Gift from RBI

The government should put the bonanza to use in a prudent manner

After a long tug of war, the government has eventually had its way with the Reserve Bank of India, managing to get it to part with a portion of its accumulated reserves. The RBI board, on Monday, decided to transfer a massive ₹1,76,051 crore to the government, including a sum of ₹52,637 crore from its contingency reserve built over the last several years. The outflow from the RBI's reserves was limited to this amount only because the Bimal Jalan Committee, appointed to recommend the economic capital framework for the RBI, decided to keep a major part of the reserves locked up and out of the reach of the government while opening up the remainder with strict stipulations. The Committee has recommended, and rightly so, that the Currency and Gold Revaluation Reserve Account (₹6.91 lakh crore as of June 30, 2018), at least half of which was eyed by the government, represents unrealised gains and hence is not distributable to the government. In the case of the Contingency Reserve (built out of retained earnings), which was ₹2.32 lakh crore as of the same date, the committee said that it should be maintained within a band of 6.5-5.5% of total assets. It left it to the RBI board to decide the precise percentage it was comfortable within this band and transfer the excess to the government. As it happened, the board, in its Monday meeting, decided to peg this ratio at 5.5% thus enabling it to transfer a sum of ₹52,637 crore to the government immediately. The committee should also be complimented for clearly specifying that the revaluation reserve cannot be used to bridge shortfalls in other reserves.

In principle, it could be argued that the government as sovereign owns the RBI and hence there is nothing wrong if it decides to tap the central bank's reserves. Yet, that it actually chose to do so is unfortunate because these reserves represent inter-generational equity built up over several years by the RBI by squirrelling away a part of its annual surplus. It is morally unacceptable that any one government can swallow even a part of such funds to help meet its expenditure in a particular year. The reserves, as the Jalan Committee has pointed out, represent the country's savings for a 'rainy day', which is a monetary or financial crisis. Interestingly, the net surplus of ₹1,23,414 crore posted by the RBI in 2018-19 is more than double that of the previous year and is considerably higher than the ₹65,876 crore that it netted in 2015-16. Only the release of the RBI's Annual Report in the next few days will help in the understanding of the reasons behind the sharp jump in the surplus. The big transfer from the RBI will free up the hands of the government at a time when tax revenues are undershooting the target by a long chalk. The money, it is hoped, will be put to use in a prudent manner.

State of stasis

In Karnataka, the BJP government's cabinet formation has been stuck in first gear

Nearly a month after taking oath and winning a trust vote, Karnataka Chief Minister B.S. Yediyurappa has still not managed to finalise the Cabinet of Ministers of the Bharatiya Janata Party-led government. The fact that it has managed to fill only 17 of a maximum of 34 Ministers and only announced portfolios on Monday suggests that the Chief Minister has been walking on eggshells to accommodate various interests. That cabinet formation has taken so long should not come as any surprise to those following the political events in Karnataka over the last three months. A prolonged political crisis led to the fall of the Congress-JD(S) regime; the BJP's ascension to power was made possible by a rebellion within the coalition's ranks. The 17 MLAs who were subsequently disqualified for their actions are waiting to know the fate of their challenge to the then Speaker's order in the Supreme Court. But they will be encouraged about their prospect of becoming Ministers if the induction of H. Nagesh, an independent MLA who was a Minister in the previous regime, is any indication. The fact that two among the newly inducted Ministers were not even MLAs, but BJP leaders who played an important role in facilitating these defections also suggests that some of the rebels could be expected to be given berths. But the delay in cabinet formation is not just due to issues related to accommodating these turncoats.

The State BJP has been overly reliant on the party centre to give it direction on every step it has taken so far since the Chief Minister took oath. With the BJP enjoying only a wafer thin majority in the Assembly, the responsibility to ensure a tight ship has fallen upon the powerful party centre led by senior leader and Union Home Minister Amit Shah. The appointment of three Deputy Chief Ministers belonging to various influential communities was clearly meant to accommodate alternative centres of power and to diversify the support base. This does not seem to be Mr. Yediyurappa's preference, if his public utterances over the matter are any indication. But the party centre's calling the shots seems to be leaving him with little choice. The BJP prided itself as a party that accorded greater autonomy to its regional leaders to handle such matters, but in Karnataka today, it is a throwback to the old Congress system with the evident preponderance of the party high command. Whether these steps lead to a balance of interests or to fresh disaffection remains to be seen. But the net result of these political shenanigans has been a prolonged stasis in governance as is visible in the laggardly work done in rehabilitation and reconstruction in parts of Karnataka that are reeling from the after-effects of debilitating floods.

A monumental litmus test

How the Supreme Court decides the cases around Article 370 will have a deep bearing on democracy

SUHRITH PARTHASARATHY

Perhaps not since the Indira Gandhi-declared Emergency has the Supreme Court of India faced an examination such as this, where its moral fibre is at stake. There, in *ADM Jabalpur v. Shivkant Shukla*, the court, by its own subsequent admission, came up lamentably short. The court, by ruling that fundamental rights, including a person's right to life, could be validly suspended during a period of emergency, left democracy teetering on the edge of the abyss. Now it faces a litmus test nearly as monumental. The cases before it concern not only the validity of the government's decision to virtually revoke Article 370 of the Constitution – and, with it, the special status that Jammu and Kashmir (J&K) enjoyed – but also the legality of the chilling limitations placed on civil liberties in the region. How the court decides these cases will have a deep bearing on the destiny of democracy in India.

A dilution of Article 370

Article 370, which pledged relative autonomy in governance to J&K, was premised on the idea that ultimate sovereignty rested with the people. But time after time this basic compact has been weakened by successive regimes at the Centre, including by India's first elected government. For its part, the Supreme Court has invariably overlooked these transgressions, by affirming the Union government's position of hegemony. The presently executed moves, however, push the envelope further, by stripping Article 370 of all its meaning. And this the government has achieved not through debate and deliberation but through constitutional obfuscation.

When the Supreme Court hears arguments on the questions arising out of these events, the government will likely point to the political nature of the dispute. In defending its decision, the government has already offered a plethora of justifications – in this, the important and critical need to re-assimilate in J&K, Kashmiri Pandits who suffered a harrowing exodus from the State has scarcely found mention.

But regardless of the ends of the government, what ought to be clear is that the rule of law demands that any state action is bound by the Constitution and its limits. After all, that is precisely why we have a Constitution underpinning our democratic republic. When judges exercise their minds on the simple legality of the government's orders it should be evident to them that the quashing of Article 370 is unlawful. And that, for the court, is all that should matter.

Article 370's raison d'être is contained in the Instrument of Accession signed by Hari Singh, the then Maharaja of J&K, on October 26, 1947. The provision, in constitutionalising the terms of that accord, stipulated that Parliament could legislate for J&K only over matters concerning external affairs, defence and communications. Where Parliament intended to legislate over additional areas otherwise provided for in the terms of the accession, it could do so by consulting the State government. But where it proposed to enact laws beyond the agreed subjects it required not only the State government's concurrence but also the express ratification of J&K's Constituent Assembly.

The Article, therefore, clearly envisaged the idea that J&K would have a Constitution of its own. Its chief drafter, N. Gopalaswami Ayyangar, was conscious of the fact that any permanent arrangement

SUSHIL KUMAR VERMA

between the State and the Union could be arrived at only once the State's Constitution was brought into force. It was to put in place an arrangement in the meantime that Article 370 provided a few other stipulations. For example, it granted the President the power to make orders applying specific provisions of the Constitution other than Articles 1 and 370 to J&K. But even such orders required subsequent ratification by the State's Constituent Assembly. It was thus clear that once J&K's Constitution came into force, together with Article 370, it would form a cohesive means of governing the State.

Condition for abrogation

This position is further illuminated by Article 370(3). The clause, as Gopalaswami Ayyangar put it to India's Constituent Assembly, "explains the whole of this article". It accorded the President a power to declare either the Article in full or any part of it inoperative on the recommendation of the Constituent Assembly of the State. This recommendation, as Gopalaswami Ayyangar explained, was a "condition precedent" to any effort at abrogating the provision.

No doubt, this original arrangement was meant to be temporary. But it was temporary only in the sense that the structure of governance would eventually be elucidated by the J&K Constitution that the State's Constituent Assembly was meant to frame. On its drafting, the Assembly could have well chosen to recommend to the President the abrogation of Article 370 (which could have even meant separation from the Union). But given that no such recommendation was made, the intention was writ large: the Article would continue to represent the sole means of taking India's Constitution into the State. Although this disposition has since been disturbed in various different ways, invariably at the instance of the Indian government, as the Supreme Court recognised as recently as in December 2016, unless the conditions in clause (3) were met, Article 370 would have to remain.

Misreading Article 367

The Union government has not entirely disputed this position. But in finding itself thwarted by these constraints, what the government has offered us is an illusory and coercive change to the constitutional bargain. Article 367, which provides rules for interpreting the Constitution, has been modified insofar as it applies to J&K by providing that wherever the term "Constituent Assembly of the State" was used in Article 370 it would refer only to the "Legislative Assembly of the State". Nifty as this might sound, the substitution, in effect, does not merely alter Article 367, but it also impinges on Article 370 itself, something which the provision, as Ayyangar was keen to stress on, decidedly prohibits.

Swiftly following this presidential order came a statutory resolution which suggested to Parliament the abrogation of the essential components of Article 370. But because J&K was under President's Rule, Parliament had now stepped into the shoes of the State's Legislative Assembly. This meant that, as a result of the newly shaped Article 367, it also acted as the State's Constituent Assembly. The incongruity could scarcely be more evident. The Union executive vested in Parliament an unrepresentative constituent power, which meant it could recommend to the President the absolute nullification of Article 370. The upshot of all this was that a decision of portentous significance affecting J&K's political future was made even though the people of the State were afforded neither an opportunity to speak for themselves nor the chance to speak through their own elected representatives.

Our Constitution's brilliance is contained in its fidelity to principles. Those principles are not fungible. Under no circumstances do they license government to use the excuse of a supposed noble end to trump the Constitution's guarantees. The processes concretised by the Constitution are important because they partake in them a vow to pay heed to the consent of the governed. When those processes are allowed to be broken they strike at the understanding that sovereignty rests with the people.

To borrow from Annie Dillard's inimitable words, in this case, casting aside constitutionalism feels like "sliding down the mountain pass and into the region of dread". Already the extraordinary blockade of communication channels in J&K, and the detention of scores of people, including three former Chief Ministers of the State, have been regarded as unexceptional, and, even more ominously, as necessary consequences of the constitutional change. The judgment in *ADM Jabalpur* may well have been overruled since, but the ghosts of the court's darkest days have not fully dissipated. In J&K, the legacy of *ADM Jabalpur* has persisted for decades. Now when the court reviews the government's decisions it may want to recall its past blunders, especially the ones that entrenched its place in the annals of the Emergency's history.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

Remembering a painful past

The drive to rewrite the history of the Second World War also accentuates efforts to dilute the global security system

NIKOLAY KUDASHEV

"He who thinks of the past also has the future in mind. He who speaks of the future has no right to forget the past. Having gone through the inferno of many battles I know at first-hand what war means and I do not want mankind to face that again." – Vasily Chuikov, Marshal of the Soviet Union.

As we approach a significant date, the 80th anniversary of the beginning of the Second World War, our memories go back to the enormous adversities that the world had gone through in 1939-1945. On this occasion, we grieve the millions of innocent lives lost in Europe, Asia, and Africa, which were engulfed in the flames of hostilities for six long years. We remember the hardships met by our fathers and grandfathers. They sacrificed their lives in the efforts to defeat the adversary and rebuilt the war-torn motherland amidst post-war hunger and extreme austerities.

We also remember the many lessons that the Second World War taught humankind. Today, as we witness how the instruments of collective security come under repeated attacks, let us recall the chain of events that led to the disaster.

By the mid-1930s, the instigators of the upcoming war, the Nazis in Germany, the Fascists in Italy and the imperialists in Japan, were busy getting their economies and armies battle-ready. Even as Italy was spreading its foothold in Africa and the Mediterranean, Japan began the conquest of Asia. Germany, having done away with the limitations imposed by the Treaty of Versailles, was eyeing its share of colonies and the vast resources of the USSR. The young Soviet country came under a grave existential threat.

Change in tack

The Soviet Union realised that the cooperation with Great Britain and France may have prevented the war or at least ensured a quick defeat of the aggressors. Over the next few years, Soviet diplomacy desperately tried to forge international collective security arrangements, based on existing allied pacts as well as mutual interests. As evident from archival documents, the British conservatives under the leadership of Neville Chamberlain had another plan in mind. Rather than joining hands for peace with the USSR and other countries to thwart the aggressive plans of the Nazis in Europe, they decided to appease Adolf Hitler (to ride the tiger, as Winston Churchill put it). The aim was to isolate the USSR and to channel predatory German energy to the East, towards the Soviet Union. In Asia, the British government encouraged Tokyo to direct its annexationist appetite to the Russian Far East, further away from the British colonies in south China.

GETTY IMAGES/ISTOCKPHOTO

In 1938, these sordid intentions resulted in London and Paris signing the infamous Munich Agreement. This ignominious act allowed the dismembering of their ally, Czechoslovakia. Thus began the countdown to the war. Moscow's attempts to honour its commitments to save Prague, the first victim of imminent German aggression, were rejected. Warsaw, saturated with hatred and distrust to the communists, said no to the Soviet proposals for meaningful talks and joined the shameless feast by annexing the Polish-populated territories of Czechoslovakia.

The war theatre

In 1939, the stage for the global war was set. By then Germany had determined its aggressive policy by annexing Czechoslovakia, tearing apart the non-aggression pact with Poland, denouncing the maritime treaty with Great Britain and setting up colonial claims against the U.K. and France. Japan had captured large territories of China, and in August, attacked Mongolia in a futile attempt to strike a blow to the USSR. Moscow intensified attempts to reach an agreement with London and Paris. Yet, the British and French negotiators had clear instructions to drag on discussions. The talks reached a deadlock. Facing the threat of a two-front war in total isolation, the USSR was forced to sign the non-aggression pact with Germany, getting some respite before the decisive battle.

Today, we witness the drive to rewrite and falsify the history of the Second World War, to whitewash the real culprits and demonise the victors. These attempts accentuate the efforts to dilute the international security system and undermine international law. The lessons of the Second World War teach us about the dangers of such actions. Having made a decisive contribution to the victory over the evil forces, our country consistently reaffirms its readiness to defend peace by strengthening the existing instruments of global stability as laid out in the UN Charter in 1945.

We consider India as an important partner in this endeavour. Together with other like-minded countries in the framework of the UN, G20, BRICS and the Shanghai Cooperation Organisation, we stand strong for the establishment of truly multipolar, just and equal world order. We stand against any illegal unilateral actions, which undermine strategic and regional stability, spread uncertainty and unpredictability in global affairs.

Nikolay Kudashev is Ambassador Extraordinary and Plenipotentiary of the Russian Federation in the Republic of India

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

India on Kashmir

It is a clear diplomatic win for India on the sidelines of the G7 summit as far as a resolution of issues between India and Pakistan on the Kashmir issue are concerned (Page 1, "PM rejects scope for third party mediation in Kashmir", August 27). Even though the Prime Minister seems to have asserted India's stand against third party mediation on bilateral issues with Pakistan boldly, India should not forget that it could be a temporary phase given the quirky nature of international relations and the stand of the U.S.

DR. D.V.G.SANKARARAO,
Nellimarla, Andhra Pradesh

Rights custodian

The article, "Time to strike the gavel" (Editorial page, August 27) raises important issues of individual and community liberty and the judiciary's responsibility in upholding them. His position is that upholding these rights brooks no delay. But when the court in its assessment decides to give the State time to bring back normalcy, one fails to understand his objection. Either the court upholds his views on what is right or shall be branded as not living up to its responsibilities. Curiously he mentions two episodes, both of which either pertain to politics or the politician. The absence of any episode involving ordinary undertrials speaks volumes about his concern for liberty and rights. The second episode mentioned brings to the fore the contrast that exists between the liberty and rights of ordinary citizens, who have fallen foul of the law, *vis-à-vis* those who are well connected. Why not advocate the cause of liberty of all individuals who are behind bars for years, awaiting their turn for justice? Yes, the gavel must be struck, but in support of: a quick justice system; a strict timeframe for each case; for disallowing tactical appeals; and certainly against lawyers who are accomplices in derailing the justice system.

V.T. SAMPATH KUMARAN,
Mysuru

Amazon fires

A callous attitude towards forest conservation would only spell doom for species dotting our earth. While it is heartening that the international community is taking note of the conflagration, much needs to be done to prevent forest fires in the first place. The inextricable link between tropical rainforests and their role in mitigating the devastating consequences of global warming cannot be disputed. Sustainable development will only remain an elusive dream so long as environmental degradation remains a norm than an exception.

M. JEYARAM,
Sholavandan, Tamil Nadu

Travel notes

The train friendship, as narrated in the article, "Confession coupe: instant friendships and quick lies" (Open Page, August 25) took me down memory lane. I was working as a surveyor/draughtsman in the Railways; there was survey work connected with bridge constructions which meant my staying away from home at least 25 days in a month. In 1960, while returning to Chennai by Quilon Express after completing survey work at Ariyalur, I struck up a conversation with a co-passenger in the upper class coach. We discussed almost everything under the sun. He was an accounts assistant in a private company and showered praise on his boss for his empathetic approach towards his subordinates. It was my turn next. I narrated how constant travel was affecting my health as there were irregular meal times and that my constant pleas to my boss to allow me work in office and focus on drawing works alone were hardly considered. My co-passenger was absorbed and asked me the name of my boss. His immediate exclamation was: "It is none other than my father-in-law." That was the end of the conversation. I was filled with dread. Surprisingly nothing happened, but from next day onwards my days of travel came to an end and I got what I wanted: drawing and estimating works.

D. SETHURAMAN,
Chennai

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CORRECTIONS & CLARIFICATIONS:

The name of the special judge of the Delhi court that extended the CBI remand of the former minister P. Chidambaram was erroneously given as Arvind Kumar Kuhar in the front-page story headlined "Chidambaram's custody extended by four days" (Aug. 27, 2019). It should have been Ajay Kumar Kuhar. In the same story, the reference to an August 28 order should be corrected to read as August 22 order.

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