



Maldivian reprieve

Ibrahim Solih must hit the ground running to stabilise the economy

After five years of rule by a government that strong-armed political dissent domestically, the Maldives has put a pro-people administration in power, swearing in Ibrahim Solih, representing the Maldivian Democratic Party, as President on November 17. He has announced a slew of populist policies, and vowed to end an era of “large-scale embezzlement and corruption”. The last is an allusion to the untold millions allegedly paid to officials as kickbacks for various mega-construction projects. The Solih government came to power on the back of a coalition of unlikely bedfellows. The MDP, the party of former President Mohamed Nasheed, has joined hands with the Jumhooree Party of business tycoon Qasim Ibrahim, the Islamic-based Adhaalath Party, and the support base of former President Maumoon Abdul Gayoom. They will have to ensure that ideological differences do not cause the coalition to split at the seams, and unravel the consequences of previous President Abdulla Yameen flinging open the doors to Chinese investment, allowing a cascade of financing that caused the national debt to balloon to nearly a quarter of GDP. But a strategic return to India and its underlying democratic values could backstop the economic pummelling that Male is sure to face if creditors in Beijing start calling in their dues.

The new government is being cautious, but professedly firm, in unravelling this web of debt. The leadership has promised that what is owed will be paid, and not a penny more; and that wherever opacity cloaked the grant of land, lease rights, construction projects and more, the honouring of debts would be linked to whether a transparent and fair process was followed in the first place. Yet, there is little doubt that China is there to stay in the Maldives, and a balancing agreement will have to emerge through the plethora of commercial contracts the new government would ideally like to renegotiate. In this mission, the renewed bonhomie with India, reflected in the respect accorded to Prime Minister Narendra Modi and the Indian delegation at the inaugural ceremony, will play a crucial role. Innumerable Indians work across the hospitality, education, and health-care sectors of the Maldives economy, and India contributes everything from helicopters to medical visas to Maldivians. The greatest threat to stability comes less from geo-strategic denouements than from within the fabric of its polity. Certain elements that backed the anti-democratic 2012 ‘coup’ that unseated Mr. Nasheed and supported the dramatically centralised power of the previous presidency still abide within the ruling combine. There is only one option for the fledgling coalition government: to strengthen Maldivian institutions and, by extension, democracy.

Quota math

Maharashtra’s proposal on reservation for Marathas is bound to invite judicial scrutiny

After months of protests, the Maratha community has secured yet another promise of reservation in government jobs and educational institutions. The proposal has been cleared by the Maharashtra Cabinet, but is yet to be passed in the State Assembly. Chief Minister Devendra Fadnavis defended this saying it is in line with the recommendations of a State Backward Class Commission (SBCC) report, yet to be made public, mandating reservations for Marathas under a new, separate Socially and Educationally Backward Class category. Mr. Fadnavis said it was the report’s assessment that Marathas are socially and educationally backward, with minuscule representation in government services, and the State is liable to take action considering the “extraordinary and exceptional conditions”. As any move to include Marathas among Other Backward Classes will cause a backlash, the BJP-Shiv Sena government has sought to provide the reservations under a separate category. But when the previous Maharashtra government, of the Congress-Nationalist Congress Party coalition, in 2014 moved to reserve 16% of seats in government jobs and educational institutions, it was stayed by the Bombay High Court. Creating a separate category now would increase the overall quota beyond the 50% limit the Supreme Court has set.

The Cabinet’s nod is in any case born of political expediency, not socio-economic reasons. The SBCC’s reported findings that a significant proportion of Marathas constitute a socially and educationally backward class do not square with available data. As with Jats in Rajasthan and Patels in Gujarat, they enjoy a socio-economic status closer to that of the forward classes (and castes) in Maharashtra. Three previous SBCC assessments have indicated as much. Besides, there is no reason to argue that Marathas face any social stigma that calls for affirmative action. The demand for reservations in this case is therefore less an acknowledgement of social backwardness from a politically powerful community and more a call for the accrual of welfare benefits to less well-off sections among the community. The assertions of backwardness by sections of dominant communities such as Marathas, Patels and Jats have largely been due to perceptions about the relative inability to move up the economic ladder, and the lack of adequate employment opportunities amid a sluggish agrarian economy. Faced with violent protests, the Fadnavis government had to accept this demand, especially after the SBCC gave its stamp of approval, but there is little to suggest any substantial change since 2014 to justify it. As judicial scrutiny is bound to be brought to bear on the government’s decision, it will be well-advised to look at measures to alleviate the State’s prolonged agrarian distress and the lack of adequate jobs, problems that affect all sections of society.

Criteria for the courts

A discussion on the kind of judges that India needs must animate our public debates



SUHRITH PARTHASARATHY

In 1973, at the acme of Prime Minister Indira Gandhi’s move towards securing a “committed judiciary”, the then Minister of Steel and Mines, S. Mohan Kumaramangalam, offered a spirited defence of the government. In speeches made both in Parliament and outside, and through a number of writings, Kumaramangalam asserted the virtues of what he thought was a legitimate policy. It was important, he wrote, invoking the words of the great U.S. judge Benjamin Cardozo, for any government, “to examine the ‘philosophy’, the ‘outlook on life’, and the ‘conception of social needs’ of a proposed appointee” to the higher judiciary. In choosing persons for the Supreme Court, in particular, he believed, it was necessary to assess a judge’s outlook on “broad matters of the State,” and “on the crucial socio-economic matters” that concerned the nation.

Made to measure?

To a casual observer, Kumaramangalam’s words might have sounded rational, but veiled behind them were the government’s rather more threatening motives. As Nani Palkhivala described it, the policy was really an effort at creating a judiciary that would be “made to measure”, that would bend to accommodate the government’s whims and caprices. Yet, even today, much as the policy of the time appears baleful to constitutional democracy, Kumaramangalam’s defence of the programme broods over the process followed in making appointments to the higher judiciary.

Only recently, on November 2,

four new judges were elevated to the Supreme Court. But neither the Collegium’s discussions on the appointees, as published on the court’s website, nor the popular discourse on the persons chosen concern themselves with a discussion on the records of these judges. We are left with little idea, for instance, on what broad constitutional philosophy these judges espouse, what their approach to constitutional interpretation might be, and on how they might view the general role of the higher judiciary.

Contrary to what some might believe, engaging with a judge’s outlook to the Constitution isn’t necessarily inimical to judicial autonomy. Kumaramangalam’s motives may have been ill-founded, but he was hardly at fault in arguing that the Constitution represented not merely a document of rules but also a certain tradition, and that the method involved in appointing judges to the higher judiciary is as much a part of that tradition as any other constitutional process might be.

It is important, no doubt, to resist the particular brand of commitment that Kumaramangalam was after. But there is at least a kernel of cogency in his argument that we cannot afford to ignore. Judicial review gains its legitimacy from the Constitution. But given that judges are unelected officials, won’t its continuing legitimacy be at stake if we deem it undemocratic to so much as wonder what the constitutional philosophy of a nominee might be? Should we dismiss all claims for democratic accountability in the appointment process by harking back to the dark days of the Emergency?

As things stand, the procedure adopted in appointing judges is seen as entirely divorced from the ordinary constraints of a democracy. This wasn’t quite how the Constituent Assembly saw things. The framers believed that the judiciary



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was integral to the social revolution that the Constitution was meant to usher in. They, therefore, as Granville Austin wrote, “went to great lengths to ensure that the courts would be independent, devoting more hours of debate to this subject than to almost any other aspect of the provisions.”

To that end, the Constitution comprises a number of special clauses. It provides for, among other things, a fixed tenure for judges of the Supreme Court and the High Courts; ensures that salaries and allowances of judges are charged directly to the Consolidated Fund of India; confers powers on the courts to punish for contempt of themselves; and, importantly, ensures that judges can only be removed through a process of parliamentary impeachment. But, much as these provisions aim to ensure that the judiciary remains ensclosed from governmental interference, the framers always believed that the power to appoint judges must vest with the executive.

Accordingly, the Constitution provides, in broad terms, that judges to the Supreme Court would be appointed by the President in consultation with the Chief Justice of India (CJI) and such other judges that he deems fit. But through a series of rulings the Supreme Court replaced the consultative method prescribed by the Constitution with one that gave the CJI and his four senior-most

colleagues (the “Collegium”) primacy in selecting candidates. But this system has proved notoriously opaque. Efforts to replace it with a National Judicial Appointments Commission (NJAC) came up a cropper after the court struck down the 99th constitutional amendment, in *Supreme Court Advocates-on-Record Association v. Union of India* (2015). The primacy enjoyed by the collegium in making appointments to the higher judiciary, the court declared, was a part of the Constitution’s basic structure.

Between the lines

Extraordinary as these findings were, the court nonetheless promised to look into the prevailing system and reform it from within. Three years later, we’ve seen little in the way of tangible change. The problems inherent in the present system are evident even from a bare reading of the collegium’s decision, published on October 30, 2018, endorsing the new designees to the Supreme Court: “While recommending the name of Mr. Justices Hemant Gupta, R. Subhash Reddy, Mukeshkumar Rasikbhai Shah, and Ajay Rastogi, the Collegium has taken into consideration combined seniority on all-India basis of Chief Justices and senior puisne Judges of High Courts, apart from their merit and integrity. The Collegium has also kept in mind, while recommending the above names, that the High Courts of Punjab & Haryana, Gujarat and Rajasthan have remained unrepresented in the Supreme Court since long.”

Therefore, it was really only concerns over the relative seniority of these judges and the extent of State-wise representation that kindled the collegium’s attention. The report does state the candidates’ merit was also considered. But given that the criteria for selection is entirely unknown, what merit means remains ambiguous, at

best. In any event, the general constitutional values of a nominee have never been seen as a benchmark to review merit. Such discussions, on the other hand, are seen as anathema to judicial integrity, as a yardstick that ought to be extraneous to any selection made.

All of this still begs the question: even assuming the collegium did, in fact, discuss the constitutional philosophies of the various choices before it, ought we to leave it to our judges to select their own colleagues and successors? Should not a discussion on the kind of judges that India needs animate our public and political debates?

No sunlight

The NJAC may well have been hastily pushed through. But if the publication of the collegium’s decisions has shown us anything, it is this: that the collegium’s workings are mysterious and undemocratic. And for the most part, the government is happy with this arrangement. It clears some recommendations with alacrity, while holding back, often for months on end, others comprising nominees that it deems uncomfortable.

What we need today is a more sustained discussion on the nature and workings of a body that can potentially replace the collegium. Such a body must be independent from the executive, but, at the same time, must be subject to greater transparency and accountability. This commission must also partake within it a facility for its members to have forthright discussions over the constitutional philosophies that a judge must possess. If we fail to bring these issues to the forefront, the rigours of democracy will never permeate into the judiciary, and we will only be further undermining public trust in the credibility of judicial review.

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A true counsellor

P.N. Haksar’s stint as Indira Gandhi’s key aide was a lesson in statecraft and integrity



MOHAMMED AYOOB

P.N. Haksar, whose 20th death anniversary falls this month, on November 25, was one of India’s most eminent public servants. He served with great distinction as Secretary and then Principal Secretary to Prime Minister Indira Gandhi, leaving an indelible mark on India’s domestic and foreign policies.

Congress politician Jairam Ramesh’s book, *Intertwined Lives: P.N. Haksar and Indira Gandhi*, illuminates the crucial role Haksar played at a critical juncture in India’s history. It does this by making Haksar speak in his own voice through letters, speeches, statements, and memos supplemented by reflections of people who knew him intimately during his years in office.

Crucial years

The years 1967-1973, when Haksar was directly involved in affairs of state, were witness to major developments in India’s domestic and foreign policy arenas. They saw the breakup of the Congress Party, the consolidation of power by Mrs. Gandhi, the nationalisation of

banks and the abolition of the privy purses. They also saw the most fundamental geo-strategic change in South Asia since Partition – the breakup of Pakistan as a consequence of Indian military intervention. Furthermore, they witnessed the Indo-Soviet Treaty of August 1971 and the Shimla Agreement of July 1972.

Haksar mentored Mrs. Gandhi during her initial years in office and was the brain behind the breakup of the Congress believing that once she got rid of the “Syndicate”, she would be the instrument for social change that India needed desperately. He was initially not enamoured by the idea of dividing Pakistan. However, as the ‘East Pakistan’ crisis unfolded, he concluded that India had no option but to get militarily involved. He was the brain behind the diplomatic manoeuvres to elicit support from the international community for the liberation of Bangladesh. When war seemed imminent, and both the U.S. and China demonstrated overt support for Pakistan, Haksar, who was initially sceptical of a defence treaty with the Soviet Union, threw his weight behind such a pact. He became convinced of the value of such a treaty after U.S. National Security Adviser Henry Kissinger’s secret trip to China in July 1971 via Islamabad, which demonstrated the convergence of U.S. and Chinese interests in preventing Pakis-



THE HINDU PHOTO ARCHIVES

tan’s breakup.

Haksar came to the conclusion that a pact that locked in Moscow’s support for India’s political and military moves was essential to neutralise U.S. and Chinese support for Pakistan in the event of war. The treaty served its purpose by paving the way for the much-needed Soviet veto that prevented the UN Security Council from calling for a ceasefire before India had reached its goal of completely liberating Bangladesh.

He was the primary strategist behind the Indian negotiating positions in Shimla. His principal advice to the Prime Minister was to avoid doing a “Versailles” on Pakistan in order to prevent the emergence of a revanchist, military regime in Islamabad. This meant desisting from forcing Bhutto to accept the Line of Control in Kashmir as the international boundary. It also meant a sympathetic approach to the prisoners of war

issue that entailed persuading Dhaka to agree to their speedy repatriation.

Haksar formally retired from government service in 1973 but continued to act as Mrs. Gandhi’s informal adviser and personal emissary. However, as Mr. Ramesh documents, his relationship with her deteriorated with the rise of her son Sanjay Gandhi as her primary adviser and the imposition of the Emergency in 1975. Sanjay harassed Haksar and his relatives during the Emergency to avenge Haksar’s earlier opposition to his Maruti project. Haksar’s house was searched on flimsy grounds. Nonetheless, Haksar, always a gentleman, never criticised her in public for her and her son’s misdeeds although, as Mr. Ramesh points out, his wife never forgave Mrs. Gandhi for the way he had been treated.

Of another time

There are three conclusions that one draws from Mr. Ramesh’s superb account of Haksar’s relationship with Mrs. Gandhi. First, he never hesitated to speak his mind to her on a variety of subjects regardless of her preferences and normally she adopted his views as her own on important matters of state. Second, Haksar’s extreme discretion in making certain that his advice and interaction with the Prime Minister remained private and that she was not to be seen as

his mouthpiece. This explains his reluctance to speak in public during his years of service when he was arguably the second most powerful person in the country. Haksar’s behaviour stands in stark contrast to that of public functionaries today who seek the limelight at the smallest opportunity. Third, he was a man of great integrity who never attempted to profit personally from the powerful position that he held. This again stands in great contrast to what is happening today when the line dividing the public and private spheres is being deliberately blurred so that those in power can benefit personally from the public offices they hold.

Haksar’s primary concern was to protect the interests of the Prime Minister, to whom he was intensely loyal. However, this loyalty did not emanate from self-serving concerns but from his belief that she was the best instrument available to implement the programme of social justice and unadulterated secularism that was dear to her father’s heart and to his own. Unfortunately, Indira Gandhi failed to fully live up to Haksar’s expectations.

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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.

Haryana’s shame

The report on the sufferings of trafficked women, especially from eastern India, is heart-wrenching (“Ground Zero” page, “The ‘outsiders’ of Haryana”, November 17). It reminded me of a similar report on the plight of Adivasi girls and women at Araku Valley, near Visakhapatnam. Poverty and a lack of education and employment opportunities are the root causes for trafficking. It appears that the Prime Minister flagship slogan ‘Beti bachao, beti padhao’ (Save girl, educate girl) is a hollow one especially when one considers that the epicentre of trafficking, in Nuh, Haryana, is about 60 km from New Delhi. One cannot help think about how even a partial amount of the ₹2,989 crore spent on

the ‘Statue of Unity’ in Gujarat could have been usefully spent to alleviate the suffering of such victims. It is also a pity that it is only an NGO or two that is contributing its mite to help these women.

A. JAINULABDEEN,
Chennai

Then and now

The contrast between the article on the Ground Zero page and an advertisement in one of the supplements published by *The Hindu* could not have been starker. The first story showed a woman, abandoned after many years of abuse, eking out a living in a portion of a decrepit hovel while the advertisement nudged rich buyers to “take the luxury upgrade”. In his historic midnight address,

Jawaharlal Nehru called upon the nation to try to fulfil Gandhi’s wish “to wipe every tear from every eye”. Between the 1960s and 1970s, engineers and architects were sent abroad to study low cost housing. But post-1991, the country’s policies have taken an irretrievable turn –luxury and ostentation have become respectable. It is ironic that some in the political class claim Swami Vivekananda to be a hero. Do they recall his ethos?

S.S. KAIMAL,
Thiruvananthapuram

Sabarimala row

The situation in parts of Kerala over the Sabarimala temple issue is unprecedented and is affecting certain pockets of the State as there are frequent disruptions to

normal life (“BJP blocks highways over protest”, November 19). The Kerala government’s determination not to buckle under pressure and to uphold the Supreme Court’s verdict is only hardening stances on the opposite side. Therefore, all stakeholders concerned should negotiate a viable step out of the gridlock.

SHUJU NEDUVELIL,
Secunderabad

■ The stand-off has become cause for concern. While the State is piling police forces in and around the temple, political forces on the other side of the divide appear to be trying to gain political mileage and ensuring that the situation becomes more volatile. It appears to be a case of who will blink first. Adding to this is the “call” by

certain social activists to visit the temple by surprise. The Supreme Court needs to take cognisance of the situation and ensure that the issue is settled soon.

SRAVANA RAMACHANDRAN,
Chennai

Water stress

The government needs to focus on alternative sources of energy (Editorial page,

CORRECTIONS & CLARIFICATIONS:

ONGC had in January 2018 bought 51.1% of *BPCL* for ₹36,915 crore from the government, said a report headlined “Modi govt. divested twice as much as UPA” (Nov. 19, 2018). Actually ONGC had bought 51.1% of *HPCL*.

In the Sunday Magazine story, “60 Minutes: With Kholoud Waleed” (Nov. 18, 2018), both the headline and text had misspelt journalist Marie Colvin’s name as Mary Colvin.

The report, “Crown Prince Mohammad bin Salman not behind Jamal Khashoggi’s murder: Saudi prosecutor” (Nov. 16, 2018), erroneously said Khashoggi was last sighted entering the Saudi consulate in *Islamabad* on October 2. It was the Saudi consulate in Turkey.

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