

The difference between a moral man and a man of honor is that the latter regrets a discreditable act even when it has no effect and he has not been caught

H. L. Mencken

PM's moment of 'Triumph'

It is Prime Minister Modi's moment of "Triumph". By signing the \$4.2 billion deal for the acquisition of four squadrons of S-400 Triumf missile defence system, ignoring the angry scowl of Washington and its threat to impose sanctions on India, Modi has made an emphatic statement, namely, that India's foreign policy is conducted in the national interest of India and any amount of pressure put by any foreign Power to change it will be of no avail. Judging by Washington's initial reaction to the signing of the Indo-Russian deal it seems White House has reconciled itself to the reality. Simultaneously, signals emanating from New Delhi suggest that India will continue to import crude oil from Iran. The threat of US sanction will not work here, too.

Modi has acknowledged Russia an "old and traditional friend of India", even though the architect of that friendship, Jawaharlal Nehru, continues to be the Sangh Parivar's bete noire. The Triumf deal has served several purposes. First, it has sent a message to Washington that it cannot take India for granted. Second, it has bolstered our defences against both China and Pakistan. Third, by signing the deal India has effectively checked Russia to go over completely to the China-Pakistan axis. Infact, it is the sanctions imposed by the US (and by the EU under US pressure) that forced Russia to gravitate toward China for purely economic reasons. The Rs. 40,000 crore Triumf deal could not have come at a more opportune time for Moscow. It is time the US realized it needs India as much as India needs the US.

At a time when the fleet strength of the IAF has been declining and the acquisition of the Rafale MMRCAs is mired in controversy the Triumf missile defence system will boost India's defence capability. Now the MMRCAs impasse has to be speedily resolved so that within the next few years, the IAF can replace its old and aging fighter aircraft with new generation aircraft. Technological upgradation of military hardware is a continuous process and has to be planned keeping in view the likely advance expected to be made by other players in this field in the future. For India it is important to be able to fight a two-front war with both China and Pakistan, if such a contingency arises. The former Soviet Union and its successor State, Russia, has proved to be India's reliable and time-tested friend. The Modi-Putin agreement has further cemented that friendship.

Justice Chandrachud's note has big significance

REFLEX ACTION

Amritananda Chakravorty

"It is directed under Article 142 that the existing data which has been collected shall not be destroyed for a period of one year. During this period, the data shall not be used for any purpose whatsoever. At the end of one year, if no fresh legislation has been enacted by the Union government in conformity with the principles which have been enunciated in this judgment, the data shall be destroyed."

With these words, Justice D.Y. Chandrachud concluded his judgment, while writing a seminal dissent in the history of India's constitutional jurisprudence in striking down the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (Aadhaar Act). On 26th September, the Supreme Court in Justice K.S. Puttaswamy & Ors. vs Union of India & Anr. [Writ Petition (Civil) No. 492 of 2012], by majority judgment authored by Justice A.K. Sikri for himself, and on behalf of Chief Justice Dipak Mishra, and Justice A.M. Khanwilkar, upheld the validity of Aadhaar Act, its passage in Parliament as a money bill, and Section 139AA, Income Tax Act, 1961, which provided for mandatory linking of Aadhaar with PAN for filing of income tax returns. Though the Court struck down many provisions of the Act, particularly Section 57 that sought to give access to private companies to Aadhaar for 'any' purpose, the Aadhaar Act, in its core was upheld, along with Section 139AA, IT Act. However, this piece is not an analysis of the majority opinion, but seeks to locate J. Chandrachud's landmark dissent in the larger context of judicial 'dissents' in India.

In the famous right to privacy judgment (with the same cause title) last year, Justice Rohinton Nariman had coined the phrase "three great dissents", which mentioned the dissents of Justice Fazl Ali in A.K. Gopalan vs. State of Madras (1950), who had first talked about the inter-relationship between fundamental rights in Articles 19, 20, 21 and 22; Justice

J. Subba Rao in Kharak Singh vs. State of Punjab (1964), who upheld the fundamental right to privacy; and the most famous dissent till date, that is of Justice H.R. Khanna in A.D.M. Jabalpur vs. Shivakant Shukla (1976), who struck down the Presidential order suspending the fundamental right of any person to approach the Courts challenging preventive detention. To this illustrious line, one can now add J. Chandrachud's dissent in the Aadhaar case.

According to Charles Evans Hughes, former Chief Justice of the United States Supreme Court, "a dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed". These words are no truer than in each of the three dissents that J. Nariman mentioned, wherein each of them became part of the majority jurisprudence, years and decades later, thereby making lawyers, jurists and even general public realise the actual significance of judicial dissents in constitutional cases of wide-ranging implications.

In the present case, J. Chandrachud held that the passage of the Aadhaar Bill as a 'money bill', i.e., not requiring the approval of Rajya Sabha, under Article 119 of the Constitution was a 'fraud on the Constitution', and the 'debasement of a constitutional institution'. He then struck down the Aadhaar Act for failing to meet the necessary requirements to have been certified as a money bill. In terms of denying benefits to people, owing to authentication failures, J.

Chandrachud categorically held that "dignity and the rights of individuals cannot be made dependent on the algorithms and probabilities. Constitutional guarantees cannot be subject to the vicissitudes of technology. Denial of benefits arising out of any social security scheme which promotes socio-economic rights of citizens is violative of human dignity and impermissible under our constitutional scheme". Since Aadhaar Act was struck down, he then accordingly struck down Section 139AA, IT Act to be unconstitutional.

Obviously, much would be written both on the majority judgment, and its follies, as well as on the minority decision in the Aadhaar case, but J. Chandrachud's dissent is particularly critical, in the current political context of a subdued judiciary, a powerful executive behemoth, and a parliament, almost maderedundant, by the said behemoth. Despite waxing eloquent about 'constitutional morality', and the 'transformative power of the constitution' in other judgments, it speaks volumes that Chief Justice Mishra chose not to write an opinion in one of the biggest constitutional cases in the history of the Supreme Court of India. One is also not oblivious that it was the same Justice Chandrachud who ordered NIA investigation in Hadiya's case in August, 2017, thereby bypassing all claims of her autonomy and dignity, and dismissed a plea seeking an independent investigation into Judge Loya's death in April, 2018. At the same time, one cannot, but appreciate both the context and the content of J. Chandrachud's dissent in the Aadhaar case, and hopes that the dissent becomes the majority opinion of the Supreme Court soon, may be in the next Chief Justice Ranjan Gogoi's tenure. As J. Chandrachud himself said in the context of the arrest of five human rights activists last month, 'dissent is the safety valve in a democracy'. Similarly, dissent is the safety valve in the judicial decision-making and independence. (IPA)



The Kailash Satyarthi Children's Foundation recently flagged off Rang Badlav Ke - Paint the Change, a volunteer and community participation event at Sanjay Camp that aims at mobilizing hundreds of volunteers and artists to give the slum community a vibrant facelift, in New Delhi

Church must take quick corrective measures

FOCUS

P. Sreekumar

The Church leadership does not seem to be in a mood to learn lessons from the arrest of Bishop Franco Mulakkal, who has been accused of repeatedly raping a nun, if the initial response is any indication.

The Kerala Catholic Bishop's Council (KCBC) has, for instance, denounced the fast undertaken by five sisters in support of the nun who was allegedly sexually abused by Franco. The fast, it said, tarnished the image of the Church, adding that the arrest of the bishop was painful. The nuns have only played into the hands of the enemies of the Church, the KCBC opined. The KCBC's stand goes against its own earlier stand on sexual crimes. For instance, in the rape cases of Kathua and Unnao, the KCBC had said that perpetrators of such crimes must be handed out deterrent punishment. However, in the Franco case, the KCBC has said not a word against the rape-accused bishop.

In an ominous sign of the shape of things to come, a sister who had supported the nuns' agitation has been asked not to discharge her church duties at St. Mary's Church parish at Karakkamala under Mananthawady diocese in Wayanad district. Sr Lucy Kalappura, a member of the

Franciscan Clarist Congregation's (FCC) St. Mary's Province, in Mananthawady, said she has been asked by the Mother Superior of her convent to stay away from church duties, including holding catechism classes, offering holy communion and conducting group prayer sessions.

Sr Lucy's crime, apart from supporting the agitating nuns, was that she participated in the TV channel discussions seeking justice for the nun in the rape case. Ironically, the church authorities have maintained a sepulchral silence on the charges against the rape-accused bishop. It has however, acted with lightning speed to relieve Sr Lucy of her church duties! On their part, the church authorities have denied any ban on the nun. All that has happened, they said, was that she has been conveyed the general opinion in the parish about the nun through the mother superior!

However, the action against the nun had to be withdrawn in the face of strong protest from the parishioners. The incident must open the eyes of the church leadership. The clear cut message is: there will be stiff resistance to any attempt to silence the aggrieved nuns; and that people will no longer tolerate such intimidatory

tactics. In another instance of vindictive action, the Syrian Orthodox Patriarchate has warned priest Yuhanon Ramban of disciplinary action for supporting the striking nuns. Ramban has been warned against going ahead with demonstrations and public activities in support of the nuns. "The above-mentioned activities of yours have caused disgrace to the status of monasticism in our church", Ramban compounded his offence by clamouring for implementing the proposed Church Act, vociferously opposed by a large number of bishops.

Such actions in the face of growing public sentiment against sexual abuse of hapless nuns can only boomerang on the Church. The time for cover-ups, hushing up of cases and the culture of silence that perpetuates abuses is over. The earlier the church authorities realize this, the better. The nun in the Franco case is a powerful symbol of the resistance movement gaining strength and traction against such sexual exploitation of

women. L'affaire Franco must induce serious self-inspection not only among the church authorities but also among those at the helm in institutions belonging to other religions. It is not as if only priests sexually exploit women. Self-styled godmen belonging to other religions have also been put behind the bars for sexual crimes. The two names that immediately spring to mind are Gurmeet Ram Rahim and Asharam Bapu. Out of the nine culprits who are cooling their heels in jail, 6 are priests and three self-styled Hindu godmen.

The silver lining in the dark cloud is that various church leaders have lamented the decline of values in the Church. Their voices have started gaining greater resonance. Former spokesperson of the Syro Malabar Church, Fr. Paul Thekkatt, has called a spade a spade. It is a matter of grave concern, he said, that the upper echelons of the Church have been using their influence and clout to cover up their misdeeds. This must stop. The embarrassment and ignominy

faced by the institution of church has been brought about solely by the failure to initiate corrective steps to stem the rot. Blaming the nuns for coming to the streets in pursuit of justice won't wash. The nuns took to the streets only after the church leadership ignored their cries for justice. In the Franco case, for instance, if only the bishop had been asked to step down in the wake of the growing outcry against him, the Church would have been spared the acute embarrassment and loss of face it is confronted with now.

The sordid episode provides an opportunity for the Church to make amends. And Pope Francis has shown them the way. In his latest appeal, the Pope has said that the time has come for the Church to change in the light of rising cases of sexual abuse by bishops all over the world. Reports say over 110 bishops from 36 countries are in jail, accused of sexual exploitation! The Pope has stressed the paramount need for the church authorities to move in step with the times. Failure to take action in sexual abuse cases is alienating the devout, Pope said. Will the authorities summon the courage and will power to take expeditious remedial steps? That is the million dollar question. (IPA)

Conventional Crossword

1		2	3	4	5	6
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		11				
12	13			14	15	16
			18			19
				21	22	
23		24			25	
26						
27					28	

- ACROSS**
- Reserved
 - After due time
 - Conditional release
 - Gathering of the witches
 - Period of time
 - Fish
 - Greek letter
 - Scottish dance
 - Camping item
 - Wrath
 - Performer
 - Micro-organism
 - Correct
 - Heckle
 - Furniture items
 - Go in
- DOWN**
- Take that offered
 - Not closed
 - Venom tooth
 - Castles
 - Beverage
 - Conceited
 - Irish republic
 - Story
 - Domesticates
 - Augury
 - Colour

SUDOKU: 2335

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8	4	5			7	2	
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Yesterday's Solution 2334

2	3	7	6	1	8	4	9	5
9	5	1	7	3	4	6	2	8
4	8	6	2	5	9	3	1	7
7	1	9	4	2	5	8	3	6
6	4	3	1	8	7	2	5	9
5	2	8	3	9	6	1	7	4
8	7	2	5	6	3	9	4	1
3	6	5	9	4	1	7	8	2
1	9	4	8	7	2	5	6	3

Yesterday's Cross Word Solution 343

C	I	T	E	A	C	T	O	R
A	C	U	M	E	N	T	O	R
M	E	N	U	T	E	V	E	
E	E	B	E	H	E	A	D	
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