Fuel price optics

Levies must be cut further to offset the effect of the continuing surge in global oil prices

The Centre finally decided last week to relent and act on the advice of monetary policymakers by cutting the excise duty on petrol and diesel by ₹5 and ₹10 a litre, respectively. The duty reduction, announced on the eve of Deepavali, immediately helped lower the retail prices of the two fuels by at least about 5% and 11%, respectively. And on the Government's urging, more than 20 States and Union Territories also reduced the VAT levied on the fuel products, thereby enhancing the relief provided to consumers from record pump prices. While the Centre asserted that the decision was to impart a fillip to the reviving economy, as well as easing inflationary pressure, the political significance of its timing was hard to overlook, coming a day after the ruling BJP suffered electoral reverses in some legislative and parliamentary bypolls. That the Government was keen to make political capital out of its belated reduction of levies was made obvious two days later, when it sought to call out the States – almost all ruled by Opposition parties – that were yet to make commensurate VAT reductions. With a clutch of crucial State elections, including to the prized U.P. Assembly, due early next year, the BJP is keen to regain control of the narrative, especially given the heightened public concern over inflation and the surge in fuel prices.

As far as the economy is concerned, the reduction in fuel bills is bound to have a salutary impact on inflation as diesel is the main fuel for freight carriage and impacts the cost of everything requiring to be transported. The softening in transportation costs ought to provide some cushion to the manufacturing sector, which has had to cope with surging input prices at a time when demand is still tenuous. The additional cash left in the wallets of consumers may also provide a small bump in consumption though the durability of this stimulus will hinge on how global oil prices behave in the coming weeks and months. Global oil prices have been on a boil this year and the World Bank group projected last month that average crude prices would end 2021 with a gain of about 70%. With the Indian crude basket having risen on average almost 62% in the 10 months through October and the historical trend suggesting a firming of prices towards the year-end when the northern hemisphere's winter usually pushes up energy demand, there is a real risk that Indian refiners may be left with little option but to continue raising retail prices. The onus would then be again on the Centre to make further cuts to the duty it had raised last year. States run by other parties should take the cue from Tamil Nadu and Punjab and bring down the prices at the outlets, and not hold back for political or revenue reasons.

Rebels and rulers

The Ethiopian government and the militias must end the fighting and begin talking

Ethiopian Prime Minister Abiy Ahmed's year-long war on the rebels in the northern Tigray region threatens to pull the whole country into a deadly civil war between the federal troops and several ethnic militias. When the war began, Mr. Abiy, a Nobel peace laureate, wanted to oust the Tigray People's Liberation Front (TPLF), an ethnic paramilitary group-turned-political party, in Tigray and install a friendly regional government. Within a month, he met his objectives and declared that major combat operations were over. But retaining control over a rebellious region was harder than ousting the rebels. Moreover, Mr. Abiy seemed to have overlooked Tigray's complex history. The mountainous region that shares a long border with Eritrea was the base of resistance against the military dictatorship in the 1970-80s. The TPLF, which fought the Derg, the military regime, for 16 years before ruling Ethiopia through a multiparty coalition for three decades, was not an easy pushover. It retreated to the mountains, regrouped and hit back, forcing the federal troops and their allies, including paramilitaries from Eritrea, to withdraw. Now, after taking Tigray and key towns in neighbouring regions, the TPLF, joined by other militias, has threatened to take Addis Ababa, the capital city that is home to five million people, "within weeks".

In his attempt to shake up Ethiopia's power structures and crush the former ruling elites, Mr. Abiy has unleashed a series of events that he is no longer in a position to control. When the country moved to a parliamentary system from military dictatorship in the early 1990s, it adopted a model called "ethnic federalism" in which the regions, largely divided on ethnic lines, enjoyed some autonomy, while the federal government, controlled by the TPLF, focused on national unity, economic growth and defence. This model worked, at least for a decade, as Ethiopia, Africa's second most populous country that was devastated by a famine in 1983-85, emerged as East Africa's strongest economic powerhouse. But ethnic tensions started resurfacing late last decade, and Mr. Abiy, an ethnic Oromo, was chosen to put the country back on the trajectory of growth and stability. But his moves to sideline the TPLF triggered a bigger political crisis, which eventually led to the war in Tigray. Mr. Abiy is now on the defensive. The move to take control of Tigray has failed. If he stops the military operations now, it would be seen as weakness and the rebels, emboldened by their recent victories and political support they gained from opposition groups, could march southwards. An all-out civil war would be disastrous as it could open old ethnic wounds. To avoid such a calamity, there has to be a mutually agreed upon ceasefire. But neither side has shown any interest in talks. The international community, particularly the African Union, should press both the rulers and the rebels to immediately end the fighting and start talking.

A new jurisprudence for political prisoners

The Supreme Court's judgment alters a terrible legal landscape that has seen the blatant misuse of the UAPA

KALEESWARAM RAJ

A judgment of the Supreme Court of India on October 28, 2021 has immense potential to reclaim the idea of personal liberty and human dignity. In *Thwaha Fasal vs Union of India*, the Court has acted in its introspective jurisdiction and deconstructed the provisions of the Unlawful Activities (Prevention) Act (UAPA) with a great sense of legal realism. This paves the way for a formidable judicial authority against blatant misuse of this draconian law.

The background

In this case from Kerala, there are three accused. The third among them is absconding. The police registered the case and later the investigation was handed over to the National Investigation Agency (NIA). The accused were in their twenties when arrested on November 1, 2019. During the investigation, some materials containing radical literature were found, which included a book on caste issues in India and a translation of the dissent notes written by Rosa Luxemburg to Lenin. There were also leaflets that were allegedly related to Maoist organisations.

Thus, the provisions of the UAPA were invoked. Against the first accused, Allen Shuaib, offences under Sections 38 and 39 of the UAPA and 120B of the Indian Penal Code (IPC) were alleged. Section 38 deals with "offence relating to membership of a terrorist organisation" and Section 39 deals with "offence relating to support given to a terrorist organisation." Section 120B of the IPC is the penal provision on criminal conspiracy. Against the second accused, Thwaha Fasal, over and above these charges, Section 13 of the UAPA was alleged – which is the provision about punishment for unlawful activities. Both the accused were students and there were no allegations of any overt act of violence. According to the accused, the charges were an attempt to label them as terrorists, based on the intellectual and ideological inclinations attributed to them.

Judicial trajectory

The case had a curious trajectory. After initial rejection of the pleas, the trial judge granted bail to both the accused in September 2020. By that time, the students had completed more than 10 months in prison. The High Court, in appeal, while confirming the bail of Allen, chose to set aside the bail granted to Thwaha. The matter then reached the Supreme Court. The Supreme Court, after a comprehensive examination, upheld the trial judge's finding that the materials, *prima facie*, do not show any "intention on the part of both the accused to further the activities of the terrorist organisation". It found fault with the High Court for not venturing to record, *prima facie*, findings regarding charges against Thwaha, whose bail was set aside by the High Court. The top court confirmed the bail granted to both the students. Now, they have been set free.

The Supreme Court was emphatic and liberal when it said that mere association with a terrorist organisation is not sufficient to attract the offences alleged. Unless and until the association and the support were "with intention of furthering the activities of a terrorist organisation", offence under Section 38 or Section 39 is not made out, said the Court. Mere possession of documents or books

V.V. KRISHNAN

by the accused at a formative young age, or even their fascination for an ideology, does not *ipso facto* or *ipso jure* make out an offence, the Court ruled.

The judgment can act as an effective admonition against a suppressive regime. It also exposes the hypocrisy of the law, the UAPA. Section 43D(5) of the UAPA says that for many of the offences under the Act, bail should not be granted, if "on perusal of the case diary or the report (of the investigation)... there are reasonable grounds for believing that the accusation ... is prima facie true". Thus, the Act prompts the Court to consider the version of the prosecution alone while deciding the question of bail. Unlike the Criminal Procedure Code, the UAPA, by virtue of the proviso to Section 43D(2), permits keeping a person in prison for up to 180 days, without even filing a charge sheet. Thus, the statute prevents a comprehensive examination of the facts of the case on the one hand, and prolongs the trial indefinitely by keeping the accused in prison on the other.

Presumption of guilt

Instead of presumption of innocence, the UAPA holds presumption of guilt of the accused. Section 43E of the Act expressly says about "presumption as to the offences". According to Section 43D(5), jail is the rule and bail is often not even an exception. The Court, in *Thwaha Fasal*, refused to construct this Section in a narrow and restrictive sense. This analysis has to some extent, liberalised an otherwise illiberal bail clause. In the process, the Court has also tried to mitigate the egregious error committed by a two-judge Bench of the Supreme Court in *National Investigation Agency vs Zahoor Ahmad Shah Watali* (2019) that interpreted the same provision.

In *Zahoor Ahmad Shah Watali*, the Court said that by virtue of Section 43D(5) of UAPA, the burden is on the accused to show that the prosecution case is not *prima facie* true. The proposition in *Zahoor Ahmad Shah Watali* is that the bail court should not even investigate deeply into the materials and evidence and should consider the bail plea, primarily based on the nature of allegations, for, according to the Court, Section 43D(5) prohibits a thorough and deeper examination. As such, in several cases, bail pleas were rejected relying on *Zahoor Ahmad Shah Watali*, despite the strong indications that the evidence itself was false or fabricated. Many intellectuals including Sudha Bharadwaj and Siddique Kappan were denied bail based on a narrow interpretation of the bail provision as done in *Zahoor Ahmad Shah Watali*. Stan Swamy was another victim of this provision and its fallacious reading.

The top court has now altered this terrible legal landscape. For doing so, the Court also relied on a later three-judge Bench decision in *Union of India vs K.A. Najeeb* (2021). In *K.A. Najeeb*, the larger Bench said that even the stringent provisions under Section 43D(5) do not curtail the power of the constitutional court to grant bail on the ground of violation of fundamental rights.

The text of the draconian laws sometimes poses immense challenge to the courts by limiting the space for judicial discretion and adjudication. This is more evident in the context of bail. The courts usually adopt two mutually contradictory methods in dealing with such tough provisions. One is to read and apply the provision literally and mechanically which has the effect of curtailing the individual freedom as intended by the makers of the law. In contrast to this approach, there could be a constitutional reading of the statute, which perceives the issues in a human rights angle and tries to mitigate the rigour of the vicious content of the law. The former approach is reflected in *Zahoor Ahmad Shah Watali* and the latter in *Thwaha Fasal*. In *Thwaha Fasal*, the Court has asserted the primacy of judicial process over the text of the enactment, by way of an interpretative exercise.

Delhi riots case

On June 15, 2021, the Delhi High Court granted bail to student activists Natasha Narwal, Devangana Kalita and Asif Iqbal Tanha who were charged under the UAPA for alleged connections with the Delhi riots. In an appeal by the Delhi police, unfortunately, the Supreme Court said that the well-reasoned judgment of the High Court shall not be treated as a precedent.

The *Thwaha Fasal* judgment has, by implication, legitimised the methodology in the Delhi High Court verdict that ventured to examine the content of the charge instead of swallowing the prosecution's story. It is this judicial radicalism that builds an emancipatory legal tool. The judgment should be invoked to release other political prisoners in the country who have been denied bail either due to the harshness of the law or due to the follies in understanding the law or both.

Kaleeswaram Raj is a lawyer at the Supreme Court of India

AUKUS could rock China's boat in the Indo-Pacific

While there is nothing surprising about AUKUS, a Pacific-centric orientation has advantages in the context of China

SUJAN R. CHINOY

The trilateral security agreement between Australia, the United Kingdom and the United States (AUKUS) continues to be in the news. At the COP26 meeting at Glasgow, U.S. President Joe Biden tried to smoothen ruffled feathers when he candidly told his French counterpart, President Emmanuel Macron, that the Australian submarine deal with France had been handled clumsily. An assuaged France is bound to come around eventually since the Trans-Atlantic partnership is important for both sides. In regard to Australia, however, the kerfuffle over the cancelled submarine deal continues to dog relations. A piqued France harbours resentment at the Australian action, going by Mr. Macron's recent remarks at the G20 press conference on November 1.

The ASEAN factor

There is also the matter of Association of Southeast Asian Nations (ASEAN) disunity over the emergence of AUKUS. The South-east Asian nations have been unable to agree on other issues before, such as developments in Myanmar or the strategic threats posed by China. While AUKUS is clearly an attempt by the U.S. to bolster regional security, including securing Australia's seaborne trade, any sudden accretion in Australia's naval capabilities is bound to cause unease in the region. In a statement on September 20, Australia had unambiguously reassured the region of its commitment to ASEAN centrality and its continued support for the South Pacific Nuclear-Free Zone Treaty as well as the Treaty of Southeast Asia Nuclear Weapon-Free Zone.

Even though Australia has denied that AUKUS is a defence alliance, this hardly prevents China from exploiting ASEAN's concerns at having to face a Hobson's choice amidst worsening U.S.-China regional rivalry. True to style, the Chinese Foreign Ministry spokesman has criticised AUKUS as an "exclusive bloc" and "clique" that gravely undermines regional peace and security and reflects a Cold War mentality. AUKUS is based on a shared commitment of its three members to deepening diplomatic, security and defence cooperation in the Indo-Pacific to meet the challenges of the 21st century. Even though this has not been stated explicitly, the rise of China, particularly its rapid militarisation and aggressive behaviour, is undoubtedly the trigger.

Decades-old partnership

As such, there is nothing surprising about the U.S., the U.K. and Australia coming together. The U.S. and the U.K. have enjoyed a special defence partnership for decades. The U.S. and the U.K. have fought together as allies, together with Australia, in the Second World War. The U.S. shared nuclear weapons technology with the U.K. following the merging of the latter's nuclear weapons programme with the American Manhattan Project as early as in 1943. The first U.K. test was conducted in 1952 in the Montebello Islands in Australia, a country that still regards the British monarch as the head of state, whose powers are exercised constitutionally through her representative, the Governor-General of Australia. To suggest that these three nations have come

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together to forge a new defence pact is stating the obvious. They have been alliance partners all along.

Engagement with China

For three nations, their relations with China have recently been marked by contretemps. Australia, especially, had for years subordinated its strategic assessment of China to transactional commercial interests. Much to China's chagrin, its policy of deliberately targeting Australian exports has not yielded the desired results. Instead of kowtowing, the plucky Australian character has led Canberra to favour a fundamental overhaul of its China policy. The attempt to torment Australia has clearly backfired.

That China's naval expansion and far-ranging forays in the oceanic space should have compelled Australia to revisit its defence and security policies should also not surprise anyone. As early as in 1942, during the Second World War, three Japanese midget submarines, launched from five large submarines that acted as launching platforms, had mounted a sneak attack in Sydney Harbour. Though the damage and casualties inflicted by the attack were limited, that brazen episode, combined by the bombing by Japanese warplanes of Darwin, also in 1942, drove home to Australia that its distant geographical location could not guarantee its security against a direct maritime threat.

In 2017 and 2019, the Talisman Sabre exercises (a biennial exercise that is led by either Australia or the U.S.), conducted by the Royal Australian Navy, were tagged by a Chinese People's Liberation Army Navy (PLAN) *Dongdiao*-class Type 815 auxiliary general intelligence (AGI) vessel. China also used the same type of vessel to monitor the multilateral Rim of the Pacific (RIMPAC) exercise in 2018.

These developments, no doubt a portent of things to come, have cast a long shadow on Australia's trade and strategic interests.

'To further' is the key

The transfer of sensitive submarine technology by the U.S. to the U.K. is a *sui generis* arrangement based on their long-standing Mutual Defence Agreement of 1958. The AUKUS joint statement clearly acknowledges that trilateral defence ties are decades old, and that AUKUS aims to further joint capabilities and interoperability. The word "further" is key, since defence cooperation already exists. The other areas covered are cyber capabilities, artificial intelligence and quantum technologies, apart from undersea capabilities. The latter is the most visible part of the agreement, and potentially, a game-changer.

Elements in the broader agenda provide opportunities to the U.S., the U.K. and Australia to engage the regional countries. There are clear indications that New Zealand is open to cooperation with AUKUS in such areas, especially cyber, its nuclear-averse record notwithstanding. All three nations will also play a major role in U.S.-led programmes such as Build Back Better World, Blue Dot Network and Clean Network, to meet the challenge of China's Belt and Road Initiative.

A comparison, the reach

The Quad and AUKUS are distinct, yet complementary. Neither diminishes the other. Whereas the Quad initiatives straddle the Indian and the Pacific Oceans, a Pacific-centric orientation for AUKUS has advantages. Such a strategy could potentially strengthen Japan's security as well as that of Taiwan in the face of China's mounting bellicosity. Shifting AUKUS's fulcrum to the Pacific Ocean could reassure ASEAN nations. It could also inure AUKUS to any insidious insinuation that accretion in the number of nuclear submarines plying the Indo-Pacific might upset the balance of power in the Indian Ocean.

China's potent military capacities must be taken seriously. China has a large and growing undersea fleet, including attack submarines, both nuclear-powered and diesel-electric. China's naval power is enabling it to challenge U.S. dominance in the Pacific beyond the first island chain. A U.S. that still boasts the world's most powerful military is perhaps tempted to look at effective means to militarily counter China. The Quad structure currently has neither the mandate nor the capability to achieve this. There are limited options in the economic arena with China already having emerged as a global economic powerhouse. AUKUS, though, provides an opportunity to the U.S. to place proxy submarine forces to limit China's forays, especially in the Pacific Ocean.

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LETTERS TO THE EDITOR

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Hospital inferno

Every time there is an accident, in this instance, a shocking hospital fire, governments come up with a platitude that stern action would be taken and ex gratia to be doled out to the families. However, everything is back to square one after some time. Delinquency on the part of the hospital concerned and the reactive nature of the Government only pave the way for more such incidents. The Government ought to forge a durable solution. Exemplary punishment ought to be given which may act as a deterrent (Page 1, November 7).

AANYA SINGHAL,
Noida, Uttar Pradesh

■ The tragedy only drives home the point that the medical authorities concerned have really not taken "intensive care" of the patients. Alas! It is imperative that staff, especially in critical sectors, show diligence in their work.

S. RAMAKRISHNASAYEE,
Chennai

■ Safety concerns, sadly, have never been a priority, and one wonders how probes being ordered after tragedies help the cause if corrective steps are never given the importance they deserve. The authorities must realise that compensation can never compensate for precious lives lost. There has to be a focus on safety measures.

BALASUBRAMANIAM PAVANI,
Secunderabad

Bravo!

The decision by legendary Caribbean cricketer Dwayne Bravo to hang up his boots as far as international cricket is concerned is sure to create a vacuum in Caribbean cricket. It could well have been the last World Cup game in West Indies colours for Chris Gayle too. Both took West Indian cricket to great heights after the Clive Lloyd-era. Apart from their cricket, one is sure to miss the conspicuous calmness of Gayle and the Calypso dance of Bravo.

K. PRADEEP,
Chennai

CORRECTIONS & CLARIFICATIONS:

In the Explainer on Vanniyar quota ("Reservation on quota", FAQ page, Nov. 7, 2021), the sentence that read, "The DNC sub-division was to have 7%..." should have read as: "The MBC/DNC sub-division was to have 7% for DNCs and a section of MBCs, while the remaining 2.5% was meant for the rest of the MBCs." In the last paragraph, in the reference to Backward Class (Muslim) quota, the percentage should have been 3.5% and not 2.5% as published.

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