedi's move to enforce the rule for two-wheeler riders to wear helmets. While the Chief Minister believes it can be enforced only after raising awareness, Ms. Bedi wants it implemented immediately. However, the Chief Minister insists that his protest has nothing to do with this. He lists the blocking of welfare schemes such as the free rice scheme and enhanced scholarship for Scheduled Caste students, among other actions of the L-G, as the real issues. Whatever be the origin of this conflict, the sight of a Chief Minister on an indefinite dharna is not seemly. It could not have gone on indefinitely, and the fact that a dialogue was formally initiated, albeit after much delay, is a welcome development.

Central to the conflict is the question whether Ms. Bedi is acting within her powers or exceeding her brief in seeking to play a proactive role in the affairs of the Union Territory. Under the Constitution, the territory belongs to the President, who runs it through the L-G as Administrator. However, under Section 44 of the Union Territories Act, 1963, the Administrator has to act on the 'aid and advice' of the Council of Ministers. At the same time, any difference of opinion between them can be referred to the President, and in the meantime the Administrator's action prevails on any urgent matter. This scheme, which gives a clear edge to the Centre, can work only if there is harmony between the Council and the L-G. It would be unfortunate if individuals occupying Raj Nivas in any Union Territory with a Legislative Assembly get carried away and ignore or undermine the elected body. Last year, ruling on the limits of the L-G's powers in Delhi, the Supreme Court stressed the need for the L-G as well as people's representatives to "function in harmony within constitutional parameters". The L-G was cautioned against having a hostile attitude towards the Ministers. There is no reason why that principle cannot be extended to Puducherry, which has a longer record of elected governments.

The bane in Spain

Snap elections could deepen fissures in its fragmented polity

he snap poll called for April 28 by Spain's minor-Socialist Party government could deepen the lacksquare fissures in the fragmented polity. The new antiimmigrant Vox party, which made inroads in December in Andalusia, Spain's most populous region, is the latest addition to the smaller formations that can hold the balance in a future coalition. The stability of the shortlived government of Prime Minister Pedro Sánchez. whose fall has triggered the third general election since late 2015, had been under threat from the start. It was propped up last June by Catalan separatist parties, which were bound to turn into a liability for Mr. Sánchez. For the governing Socialist Party has, no less than the conservative People's Party, consistently regarded the Catalonian demand for separation as a violation of the integrity of the Spanish union. The previous centreright government took a hard line on the separatist cause: it dissolved the regional parliament and imposed rule from Madrid following the October 2017 referendum and the unilateral declaration of independence. But Mr. Sanchez's efforts to renew a political dialogue have proved futile in the face of the volatility. Last year's commemorations marking Catalonia's national day and the first anniversary of the controversial 2017 plebiscite saw large turnouts at separatist protests. Meanwhile, a recent government proposal to appoint a rapporteur to negotiate with the secessionists has been condemned as a betrayal by the conservatives. The anti-government protests drew large crowds championing a united Spain and demands to vote out the Socialists.

A trial that started last week against the masterminds of the 2017 referendum is the latest flashpoint. Many of the defendants appearing before the Supreme Court were part of the regional Catalan government and face long prison terms if convicted. The trial has sealed any hope of the Socialist government conceding its coalition Catalan allies' demand for a referendum on statehood. Within days, the separatists hit back, voting down the national budget, alongside the Opposition conservatives whom Mr. Sánchez unseated in June. Whereas prolonged instability has marred Spanish politics in recent years, the country had so far seemed immune to the populist surge spreading across the rest of the European Union. The entry of the extreme right Vox party to the Andalusian legislature has unsettled that *status quo*. The Socialists are expected to emerge as the single largest party in April, but well short of a clear majority. The two centre-right parties are also unlikely to muster enough numbers to form a government on their own. Opinion polls indicate that Vox could have a significant presence in the next parliament and be in a position to play kingmaker. This is not an attractive prospect for either the majority of moderates or the Catalan separatists. Spain needs stability at any cost today.

Not without an explanation

Judges must give their reasons in writing for recusing themselves from specific cases



SUHRITH PARTHASARATHY

Then must a judge disqualify herself from hearing a case? Must decisions of this gravity be left to the wisdom of individual judges? Under what circumstances does a decision of recusal transgress a judge's general responsibility to sit and deliver impartial justice? Should not a judge who disqualifies herself be compelled to deliver an order explaining her reasons for recusal?

Cases at hand

These questions have been brought to sharp focus with a rash of recusals made by judges of the Supreme Court over the course of the last few weeks. In one case alone - challenging the appointment of M. Nageswara Rao as interim director of the Central Bureau of Investigation - three judges recused themselves. First Chief Justice Ranjan Gogoi disqualified himself, purportedly because he was set to be a part of the selection committee tasked with choosing a new CBI Director. He then assigned a bench presided by Justice A.K. Sikri to hear the case. But Justice Sikri too recused, on grounds, one assumes, that he was part of a panel that removed the previous CBI Director Alok Verma from his post. Next, Justice N.V. Ramana recused himself for apparently personal reasons. "Nageswara Rao is from my home state and I have attended his daughter's wedding," he told the petitioner's counsel.

However, none of these orders of recusals was made in writing, and, by themselves, the professed oral reasons for the decisions do not quite point to why the judges ought to have thought themselves

The recusals in the CBI case weren't the only ones to make the news. Last month Justice U.U. Lalit recused himself from hearing the dispute over land in Ayodhya after senior advocate Rajeev Dhavan pointed out that the judge had appeared for former Uttar Pradesh Chief Minister Kalyan Singh in a related contest. Although Mr. Dhavan said he had no specific objection to Justice Lalit continuing to hear the case, the judge, the court's order notes, "expressed his disinclination to participate in the hearing any further." But because we don't have a written order specifically justifying the recusal, it's difficult to tell whether the disqualification was really required.

Last September two judges of the Gujarat High Court withdrew from a set of controversial cases by merely saying, "not before me." Similar orders were passed by three judges of the Nagpur bench of the Bombay High Court, who refused to hear a plea filed by a lawyer Satish Uke concerning the death of Judge B.H. Loya. Unsurprisingly, though, none of the judges recorded their reasons in writing, allowing, in the process, plenty of scope for conjecture and surmise.

In taking oath of office, judges, both of the Supreme Court and of the high courts, promise to perform their duties, to deliver justice, "without fear or favour, affection or ill-will". While "fear and favour", as Stephen Sedley, a former judge of the Court of Appeal of England and Wales, has

written, are "enemies of independence, which is a state of being". affection and ill-will "undermine impartiality, which is a state of mind". The purpose of recusal, Mr. Sedley added, is to underpin these twin pillars of independence and impartiality. A decision, therefore, on a demand for a judge's disqualification is an especially solemn one. A gratuitous recusal, much like a failure to recuse when faced with genuine conflicts of interest, traduces the rule of law. To withdraw from a case merely because a party suggests that a judge do so impairs judicial fairness. It allows parties to cherry-pick a bench of their choice.

Formulating rules

Given these implications, one can be forgiven for thinking there exists a set of concrete rules that tell us when a judge must recuse herself. But as T.R. Andhyarujina wrote some years ago, what we really have are different elucidations of a principle against an apprehension of bias. No doubt, in some cases, prejudice is presumed – for example, where a judge has appeared for one of the litigants at some stage in the same dispute. It's also by now an axiomatic rule that no person should be a judge in her own cause. But there are cases where somebody else's cause becomes the judge's own.

In disputes where a judge has a financial interest in the litigation, where a judge owns shares in a company which is party to the case, the fact of owning shares is, in and of itself, considered a disqualification. This rule is derived from an 1852 House of Lords judgment, which held that Lord Cottenham ought not to have delivered a verdict in a case where he owned shares in one of the parties to the litigation. The tenet here appears clear enough, but it's today muddled by the ubiquity of shareholdings by judges and judges' relatives – Mr. Sedley cites the example of a 1980 appeal against Shell and BP in which "the registrar of civil appeals was unable to assemble three judges who had no shares in either defendant." Invariably, therefore, when a judge owns shares in one of the litigants what we expect is disclosure of the fact, and if neither party objects one might think it's acceptable for the judge to hear the case. But in the absence of a well-defined rule that helps establish a basic standard, a decision of this kind can prove troubling somewhere down

The closest we've come in India to carving out a definite rule was a formulation made by Justice J. Chelameswar in his opinion in Supreme Court Advocates-on-Record Association v. Union of India (2015). Here, the 99th constitutional amendment was challenged, and a claim was made seeking Justice J.S. Khehar's recusal. The plea was rejected, but Justice Chelameswar attempted to establish something akin to an elementary canon. "Where a judge has a pecuniary in-

terest, no further inquiry as to whether there was a 'real danger' or 'reasonable suspicion' of bias is required to be undertaken," he wrote. "But in other cases, such an inquiry is required, and the relevant test is the 'real danger' test."

Even with this formulation, what constitutes real danger of bias remains a matter of construal. And whether an individual judge should be allowed to decide for herself on pleas of recusal is equally a point of contention. Yet the test does provide a plausible solution, so long as judges make their choices by reducing their reasons to writing. For when judges choose without a rational motive, without expressing their decisions in writing, they hurt the very idea of judicial rectitude.

Equally destructive

Ultimately, a mistaken case of recusal can prove just as destructive to rule of law as those cases where a judge refuses a recusal despite the existence of bias. We mustn't allow recusals to be used as a tool to manoeuvre justice, as a means to picking benches of a party's choice, and as an instrument to evade judicial work. As the Constitutional Court of South Africa held, in 1999, "the nature of the judicial function involves the performance of difficult and at times unpleasant tasks," and to that end judicial officers "must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.'

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The contractual functionary

Sanitation workers represent a wider phenomenon of exploitative contractual work



KRISHNA KUMAR

ewage pipes and drains represent the bleaker side of India's struggle to modernise its cities. Last month, Kishan Lal, 37, a sanitation worker, died inside an underground drain in the nation's capital. Called to repair a blocked drain in the Wazirabad area of Delhi, he had no safety kit with him. The details of his death that have appeared in newspapers make for sordid reading: he died of asphyxiation. When he did not come out, the police and fire department were called. They could not find him. It was the National Disaster Response Force that found his body after an eight-hour search. Reports of deaths in similar circumstances appear regularly in the local press in different cities. They attract public attention for a day or two, but fail to sustain it.

Caste and contract work

Reports identified Kishan Lal as a 'contract worker'. The meaning of this term has grown and the scope of its use has greatly expanded over recent decades. Depending on who your contractor is, you could have a vastly different experience of work under a contract. There was a time when the term was

used only in the context of private sector employment because the government alone gave 'permanent' appointments. Economic reforms introduced under liberalisation changed that. From the early 1990s, govern-

ment jobs could also be given on contract. Among sanitation workers, thousands in each major city are serving on contract. Few statistics exist to guide us in the jungle of norms and procedures governing contractual work. We also don't know the share of permanent staff in the total sanitation staff in the country. What we do know for certain is the relation between caste and contract work in the sphere of sanitation. Sanitation workers on contract mostly belong to the Scheduled Caste (SC) category. Surveys indicate a small proportion of other castes in permanent sanitation staff. It is also reported that these non-SC permanent functionaries often get proxy workers from SC backgrounds to do the actual work. So, the bond between caste and work continues to be strong decades after B.R. Ambedkar had analysed and highlighted it.

In the case of sanitation, contract work means gross vulnerability and exploitation. The terms of contract are minimalist, and a contractor feels free to enhance his own share of the contract with impunity, by nibbling away the worker's share. Though the government is supposed to regulate the functioning of this contract, it



does not show much active interest in doing so. It has been following the general policy of privatisation as a matter of faith, without putting in the effort it takes to work out the details for different sectors and departments. The realisation that one solution does not solve every problem is absent. Such a realisation is also unpopular, especially among people who present themselves as the gurus of efficiency. A tacit pact guides their relations with the bureaucracy. Hardly any politician in office has the time or the inclination to disturb this pact and force both sides – the efficiency gurus and the civil servants - to take stock of different nooks and crannies of the vast apparatus of the state. Decline in efficiency and quality of different services is quite apparent to the public, but it is flatly denied by political leaders, civil servants and consultants.

Quality takes a hit

They also deny the urgency of reviewing the working of the contractual system in areas directly

related to welfare, such as sanitation, health and education. Little attempt has been made to study how contractual work has affected reliability in the postal services, railways and accounts. Even in functions such as data gathering, which are crucial for economic planning and decisions, the contractual workforce has proved detrimental to quality. In a paper published in the Economic and Political Weekly (February 15, 2014), Professor Sheila Bhalla made this point with reference to the use of contractual enumerators in the National Sample Survey

In many spheres, contractual appointments do not involve a private contractor, but that makes little difference to the quality of work done. In education, for instance, many State governments have been hiring teachers on contract. Their service conditions are totally different from those serving as permanent staff, yet they are expected to deliver higher quality in teaching. The mantra upholding this expectation is that contractual teachers will work harder because they are insecure. In State after State, this mantra has not borne fruit, but no one wants to acknowledge that. Nor do governments want to admit that contractual work in professions such as teaching discourages motivation to improve one's performance. The reathat contractual son is functionaries see no definite prospect of a career or future in the

same profession. Also, their wage is much too small to sustain the growth of substantial professional commitment.

The case of sanitation workers on contract is worse. They work for small-time contractors who have absolutely no idea of the role of a sanitation worker. The contractor feels free to exploit the worker, conveniently hopping over whatever barriers and checks, including digital devices, that the government attempts to use for providing financial security to the worker. The government – in the case of sanitation, it is often the municipality - shows little sustained interest in imposing stringent norms for provision of equipment, including those for safety, necessary for sewer cleaning. As for training, no one seems to believe that sanitation involves complex work, requiring both knowledge and training. Such a thought is fully precluded by the strong and enduring bond that exists between caste and sanitation. Sanitation campaigns do not articulate an acknowledgement of the relationship between the caste system and cleaning jobs. An ideological barrier prevents such articulation. The media too does not highlight the connection between caste and cleaning. That is why whenever sanitation workers die in underground drains, the news simply passes into unsorted history.

Krishna Kumar is a former director of the

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No cover

The decision to withdraw state security cover to separatist leaders in Kashmir, which the Home Minister referred to obliquely as "acting against those who get money from across the border and are hand in glove with Pakistan's ISI", is a step in the right direction (Page 1, "J&K administration withdraws security to separatist leaders", February 18). The money saved should be utilised for the welfare of ordinary Kashmiris. Separatist leaders have been enjoying the best of both worlds. This is also the time for the cover of all protected persons, including mainstream and separatist leaders, to be reviewed. C.G. KURIAKOSE,

■ A number of steps may have been taken after the

Pulwama terror attack. But what we need to do, most of all, is to address the core issue: why is it that the educated Kashmiri youth is being drawn to terror? Kashmir, a festering wound, needs a multi-pronged strategy that can prove effective. SANGEETA KAMPANI, New Delhi

■ In an atmosphere of heightened emotions, one would tend to applaud the decision. But this is a case of emotions overtaking judicious reasoning. So long as separatist leaders continue to be Indian subjects and as long as the perception of a threat to their lives remains, it is incumbent on the government to provide them adequate protection. At a time when proactive steps are needed to win over the

Kashmiri mainstream, arm-

twisting instead of reaching

out will be counterproductive and deepen the alienation. AYYASSERI RAVEENDRANATH,

■ It is clear that neither the U.S. nor China can influence Pakistan so that it turns over a new leaf as long as the state is controlled by the all powerful Pakistan Army. The peace overtures made so far by the deep state seem to be an eyewash. To add to this is the attitude of the leaders of various political parties in the Kashmir Valley who do not seem sincere about ending terrorism. The numerous separatist outfits too have their own agenda. Ultimately it is innocent civilians who are paying the price.

A. MICHAEL DHANARAJ,

■ Reports of Kashmiri students facing intimidation following the Pulwama terror

strike are unfortunate. The very idea of India is one that is rooted firmly in its pluralistic character and liberal and secular outlook. What binds Kashmir to India is not a military force or a political pact signed decades ago, but the un-selfconscious movement of people from Jammu and Kashmir to other parts of the country in search of jobs and better opportunities. It stems from the idea of India that they can find a home anywhere in the country. We should not let this idea of India be besieged by forces inimical to the unity and integrity of the country. It is incumbent upon the administration. civil and political leadership to maintain peace. M. IEYARAM. Sholavandan, Tamil Nadu

Verified

The Readers' Editor's column (OpEd page, February 18) and the former

RE, K. Narayanan's column, "Venturesome, vainglorious" (April 13, 2009), prove that The Hindu is still guided by the principles laid down in the very first editorial titled "Ourselves" (September 20, 1878): "The principles that we propose to be guided by are simply those of fairness and justice..." I am reminded of the time when I had sent my article, "Learning from the birds", to be published in the Open Page. I was asked about the veracity of the accompanying photograph, of a sunbird which had built its nest from a hook on the ceiling of our verandah, feeding its nestlings. The article/photograph were published on May 12, 2015 only after the picture was found to be authentic. SUKUMARAN C.V., Palakkad, Kerala

Immigration debate In the U.S., the basic institutions that make up a successful democracy have been compromised for sheer political gains, and this is sure to have multitudinous ramifications (Editorial. "Strange emergency", February 18). If the exorbitant amount of money that could be set apart to splurge on "the Wall" is channelled towards affordable and quality education to the children of immigrants, they could metamorphose from "drug dealers" to becoming indispensable assets of There is no doubt that U.S.

President Donald Trump needs to enlighten himself about immigrants having played a paramount role in helping the U.S. become a superpower and engendering "the American dream".

JACOB J. PUTHENVEETTIL,

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