



The shift in Bihar

As Nitish Kumar switches allies, the BJP appears to be the only winner

Nitish Kumar's impending split from the Mahagathbandhan, or Grand Alliance, in Bihar had been the subject of speculation for months so that when it came, the only surprise was the swiftness and finality of the separation from Lalu Prasad's Rashtriya Janata Dal – and of his embrace of the Bharatiya Janata Party. The sequence of events suggests that Mr. Kumar had secured the new alliance and his continuation as Chief Minister before he resigned. This is why the proffered reason for his resignation – the allegations of corruption against his Deputy Chief Minister and Mr. Prasad's son, Tejashwi Yadav – lacked conviction. Mr. Kumar's record of shifting fast and loose between allies is a story of political expediency and it is not entirely clear what political compulsion or personal ambition the latest move was born of. If it was naïve to believe that in 2013 he led the Janata Dal (United) away from the BJP, with which he led a coalition government in Bihar, because of a sudden aversion to prime ministerial candidate Narendra Modi and communalism, then it is just as ingenuous to think that his recent move is a result of a principled fight against corruption. Surely, Mr. Kumar knew he had teamed up with a party led by a man convicted for corruption in the fodder scam when he joined hands with Mr. Prasad to fight the 2015 Bihar Assembly election? The record shows that Mr. Kumar's rallying cry changes depending on which political party he chooses to be up against.

As Mr. Kumar inched closer to the BJP, praising demonetisation, supporting its presidential candidate and even colouring a lotus at a public function, the war on corruption became his overriding theme once again. While it is likely he will steer the JD(U) on this political realignment in the days to come, a question mark remains on how long the new arrangement will last. In the BJP's take-no-prisoners project to expand its electoral footprint, a multi-cornered contest in Bihar, on the lines of the last Lok Sabha election, could be the best-case scenario for the party in 2019. Will it have any use for the JD(U) then? As for Mr. Kumar, he has since 2005 built a constituency made up of vulnerable sub-sections of the electorate: women and the more backward among the Other Backward Classes, Dalits (Mahadalits), and Muslims (Pasmanda Muslims). These are voters he has sought to tie in to the development narrative with his various allies and forge winning coalitions. Whether this tactic has run its course will be known at the next election, mid-term or otherwise. The gains to the JD(U) from the patch-up are not immediately evident, if indeed Mr. Kumar sees something more durable than a settling of scores with Mr. Prasad. What is without doubt is that opposition unity has suffered a setback. The Mahagathbandhan was perceived as the template for taking on the BJP nationally – what's more, there were many people who hoped, and once again naïvely, that Mr. Kumar would be at the heart of it.

A crisis of trust

Trump's actions are driving a wedge between his White House and the Republican Party

During the past week, it became evident that U.S. President Donald Trump takes a dim view of his Attorney General, Jeff Sessions, a man whose appointment to that key role he fought resolutely for in the face of serious objections. This is not a clash of egos, but another instance of Mr. Trump's disdain for constitutional propriety regarding conflicts of interest and the murky issue of Russia's influence on the 2016 presidential election. The current episode dates back four months, to when Mr. Sessions recused himself from the FBI's inquiry into whether Moscow had interfered in the election. Although Mr. Trump at the time dismissed the notion that such action was called for, Mr. Sessions's recusal was consistent with settled norms and with his own reassurances on Capitol Hill that he would consider being removed from any process where he thought his "impartiality might reasonably be questioned". The President's anger at the FBI investigation then swelled, leading to the abrupt firing of the Bureau's Director James Comey in May. Mr. Comey had previously told the House of Representatives' Intelligence Committee that the FBI was investigating whether the Trump campaign coordinated with Russia during the election. Since July 24, Mr. Trump has stepped up his public attacks on Mr. Sessions, describing the recusal as "very unfair", and suggesting that Mr. Sessions showed bias in favour of Democratic election rival Hillary Clinton by not probing her emails as he should have.

Observers are not surprised that Mr. Trump, a man of his own making, has shown himself to be comfortable with a casual approach toward conflicts of interest. Yet what they may not have anticipated is the extent to which his desire to protect the personal interests of his family and the business interests of the Trump Organization could eventually lead to a chasm between the White House and the Republican Party. After all, many among the party's traditional conservatives believe firmly in the established traditions of checks and balances within the government system and would view the suspected Russian meddling through the lens of fierce patriotism. The clearest indication that trust is fraying between the Oval Office and Capitol Hill is the fact that Representatives this week passed a tough sanctions bill with proposed measures targeting Moscow, by an overwhelming 419-3 vote. This would hamper Mr. Trump's strategy of extending the hand of friendship to Vladimir Putin. Mr. Trump can ill afford such a trust deficit, especially when his own officials appear to be uncertain over their boss plans. This would apply, for instance, to Defence Secretary James Mattis, who was on vacation when Mr. Trump unexpectedly announced a ban on transgender persons in the military.

Country without a PM

Nawaz Sharif is a distracted leader; the Supreme Court's next step will determine if he's seen to be victim or culprit



AYESHA SIDDIQA

The office of Pakistan's Prime Minister is subject to pulls and pressures far in excess of those in other democracies. But even by these standards, Nawaz Sharif is under inordinate stress. He is facing a court case and a scathing media trial.

A three-member Bench of the Supreme Court is yet to give a final verdict regarding his disqualification. The decision will be based on the report by a Joint Investigation Team (JIT) established by the orders of the court to investigate Mr. Sharif and his family's assets after the leak of the Panama Papers related to holdings in offshore companies.

The question now is whether the Chief Justice will give a verdict based on the decision of the three judges or call for a larger Bench. The judiciary might like to get the decision popularly accepted by calling for a larger Bench. It is not as if all onlookers are convinced about the judges or the JIT being bipartisan.

Odds stacked against PM

It is a fact that corruption investigations are not easy, especially when the country's main anti-corruption institutions, the National Accountability Bureau (NAB) and the Federal Investigation Agency (FIA), lack forensic investigation expertise. Even in the case of some of the Sharifs' assets, the JIT hired the services of a foreign company. Notwithstanding such lacunae, the highest court was willing to open

up a Pandora's box of investigating "a constant murmur nationally as well internationally about respondent No. 1 (Nawaz Sharif) indulging in corruption, corrupt practices and money laundering". If proven guilty, Mr. Sharif cannot hold office as per Article 62 (1) (F) of the 1973 Constitution as he would be declared as not being *sadiq* (truthful) and *ameen* (honest). Even if the judges feel uncomfortable using the JIT report as the basis of their decision, the axe could still fall on Mr. Sharif on the basis of him officiating as a director in a company registered in the UAE while he was heading the government.

There are today very few people betting on Mr. Sharif completing his term, which if he does, he'd be the first Prime Minister to do. But as far as the popular narrative in the country goes, Mr. Sharif is already gone. The working of the state bureaucracy has already slowed down in anticipation of some transition.

There are even rumours of Mr. Sharif's current Interior Minister, Chaudhry Nisar, being favoured by both the Establishment and the rival Pakistan Tehreek-e-Insaf party as one of the candidates to replace him while the Pakistan Muslim League (Nawaz) government is allowed to complete the term.

In any case, there will be no hurry to hold the next elections due to the need for a new delimitation of constituencies based on the recently held census – senior judges believe the delimitation should take place. Meanwhile, Mr. Sharif's future role in politics will be determined by how far the court proceedings drag and how it turns out personally and politically for him in the months and years to come. What is certain is that Mr.



Sharif is not inclined to resign, as was expected of him, but, if it comes to that, to go down as a political martyr – a man politically victimised by non-parliamentary institutions of the country.

The media campaign aims to make him bleed politically and increase his losses the longer he stays. Interestingly, there are serving state officials in numerous WhatsApp groups who are gently directing conversations in a certain direction, or watching while their partners do the same. It is not that lack of accountability is not a huge problem in Pakistan but that accountability has always been used as a political tool to punish rivals. Hence, ordinary people forgave Dr. A.Q. Khan, the architect of Pakistan's nuclear programme, and accept him as a hero despite his confession on television regarding illegal sale of nuclear technology because in their eyes he did return something for all he took. Also, in the absence of the enact-

ment of a strong law or principle of the rule of law, even courts are perceived by the man on the street as either corrupt or highly political. Moreover, when the law is meant to selectively conduct accountability (excluding the military and the judiciary), many raised eyebrows at an earlier judgment in the Panama Papers case that quoted Mario Puzo's *The Godfather* but no law.

Post-verdict scenarios

Since the power rests with the judges, their verdict will influence the short- or longer-term future of the Sharif family. The real conversation in the drawing rooms these days is whether it is just Mr. Sharif who will be disqualified or whether it would extend to his entire family – two sons and a daughter who are the ones actually named in the Panama leaks. With his eyes already on the 2018 elections, Mr. Sharif would hope that his daughter and political heir,

Maryam Nawaz, survives this crisis. If the entire family is disqualified, it will certainly send a signal that things are up for grabs.

This means that even if the PML (N) remains, it would be mired in infighting and could be as easily manipulated as the Pakistan Muslim League (Quaid-e-Azam) was. While parts of central and north Punjab will remain aligned with Mr. Sharif, there will much greater activity in south and south-west Punjab where people will be influenced by, as per local political lingo, 'whichever way the strong wind blows'. This is translated as a clear indication that the Establishment is not in a party's favour.

But the process of shifting gears will essentially start with electable candidates moving to another party or contesting elections as independent candidates. In urban centres, the anti-corruption slogan, compounded with the anti-incumbency factor, will play a role.

The case against Mr. Sharif is indeed critical as the manner in which the court proceeds will determine not only his short- to medium-term political moves but also his long- to longer-term future. If the judges do not appear bipartisan and use the principle of law rather than their opinion – a fashion that dates back to Justice Iftikhar Chaudhry's days – Mr. Sharif will be perceived as a victim rather than a culprit.

Even his disqualification will then generate the myth that he was punished for something else rather than what the court and the JIT tried him for. This may not save Mr. Sharif now but will haunt the Establishment in a few years.

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What's at stake in Hyderabad

India must counter Japan's U.S.-style pressure at the RCEP talks and ensure affordable generic medicines

FEROZ ALI

Leaked texts are like leaked gases – you may never find the one responsible for it, but the mayhem caused by its release is hard to contain. Unsurprisingly, all public discussions on the Regional Comprehensive Economic Partnership (RCEP) are centred around leaked documents. As India negotiates the RCEP – a free trade agreement that looks remarkably similar to the now failed Trans-Pacific Partnership (TPP) but for the absence of the chief protagonist and dissenter, the United States – Japan now appears to be playing the role that the United States is known for: policing the intellectual property (IP) regimes of its trading partners. Unlike the TPP, where India and China were not parties, the RCEP will open two of the world's fastest-growing economies to new standards of IP protection with some unforeseen consequences.

IP, investment and RCEP

One of the conditions that have been put forth both in the TPP as well as the RCEP is the formation of an Investor State Dispute Settlement mechanism and to include IP as an investment. Treating IP as an investment would allow private

companies to raise investment disputes against the host country whenever they feel that the legal regime does not favour them. These disputes could be initiated by MNCs and especially the pharmaceutical industries that have until now had their hands tied in front of the Indian laws and the judiciary. Japan's insistence on the inclusion of this clause comes as no surprise as it is the third-largest RCEP investor country. Countries like India and China, which will be the destinations for the investments, should include safeguards against these measures.

The IP chapter in RCEP is at risk of including provisions far stricter than those mandated by the World Trade Organisation (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The leaked IP chapter shows that both Japan and South Korea are mounting pressure to implement a TRIPS-plus regime in IP. Adhering to TRIPS-plus standards would be detrimental to developing countries that have benefited from generic competition and lower-priced medicines through the use of the flexibilities in TRIPS such as stricter patentability criteria and the absence of



data exclusivity provisions. The few IP reforms discussed in the RCEP include data exclusivity, patent term extension, and much more lenient criteria for patentability.

This would mean delay in the entry of generic versions of medicines, extension of patent monopoly for a longer time, and exclusivity for drugs that should not be patented if strict patentability criteria were to be applied. The RCEP negotiations on these fronts spearheaded by Japan appear to be an extension of the arm-twisting that developing countries like India

have been repeatedly subject to by the U.S. as reflected in the most recent Special 301 Report released by the U.S. Trade Representative.

The strong MNC lobby growing in Japan, especially on the pharmaceutical side, is a reason for its insistence on stricter IP rules. An example of this is the drug patented by Otsuka for the treatment of extensively drug-resistant tuberculosis (TB).

The company has been strategically withholding the registration of the patent in India, thereby preventing a generic version of the drug from being manufactured. In the event that a provision of data exclusivity is passed, the millions of TB patients in India would have to buy the high-priced drugs, which would have no cheaper generic alternative.

MFN clause

The WTO has a most-favoured-nation (MFN) clause that obliges the concessions offered to the MFN to be offered to others. In essence, if India has an agreement with Japan (through the RCEP), India will be obliged to offer the same concessions to the U.S. as well as the other members of the WTO. The negotiating pattern reflects the reality of

international law making. It is evident that developed countries are using FTAs to expand the existing standards of IP.

At the 19th round of the RCEP negotiations currently on in Hyderabad, India must resist Japan's U.S.-style pressure in this regard. Developing countries like India which have taken the leadership in instituting and using balanced intellectual property protection for pharmaceuticals should not only proudly protect their laws in the RCEP negotiations, they should also encourage other countries to adopt and use similar measures that ensure generic competition. The international trading system is not an end in itself and instead of adopting U.S. style lobbying on behalf of multinational companies in the RCEP negotiations, Japan would do well to recall its international commitments on health care and sustainable development and support developing countries in the region in their quest to ensure sustainable access to affordable medicines.

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LETTERS TO THE EDITOR

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Nitish's 'ghar wapsi'?

Given the recent overtures made by Nitish Kumar to the Bharatiya Janata Party (BJP), the turn of events in Bihar came as no great surprise. The resignation and the swearing-in as Chief Minister within a span of 14 hours follow a script to perfection. The plot has left people wondering how Mr. Kumar could be so calculating, opportunistic and petty. That he could not think of dissolving the Assembly and calling fresh elections reflects his desire to stay in power. It is an irony that Mr. Kumar, who left the National Democratic Alliance (NDA) government as a mark of protest against Narendra Modi's ascendancy, has now chosen to put himself at his mercy, blissfully oblivious of the "effect" of Mr. Modi's rise to power, like lynchings across the country. By realigning with the NDA, Mr. Kumar has lent legitimacy to what is going on in the name of nationalism and shown that his commitment to secularism is a matter of convenience and not conviction. His short-

sighted action cannot but be seen as a betrayal of the people's mandate which was for the Mahagathbandhan (Grand Alliance). He could not have done worse for the cause of Opposition unity and the emergence of a secular alternative to the BJP.

G. DAVID MILTON,
Maruthanode, Tamil Nadu

■ The resignation of Mr. Kumar to form a new government with support of the BJP is, to say the least, a highly immoral act. The people of Bihar in 2015 had voted an anti-BJP alliance to power. If Mr. Kumar was dissatisfied with the functioning of his alliance partners, he should have gone for a new election in alliance with the BJP. This episode brings out the need for a constitutional amendment to make fresh elections mandatory in the event of such developments.

S. VENKATARAMAN,
Pune

Privacy as right

The debate on right to privacy should result in

consensus on data protection and not opposition to the use of data for greater public good ("Privacy in the public domain," July 27). There is nothing exciting about the formation of a nine-judge Bench by the Supreme Court. This is because right to privacy has already been recognised by the Supreme Court as an offshoot of "right to life and personal liberty" (Article 21). However, we must remember that no right, however sacrosanct it may be, is not absolute. It has to be regulated for the larger public good. In this age of technology-driven life, data analysis can serve many purposes like better targeting of welfare schemes, transparent and direct transfer of benefits, monitoring and detection of crimes, ensuring of tax compliances, and tracking of anti-national and terror activities. At the same time, unauthorised and illegal use of individual data may result in fraud and loss of privacy for individuals. Therefore, it is high time that the

Central government constitutes a task force comprising experts from the Law and Information Technology Ministries and comes out with a comprehensive data protection law.

M.K. BHANDARI,
Mumbai

■ The article has exposed the hypocrisy of singling out the government and its agencies as arch-violators of the citizens' privacy while turning a blind eye to the surreptitious and invisible collection, storage and unauthorised use of private data by technology companies. Strictly speaking, there isn't much of a difference between privacy lost through the coercive actions of the government and that caused by the voluntary parting of personal information by netizens. In fact, the latter is more insidious because while the citizens can always haul the government before the courts, no such legal recourse is available against the American technology companies if personal

information falls into the wrong hands. Privacy activists should be more worried about the Internet's oligopolistic architecture where the control and command systems lie in the hands of a couple of technology companies. Sure, users can sign out of Facebook and Google, but these companies have colonised the digital space to such an extent that pulling the plug involves the risk of inviting social isolation and ostracism.

V.N. MUKUNDARAJAN,
Thiruvananthapuram

Save the wetlands

The heavy floods of 2015 in Chennai were a man-made disaster. Unplanned urbanisation, coupled with encroachment of wetlands in and around the city and their conversion into sites for waste disposal, commercial establishments and residential constructions were the primary reasons for the floods. The damage caused should have been a wake-up call for the governments at the State and the Centre but it is shocking that they are

planning for more disasters by diverting Ennore wetlands for industrial installations ("Time to change course," July 27). Wetlands are of great ecological and economic importance. They help to maintain water at normal levels in lakes, ponds, rivers and also act as recharge and purification aquifers. Occupation of wetlands modifies the course of the overflowing rivers and disturbs the ecosystem. India is a signatory to the Ramsar Convention on Wetlands of International Importance (1971), whose mission is the conservation and wise utilisation of wetlands through local and international cooperation. Governments have to comply by the convention's rules. Construction cannot be forbidden but proper planning and mandatory environmental audit can do great good both to the government and the wetland ecosystem.

ARCHANA VENKATAMADHIVARAJ,
Thoothukudi

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