



## Balance and tilt

SC order on rebel MLAs hands over the floor advantage to the Karnataka Opposition

The Supreme Court's interim order stating that the 15 dissident Karnataka legislators cannot be compelled to attend the House, means they are not bound by any whip relating to the trust vote moved by Chief Minister H.D. Kumaraswamy. This gives the numerical advantage in the House to the BJP-led Opposition. Without the support of the 15 lawmakers, the ruling coalition will be reduced to a minority. The other limb of the order permits the Speaker to decide on the resignation of these MLAs in a time-frame he considers appropriate. Although the court says there was an imperative necessity "to maintain the constitutional balance", the order tilts the odds in favour of the Opposition in the vote. It amounts to holding that provisions of the anti-defection law, under which parties can issue whips to their members to vote in a particular way, will not be applicable to the 15 MLAs. The order raises the concern whether it does not constitute a perilous precedent for granting *ad hoc* judicial exceptions from constitutional provisions on defection and set the tone for future judicial intervention to suspend the operation of any whip in respect of a few. Alternatively, the court, which is understandably reluctant to intervene in the Speaker's power ahead of his decisions, could have refrained from making any orders about the legislators' presence during the trust vote, and made it clear that any action against them arising out of their absence or manner of voting would be subject to judicial review.

To be fair to the Supreme Court, it is being burdened with the task of unravelling political knots created by amoral strategems. In this case, the "political thicket" into which the court has been dragged has its origins in manoeuvres to reduce the combined strength of the Janata Dal(S) and the Congress. In a bid to thwart tactical resignations, the government and the Speaker adopted the counter-strategy of not immediately accepting them, but initiating or pursuing disqualification proceedings. One of the questions in the litigation is whether it is resignation or disqualification that should get priority. The objective of disqualifying the MLAs rather than allowing them to quit will not save the government, but it will prevent them from taking oath as ministers in an alternative Cabinet. Though the court's order recognises the Speaker's authority to rule whether the resignations are genuine, and fixes no time-frame, it is a Pyrrhic victory; for, their continuance as members puts them under no obligation to vote for the government in view of the allowance given to stay away during the vote. The dissident MLAs risk nothing other than their seats, certainly not the opportunity to join the Cabinet of a successor-government. When the court takes up the substantive questions of law for adjudication, it should squarely address the new-found interplay between issues of resignation and disqualification, lest it become a perennial source of political controversy.

## Sword against pen

India needs a free and independent media for its own well-being

Journalists are facing heightened threats around the globe, according to the 2019 World Press Freedom Index compiled by Reporters Without Borders (RSF), covering 180 countries and territories. It notes that the number of countries regarded as safe for journalists is on the decline; this should be a wake-up call. Hatred of journalists has degenerated into violence in many places, and India is no exception. In 2018, at least six Indian journalists were killed in the line of their work, the report said. India's rank fell by two places to 140 from 138 – in 2016 it was 133 and in 2017 it was 136. In 2014 India's ranking was 140, but this year's setback is qualitatively different. The report notes that organised campaigns by supporters of Hindutva "to purge all manifestations of 'anti-national' thought from the national debate" is putting journalists in danger. Women journalists are particularly at the receiving end, and covering sensitive but important topics of public interest such as separatism in Jammu and Kashmir and Maoist insurgency has become more difficult. Authorities use anachronistic sedition laws against journalists, who also face the wrath of militants and criminal gangs.

Hostility towards the media is a defining feature of hyper-nationalist politics in many countries. In India, the Centre and several State governments have not merely shown extreme intolerance towards objective and critical reporting but also taken unprecedented measures to restrict journalism. The Finance Minister's recent order barring credentialed reporters from the Ministry's premises is a case in point but this is not an isolated measure. There is a systematic attempt to limit the scope of journalism in India through physical restrictions, denial of information and hostile rhetoric against journalists by senior government functionaries. The Narendra Modi government is unlikely to take the RSF report seriously. While expression of concern by foreign countries or global bodies regarding human rights, religious violence or media freedom is routinely dismissed as external interference in India's sovereignty, the government knows all too well that in a globalised world these perceptions matter. What else would explain the Prime Minister's single-minded pursuit to improve India's position in the World Bank's annual Ease of Doing Business ranking? If India is concerned about its reputation in terms of business and investment, it should be equally or even more concerned about its standing as a democratic, pluralist country with a free and dynamic press. That is not so much for the inflow of investment or luring global corporations, which may care little about a destination-country's democratic credentials – but for India's well-being.

# At the UNSC, a three-point agenda

India should once again become a consensus-builder, instead of the outlier it has progressively become



JAYANT PRASAD

India's singular objective as a non-permanent member of the United Nations Security Council (UNSC) in 2021-22 should be to help build a stable and secure external environment. In doing so, India will promote its own people's prosperity, regional and global security and growth, and a rule-based world order. It could emerge a partner of choice for developing and developed countries alike.

India's representation in the UNSC has become rarer. It is to re-enter the Council after a gap of 10 years. The previous time, in 2011-12, followed a gap of 20 years. In total, India has been in the UNSC for 14 years, representing roughly a fifth of the time the United Nations (UN) has existed. India must leverage this latest opportunity to project itself as a responsible nation.

### Changing state of world

India finds itself in a troubled region between West and East Asia, a region bristling with insurgencies, terrorism, human and narcotics trafficking, and great power rivalries. There has been cataclysmic dislocation in West Asia. The Gulf is in turmoil. Though the Islamic State of Iraq and the Levant (Daesh) has been defeated, Iraq and Syria are not going to be the same as before. Surviving and dispersed Daesh foot soldiers are likely preparing new adventures, many in their countries of origin. The turbulence in West Asia is echoed in North and South Asia, a conse-

quence of the nuclear and missile tests by the Democratic People's Republic of Korea and Afghanistan's slow but unmistakable unravelling from the support, sustenance and sanctuary provided in its contiguity to groups such as the Haqqani network, the Taliban, and al-Qaeda. Other problems in Asia include strategic mistrust or misperception, unresolved borders and territorial disputes, the absence of a pan-Asia security architecture, and competition over energy and strategic minerals.

Alongside, the western world is consumed by primordial, almost tribal instincts, turning its back on the universal values it once espoused as western values. Pundits and political scientists, who had spoken of the end of the nation state and the end of history itself, are grappling with the rise of new nationalism.

The benign and supportive international system that followed the Cold War has all but disappeared. At the beginning of this century, the words 'national interests' had acquired almost a pejorative connotation. They are now back in currency. Fear, populism, polarisation, and ultra-nationalism have become the basis of politics in many countries. No wonder that five years ago, when Henry Kissinger completed his latest work, *World Order*, he found the world to be in a greater state of disorder than at any time since the end of World War II.

Even so, the world is in a better place today than when the UN was first established. The record on maintaining international peace and security, one of the prime functions of the UNSC, has been positive, with or without the UN. The world has been distracted from its other shared goals, especially international social and economic cooperation. Although



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coordination between 193 sovereign member nations will be difficult, it is well worth trying. To this end, the permanent members (P-5) as also other UN members must consider it worth their while to reform the Council.

A report by PricewaterhouseCoopers, "World in 2050", predicts that by 2050, China will be the world's number one economic power, followed by India. In China's case, this is subject to its success in avoiding the middle-income trap. And in India's, to more consistent economic performance than the experience of recent years. That said, one of the challenges of the international system today, and for India in the UNSC, is that this profound impending change is largely unrecognised by the great powers and other countries.

### What should India aim to do?

There is no need for India to fritter away diplomatic goodwill in seeking an elusive permanent seat in the UNSC – it will come India's way more by invitation and less by self-canvassing. India will have to increase its financial contribution, as the apportionment of UN expenses for each of the P-5 countries is significantly larger than that for India. Even Germany and Japan today contribute many times more than India. Although India has been a leading provider

of peacekeepers, its assessed contribution to UN peacekeeping operations is minuscule.

At a time when there is a deficit of international leadership on global issues, especially on security, migrant movement, poverty, and climate change, India has an opportunity to promote well-balanced, common solutions.

First, as a member of the UNSC, India must help guide the Council away from the perils of invoking the principles of humanitarian interventionism or 'Responsibility to Protect'. The world has seen mayhem result from this. And yet, there are regimes in undemocratic and repressive nations where this yardstick will never be applied. Given the fragile and complex international system, which can become even more unpredictable and conflictual, India should work towards a rules-based global order. Sustainable development and promoting peoples' welfare should become its new drivers.

Second, India should push to ensure that the UNSC Sanctions Committee targets all those individuals and entities warranting sanctions. Multilateral action by the UNSC has not been possible because of narrowly defined national interest. As on May 21, 2019, 260 individuals and 84 entities are subject to UN sanctions, pursuant to Council resolutions 1267, 1989, and 2253. The U.S. Department of Treasury's Office of Foreign Assets Control maintains a larger list of individuals and entities subject to U.S. sanctions. The European Union maintains its own sanctions list.

Third, having good relations with all the great powers, India must lead the way by pursuing inclusion, the rule of law, constitutionalism, and rational internationalism. India should once again become a consensus-builder, in-

stead of the outlier it has progressively become. A harmonised response is the sine qua non for dealing with global problems of climate change, disarmament, terrorism, trade, and development. India could take on larger burdens to maintain global public goods and build new regional public goods. For example, India should take the lead in activating the UNSC's Military Staff Committee, which was never set into motion following the UN's inception. Without it, the UNSC's collective security and conflict-resolution roles will continue to remain limited.

### Looking at polycentrism

A rules-based international order helps rather than hinders India, and embracing the multilateral ethic is the best way forward. India will be a rich country in the future and will acquire greater military muscle, but its people will remain relatively poor. India is a great nation, but not a great power. Apolarity, unipolarity, a duopoly of powers or contending super-powers – none of these suit India. India has a strong motive to embrace polycentrism, which is anathema to hegemonic powers intent on carving out their exclusive spheres of influence.

Finally, India cannot stride the global stage with confidence in the absence of stable relations with its neighbours. Besides whatever else is done within the UN and the UNSC, India must lift its game in South Asia and its larger neighbourhood. Exclusive reliance on India's brilliant team of officers at its New York mission is not going to be enough.

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# Takeaways from the Kulbhushan Jadhav case ruling

India's more successful legal journey to the ICJ must now reshape New Delhi's approach to potentially difficult situations



ARJUN SUBRAMANIAM

Kulbhushan Jadhav, the former Indian Navy officer, who was allegedly abducted by Pakistani intelligence from Iran and sentenced to death on charges of espionage and terrorism by a farcical military court in Pakistan, has been given a glimmer of hope by the ruling of the International Court of Justice (ICJ). Responding to a petition by India that sought an annulment of his death sentence because Pakistan had violated numerous international treaties and extracted irregular confessions under coercion, the ICJ, on July 17, 2019, ruled with a decisive vote (15-1) that Mr. Jadhav cannot be executed by Pakistan, and that he must be given adequate consular access and a fair trial. The ruling also urged Pakistan to review his conviction. This constitutes a major diplomatic and legal victory for India, with Pakistan accusing India of 'ambushing' it at The Hague.

### Focussed strategy

Given its rather lukewarm record in the past of securing the release of Indian detainees in Pakistan through bilateral negotiations, In-

dia's strategy in this case has been to exploit increasing international acceptance that Pakistan was an emerging 'rogue' state. Laying stress on Pakistan's scant regard for Article 36 of the Vienna Convention on Consular Relations – it deals with the arrest, detention and trial of a foreign citizen – India's counsel, Harish Salve, highlighted two compelling arguments. First was the arrest process, which was not accompanied by an immediate notification to Indian consular officials in Islamabad. There was a delay of over three weeks before India was informed, and it was during this period, according to reliable sources from within Pakistan, that Mr. Jadhav was subjected to all means of coercion and forced to sign a 'confession taken under custody' without adequate legal representation. Second was the two-way denial of access and communication by any means between Mr. Jadhav and consular officials and a failure to inform him of the rights he enjoyed under the convention.

The legitimacy of military courts has always been controversial within the international legal system that emerged in the post-World War II era as a fast-track system of delivering skewed justice by authoritarian regimes and military dictatorships. Purportedly set up in Pakistan in 2015 as a counter-terrorist and anti-corruption initiative, Mr. Jadhav's sentencing in April 2017 was based on confes-



sions taken in captivity and is part of several arbitrary sentences by Pakistan's Military Court.

### Violation of rights

The International Covenant on Civil and Political Rights (ICCPR) recognises the right to an effective defence against criminal charges, and to a fair and impartial trial, in which the accused is represented by a lawyer of his choice. By denying consular access, Pakistan has stood in gross violation of both the Vienna Convention and the ICCPR. Had due process been followed, and then had Mr. Jadhav been charged with espionage, India may not have had the necessary room to take the matter to the ICJ.

By attempting to circumvent the 'due diligence' process, Pakistan has exposed serious chinks in its legal environment and jeopardised its standing in the comity of nations. The Jadhav case has also revealed Pakistan's desperation in its search for 'proxies' as drivers of the internal unrest in Balochistan. Reliable sources within India's in-

telligence agencies hint at the possibility of Mr. Jadhav having been abducted by armed groups operating on the border between Iran and Balochistan. Pakistan is known to have used proxy Sunni groups such as the Jaish al-Adl against Iran, and Iranian officials have often spoken to their Indian counterparts about Pakistan's sponsorship of terrorist activities along the Iran-Pakistan border. A testimony to the growing menace of this group is its recent designation as a front of Jundullah – which is a 'Specially Designated Global Terrorist'.

India has shown both intent and resilience in attempting to secure the release of Mr. Jadhav despite the many hiccups along the way. Following a synergised approach steered by the National Security Adviser and the External Affairs Minister, India fought the kidnapping of Mr. Jadhav, an Indian national who was legitimately residing in Iran after retirement from the Indian Navy. Realising, in 2017, following his death sentence that the overall deteriorating relations between India and Pakistan had closed the door on any bilateral way of securing his release, India rightly chose to go the 'international way' by fielding a formidable legal team led by the jurist, Harish Salve. Sparring no efforts on the human aspects of the case too, India managed to get Mr. Jadhav to meet his mother and wife after the death sentence was pronounced.

The first success achieved by the Indian legal team was on May 9, 2017 when the ICJ sent an urgent message to the Prime Minister of Pakistan, urging him to stay the execution till India's case was heard fully and the ICJ arrived at a verdict. Moving slowly but surely through the legal battle for over two years, India, has been demonstrating significant synergy between various stakeholders in the case.

The final verdict will, hopefully, galvanise the Indian establishment to step on the pedal and exert pressure on Pakistan to rescind the death sentence and allow Mr. Jadhav consular access and legitimate legal platform to mount his defence. While it would be wishful thinking to assume that Mr. Jadhav would return to India soon, there is a glimmer of hope on the horizon that the Indian strategic establishment would do well to exploit. Having deftly navigated the legal and diplomatic channels and restrained the Pakistan military by securing manoeuvring space following the ICJ verdict, a leading power such as India must demonstrate its intent and capacity to extract desirable outcomes out of potentially difficult, or seemingly impossible situations. Kulbhushan Jadhav's case is one such challenge.

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## LETTERS TO THE EDITOR

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### An exclusionary tactic

It is obvious that both the Centre and Assam government want to deprive more people from inclusion in the National Register of Citizens (NRC). Hence, they are seeking a re-verification of 20% of those already enrolled (Front page, "Centre, Assam move SC for sample re-verification of NRC," July 17). There have been many disturbing reports on the anomalies in the process of NRC updation, especially about the use of locally developed Digitised Legacy Data software without subjecting it to the rigours of necessary testing. Moreover, there are also reports that complete data on the 1951 NRC and electoral rolls of 1966 and 1971, based on which the present NRC is being updated, are unavailable.

As mentioned by the writer in her article, "The many hurdles in proving citizenship" (OpEd page, July 17), a majority of those left out of the NRC are impoverished and illiterate. They are not in a position to fight for their legitimate rights in the court of law and are in danger of being declared "foreigners" even though they could be genuine nationals.

S.K. DEB,  
Kolkata

### Disqualify the defectors

It has become routine for elected representatives to change loyalties for pecuniary benefits, threatening the stability of an elected government, following which a different party captures power. This amounts to a clear breach of the trust of voters who elected the MLAs and

endangers the very fabric of democracy. The present Anti-Defection Law does not act as a deterrent. Hence, it needs to be suitably amended to ensure that members of a party, irrespective of the numbers, are not able to defect till they complete their full term (Editorial, "Karnataka conundrum", July 15). If they defect, they should be disqualified.

M. GOVINDARAJ,  
Gudiyatham, Tamil Nadu

### A test of federalism

Elected representatives from non-Hindi-speaking States are often compelled to protest against the Central government for conducting recruitment tests only in Hindi or English and denying an equal opportunity to many candidates (Front page, "Centre annuls test to

recruit postmen," July 17). Such quiet enforcement, where the state favours one or two languages for competitive recruitment exams, is against the principles of federalism and especially disadvantages those living in rural areas.

H.N. RAMAKRISHNA,  
Bengaluru

### A realistic move

The postponement of Chandrayaan-2's launch need not be viewed as a dampener. The ability to identify a malfunctioning component and recognise the attendant risk is as laudable if not more as a successful launch. We need to take lessons from the disaster that befell NASA's Challenger space shuttle on January 28, 1986 (Editorial, "Waiting for daybreak", July 16). A design fault in one of its components had been

known to NASA scientists. Since, on the day of the launch, the temperature was below the permissible limit, the engineers raised an alarm. However, President Ronald Reagan's address scheduled for the same evening had included a 'successful launch' in its content. To avoid embarrassment, NASA's management overruled the technical advice. Soon after lift-off, the launch vehicle exploded, killing all the seven crew members. The Rogers Commission concluded that NASA's organisational culture and decision-making processes were the culprits. Physicist Richard Feynman observed that "for a successful technology, reality must make precedence over public relations, for nature cannot be fooled". The ISRO team should be

congratulated because the presence of the President of India at the launch site did not weigh on them and they placed reality above public relations.

R. NARAYANAN,  
Thiruvananthapuram

### Judges not 'Lords'

The Rajasthan High Court's decision to do away with the archaic practice of addressing judges as 'My Lord' and 'Your Lordship' is laudable and can be emulated by other courts. In the place of 'My Lord', 'Mr. Judge', can be used. The custom of calling a judge 'Your Honour' can also be dispensed with ("Rajasthan HC seeks to dispense with 'My Lord'," July 15).

K. PRADEEP,  
Chennai

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