

An arbitrary transfer, a graceful resignation

The ‘downgrading’ of Chief Justice Vijaya K. Tahilramani amounts to humiliation of a judicial officer

R. VAIGAI, ANNA MATHEW & S.DEVIKA

The transfer of Chief Justice Vijaya K. Tahilramani from the Madras High Court to Meghalaya is shocking and disconcerting. She had presided over a court of 75 judges and administered a subordinate judiciary in 32 districts in addition to the Union Territory of Puducherry. In contrast, the Meghalaya High Court has only three judges and a subordinate judiciary in just seven districts.

The transfer of a Chief Justice from one of the bigger High Courts to one of the smallest High Courts in the country is an obvious case of downgrading and amounts to public humiliation of the highest judicial officer in a State. Her response to this humiliation has been graceful but resolute – resignation.

Earlier, in 2017, Justice Jayant Patel, who was slated to be appointed Chief Justice of the Karnataka High Court, had resigned when he was transferred to the Allahabad High Court. Significantly, he was a member of the Bench of the Gujarat High Court that had ordered a CBI probe in the Ishrat Jahan encounter case.

A vulnerable high office?
Is the constitutionally protected office of a High Court judge so vulnerable? If yes, something is rotten in the State of Denmark!

The Supreme Court derives its power to select, appoint and transfer judges from its verdicts in Three Judges Cases. After a spate of “punishment transfers” of upright judges by the Central government during the Emergency in 1975, the judiciary arrogated to itself the power in order to preserve judicial independence. Thus, the collegium system consisting of the Chief Justice of India and four senior-most judges of the Supreme Court was put in place.

However, the apex court’s power to transfer is not unfettered and absolute and can only be carried out in public interest for better administration of justice. The Supreme Court can order a judge’s transfer to improve the functioning of either of the High Courts or if there are close relatives of the judge practising in the same Court. The apex court can also do so if the judge has litigation or property interest in the State or has become controversial and so her



“The transfer of Justice Vijaya K. Tahilramani to a smaller court defies logic.” The Justice at the inauguration of a court building in Chennai. ■ M. KARUNAKARAN

continuance in the same High Court is not conducive.

In the case of Justice Tahilramani, though the collegium’s recommendation stated that the transfer was made “in the interests of better administration of justice,” the lack of public interest is glaring. The judge has conducted herself with dignity befitting the high office, has not been mired in any controversy, and does not have any close relatives practising in Tamil Nadu.

In the past, the functioning of the collegium has attracted much criticism, largely due to aberrations in certain selections and transfers. Retired Supreme Court judge, Justice Ruma Pal, had in 2011 called the functioning of the body a “mystique” shrouded in “secrecy”. Later, the government’s attempt to have a National Judicial Appointments Commission (NJAC) was rejected by the Supreme Court in 2015 and the system of collegium has continued with its opaqueness and inconsistencies.

Ironically, Justice A.K. Mittal, who has been recommended to replace Justice Tahilramani, was superseded in 2018 when the collegium found his junior Justice Surya Kant to be “more suitable” for the position of Himachal Pradesh High Court Chief Justice. He was later appointed in May 2019 to head one of the smallest High Courts. Hence, the collegium’s recommendation to have him replace Justice Tahilramani, who has had

three stints as acting Chief Justice of the Bombay High Court, defies logic. The transfer appears arbitrary, coming at a time when Justice S. Manikumar, a judge junior to her, has been recommended for appointment as Chief Justice of the Kerala High Court, which has a larger strength than its counterpart in Meghalaya.

In recent times, despite its judicial pronouncements in cases such as the entry of women into Sabarimala and triple talaq, the Supreme Court has not exactly covered itself with glory in cases of women on its administrative side. The transfer of the highest-ranked woman High Court judge in the country will only dent the credibility of the collegium further.

Transparency needed
The most pertinent question here is whether the transfer serves the interests of administration of justice for the people of Tamil Nadu. The Supreme Court cannot function as a sentinel of justice unless it puts its own house in order. Its functions, both judicial and administrative, have to be transparent and accountable. Courts have in the past held illegal executive orders passed without reason. The same should apply to the administrative actions of the apex court’s collegium.

Due to the puzzling facts relating to Justice Tahilramani’s transfer, rumours are rife on social media and in court corridors. The media has re-

ported that the transfer is a reaction to her judgment in the *Bilkis Bano* case that concerned the Gujarat riots of 2002. It is also speculated by some that personal prejudices of some Supreme Court judges resulted in the transfer. One would like to believe that these rumours are false.

Here, Justice Ruma Pal’s revelations in 2011 that consensus in the collegium was often arrived at by “trade-offs” with “disastrous consequences” and that “sycophancy” and “lobbying” had coloured the appointments are ominous. Such actions shake the faith of the public in the judges’ functioning.

Checking the collegium
In 1977, Justice V.R. Krishna Iyer warned in the *S.H. Sheth* case that “public power is a lofty trust to be operated and, if private impulses or public aberrations play upon the exercise, the Court shall quash the lawless fiat.” The collegium is not a creation of the Constitution, but of the court itself. Yet, when the collegium’s decisions are called into question for having been influenced by extraneous considerations, there is no institutional check.

In the general atmosphere prevalent now where even constitutional functionaries are kowtowing to the powers that be, Justice Tahilramani, by resigning, stands tall as a pillar of courage. One is reminded of Justice H.R. Khanna, who had braved intense political pressure to dissent in the *ADM Jabalpur* case (*Habeas Corpus* case) during the Emergency and chose to resign when faced with supersession.

The resignation of a judge with 17 years of judicial service, just a year before her retirement, has to raise alarm bells about the health of the system. Judges of High Courts enjoy constitutional tenure and protection and cannot be subjected to public shame for undisclosed reasons. Any arbitrary transfer by the Supreme Court collegium reduces the High Court judges to a subordinate status. Further, the collegium system, by its opacity, has failed to build a fearless and strong judiciary and serve the public interest. *Quis Custodiet Ipsos Custodes* (Who will guard the guards themselves)?

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FROM THE READERS’ EDITOR

A disturbing downward spiral

When fundamental rights are being trampled upon, it’s the duty of the press to stand with its citizens



A.S. PANNEERSELVAM

Vijay. S. Raghavan, a reader from Navi Mumbai, often writes to *The Hindu*. His interests include the Indian Readership Survey, typography and newspaper design, sports, and economics. He frequently compares and contrasts the way various English language newspapers publish a story and shares his views with us. Mr. Raghavan took serious exception to my last column, “Selective silence leads to calamities” (September 2). His contention was that no one is sure who is right and who is wrong on the Jammu and Kashmir situation.

After criticising the role played by the political families of Jammu and Kashmir, including the Abdullahs and Mufti Sayeeds, Mr. Raghavan contended that the Modi government should be given a long rope to bring about law and order in the region. He then spoke of the exodus of Pandits from the Valley and said that no media came to their rescue then. He cited cross-border terrorism to justify the curbing of freedom of both the citizens of Kashmir and the media. He declared that there is “no use in lamenting on the freedom of press under these unusual circumstances in Kashmir.”

A flawed argument
There are many problems with Mr. Raghavan’s contention. They go against the grain of responsible journalism and the commitment of the state to its own citizens. Since 2014, an oft-repeated argument from some is that the media should refrain from premature criticism when the Bharatiya Janata Party-led National Democratic Alliance government announces certain policies and the government should be given the benefit of the doubt and time to prove itself. This was the refrain when the huge economic fiasco called demonetisation was unleashed on citizens. It grew louder when the government failed to smoothly roll out the Goods and Services Tax.

The government’s failures are evident on multiple fronts. In the realm of foreign policy, India’s relationship with every neighbouring country is under strain. In the area of cooperation with developed economies, the failure to gain entry into the Nuclear Sup-

Saudis have lost the Yemen war

They have no credible ally on the ground and no effective strategy to turn around the war

STANLY JOHNY

Saudi Arabia and the UAE are allies. When they launched the Yemen offensive in March 2015, their common goal was to defeat the Shia Houthi rebels, who had captured the capital Sana’a. After over four years, they are not even close to meeting this goal, and there are growing frictions within the anti-Houthi coalition.

The Yemeni government, which Riyadh is backing, is headquartered in the southern port city of Aden and is practically operating from Saudi Arabia where the Yemeni President is residing. Aden was captured by southern separatists, who were part of the Saudi coalition, last month. The separatists are backed by the UAE, Saudi Arabia’s partner. Late last month, Emirati warplanes carried out airstrikes against Yemeni government troops, backed by Saudi Arabia, which were trying to recapture Aden from the UAE-backed separatists. In practical terms, there are three power centres and multiple militias in today’s Yemen: The Houthis, who control Sana’a and the northern towns, the southern separatists who are strong in and around Aden, and the internationally recognised government that is run from Saudi Arabia.

Weak on the ground
How did Saudi Arabia lose the war? Crown Prince Mohammed bin Salman, the main architect of the war, may have thought Yemen would be a cakewalk for the Saudi troops. The Houthis lacked real battleground experience and are nothing in terms of a conventional military force against the Saudi war machine. The Saudis also enjoyed the support of the U.S., and had a coalition of Sunni Muslim countries backing them. The plan was to oust the Houthis quickly and restore the Saudi cherry-picked administration of President Abdrabbuh Mansur Hadi in Sana’a.

But the Saudi coalition was weak on the ground. Former Yemeni President Ali Abdullah Saleh and the troops loyal to him joined hands with the Houthis in a tactical alliance. President Hadi, who is living in Saudi Arabia, has been anything but an inspiring, charismatic wartime leader. Within the coalition, there has been historical mistrust between the pre-

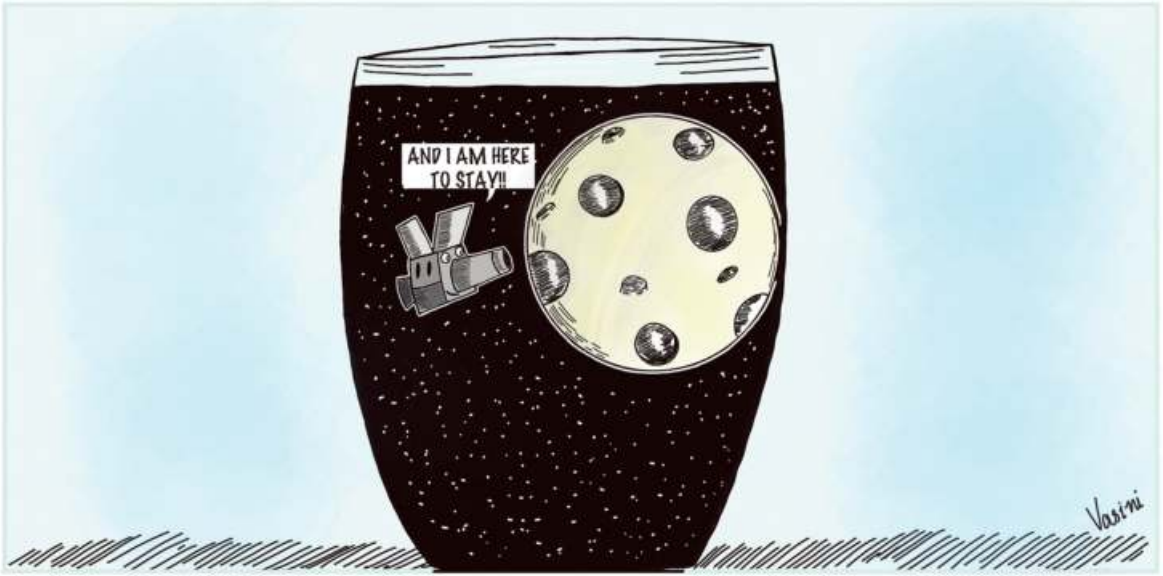
dominantly northerners-dominated government troops and the rebels in the south, who want the south to be a separate country.

The Houthis, on the other side, got support from Iran. They did not just prevent Sana’a from being recaptured, but also started attacking Saudi Arabia with short-range missiles and drones. The Saudi plan was to turn the war around using air power. But the problem is that air power alone doesn’t win a war; credible allies are needed on the ground, which Saudi Arabia lacked. Its excessive use of air power has turned Yemen into a humanitarian catastrophe: thousands have been killed, hundreds of thousands displaced, and the country pushed to the brink of a famine.

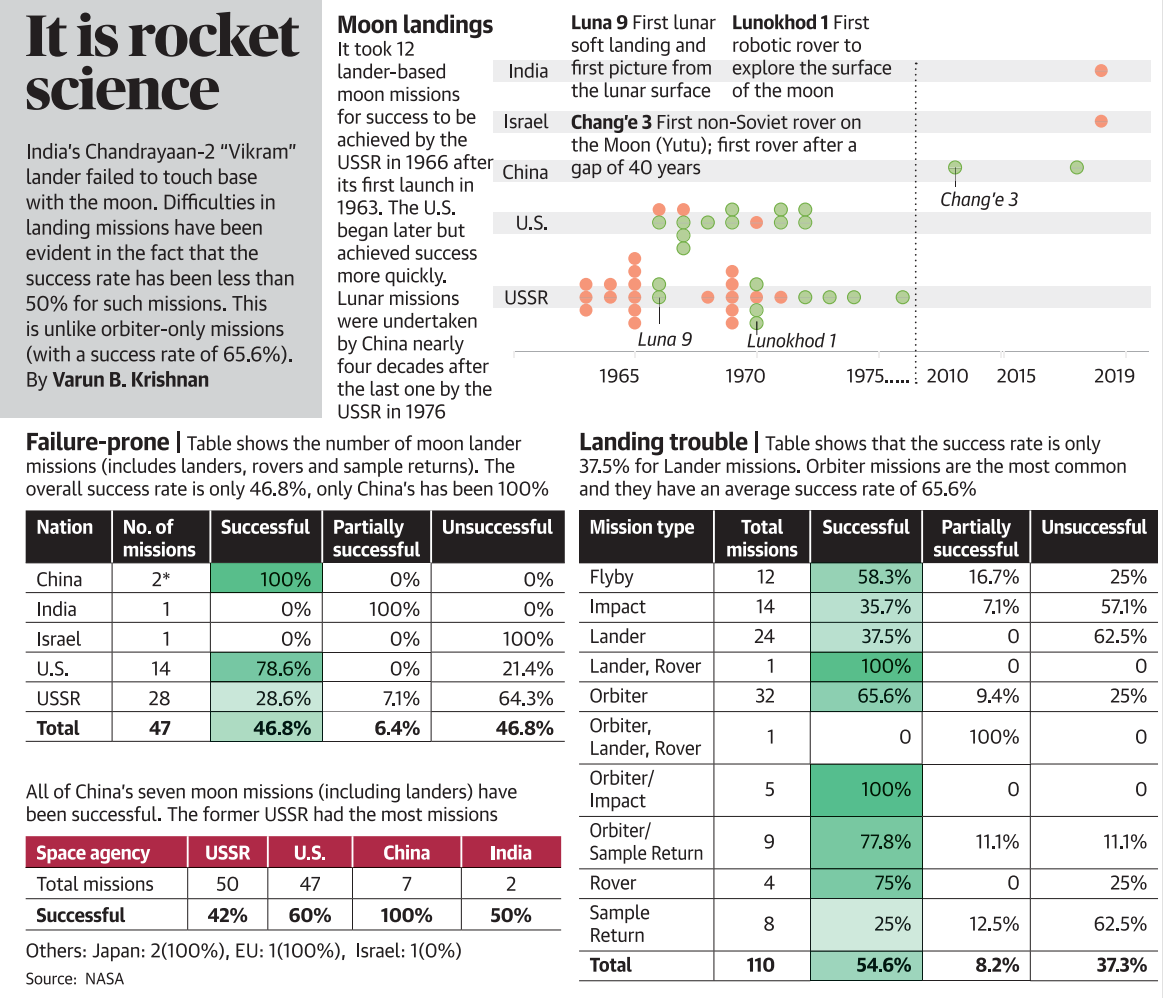
When it came evident that Saudi Arabia was not winning the war, fissures started emerging within the coalition. To stabilise the country, Saudi Arabia has turned to Islah, a political Islamist party in Yemen that has roots in the Muslim Brotherhood. The UAE is opposed to it. It began betting directly on the Southern Transitional Council, the separatists based in Aden. The UAE’s calculus is that even if the war slips into a stalemate, it could retain its influence in Aden, which is a strategically important port that offers access to the Arabian Sea as well as to the Horn of African coast.

Unclear role
The U.S. has signalled that it will facilitate talks among the multiple factions in Yemen through Oman, a neutral player. But it’s still not clear what Saudi Arabia will do. The Saudis hold the key to peace in Yemen. But they are also a strategically weak point. They haven’t got Sana’a. They have almost lost Aden. The government they back is practically a ghost government of militias that are on the loose. Prolonging the war is also not an option. Having no credible ally on the ground and no effective strategy to turn around the war, dragging on the conflict would only pull Saudi Arabia further deeper into the morass. The sooner the Saudis realise that they have lost the war, the better it will be for everyone, including the devastated Yemeni public.

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DATA POINT



The Hindu FROM THE ARCHIVES

FIFTY YEARS AGO SEPTEMBER 9, 1969

U.S. Ambassador freed

The U.S. Ambassador, Mr. Burke Elbrick, was freed by his kidnappers yesterday [September 7] about seven hours after 15 Brazilian political prisoners received asylum in Mexico under a ransom agreement. Four of the six revolutionaries who kidnapped Mr. Elbrick were arrested shortly after his release, police sources revealed to-day. Mr. Elbrick had been held 78 hours by a group of terrorists.

“To coin the understatement of the year, I am glad to be back,” Mr. Elbrick said in a statement released by the U.S. Embassy, minutes after his return. “I am glad the kidnappers lived up to their word and let me go. I am grateful to the Brazilian Government for taking necessary action to bring about my liberation.” The Embassy said, Mr. Elbrick received a confidential telephone call from President Nixon shortly after his arrival. Pale and unshaven, Mr. Elbrick had a small injury on the right side of his forehead, and the skin was tinted red with a disinfectant. “The Ambassador was hit over the head with a pistol as he was being transferred from one car to another during the kidnapping”, the Embassy Press Officer, Mr. Ernest Wiener, said. Mr. Elbrick appeared to be in good physical condition, he added.

A HUNDRED YEARS AGO SEPT. 9, 1919.

Punjab Situation.

Lahore, September 8. – The “Tribune” publishes this evening an account of a meeting convened by the Indian Association which was to have been held at Bradlaugh Hall on the 3rd September but which was subsequently prohibited by the Deputy Commissioner. It appears that the members of the Indian Association wanted to hold a meeting with a view to thank Sir Edward Maclagan for initiating a conciliatory policy, to pray for revision or further commutation of the sentences passed by the martial law commission officers, to request for immediate appointment of an imperial commission of enquiry. Though the members were of opinion that no sanction of the authority was necessary for holding a private meeting of this kind, it was considered advisable under the peculiar circumstances through which the province had passed to bring the fact to the notice of the District Magistrate and consequently Mr. Ganpat Rai, Barrister-at-Law, wrote a letter to the District Magistrate informing him of the proposed meeting.