



THE DISQUALIFICATION CONUNDRUM



For the right of dissent: Congress party activists hold placards at a silent protest in support of Rahul Gandhi in Mumbai on March 26. AP

Former Congress President Rahul Gandhi's removal from Parliament has raised some legal questions about the immediate loss of membership from the Lok Sabha on conviction of a crime which attracts a prison term of two years or more

The disqualification of Rahul Gandhi from his membership of the Lok Sabha, which also means that he is not qualified to enter an electoral contest for a period that may potentially run up to eight years, has set off a debate on whether criminal conviction should entail immediate loss of a serving legislator's membership. A petition has already been filed questioning the relevant provision in the Representation of the People Act, 1951, that prescribes disqualification on conviction for crimes that attract a prison term of two years and more.

Past protection

There is considerable discussion now as to whether the earlier protection enjoyed by serving legislators from immediate disqualification must be restored. Section 8(4) of the RPA, 1951, was struck down in 2013 by the Supreme Court in a landmark verdict in Lily Thomas versus Union of India. Soon after the judgment, the then UPA regime sought to bring an ordinance to restore the legal position in favour of sitting MP's, MLA's and MLC's. However, it ran into political opposition as detractors said it was aimed at protecting UPA leaders such as Lalu Prasad Yadav from disqualification on conviction for corruption. Many have highlighted the fact that Mr. Gandhi himself was one of those critics; he famously tore up a copy of the draft ordinance to display his opposition to the move, which he considered to be an attempt to shield the corrupt. However, it is a moot question whether the ordinance or the Act that may have replaced it later would have survived judicial scrutiny.

This is because Section 8(4) of the Act was declared unconstitutional on the ground that Parliament lacked the legislative competence to enact it. The apex Court had cited Article 102 of the Constitution (and Article 191, the corresponding article for State Assembly and Legislative Council members) to lay down that Parliament was mandated to enact a common law prescribing what sort of situation would disqualify a person for both 'being chosen as' and 'being a member' of Parliament. Sub-section (4) of Section 8 said the disqualification will not take effect for three months for anyone who is an MP or an MLA on the date of conviction, and if during that period, an appeal is filed, the mere fact of filing the appeal will operate as a stay on disqualification until its disposal. The Court ruled that Parliament was not competent to have separate provisions for these two situations, as the constitutional mandate was to enact a single law. By creating one provision for the immediate disqualification of ordinary citizens and another one for deferred disqualification of legislators, Parliament had violated the constitutional mandate.

The contrary view

During the hearing, the government defended the protection clause for sitting lawmakers with two arguments, the first of which was based on practical

considerations. It contended that a regime may be surviving on a wafer-thin majority, and immediate disqualification of a member or two from the date of conviction may result in loss of majority and change of regime. It was necessary for the purposes of democracy to prevent the situation.

The second consideration was that immediate disqualification may entail the conduct of a by-election. In the event of the conviction being set aside by an appellate court after a while, the by-election's outcome cannot be reversed, and the exonerated former member will have no legal recourse for restoration of membership.

The second argument was on legal grounds: the government submitted that Parliament was not really making two different provisions concerning disqualification while enacting Section 8. What the protection clause envisaged was mere postponement of the time from which the disqualification comes into effect in case of serving legislators. It did not mean that lawmakers were subject to a different kind of disqualification for 'being chosen as' and 'being members'. The Supreme Court rejected these arguments. It went on to hold that the remedy for someone suffering immediate disqualification was to file an appeal and seek a stay on conviction. It clarified that the disqualification will cease to operate from the date of stay of conviction by an appellate court. This has given rise to a different question altogether, one that may be relevant today in respect of those suffering disqualification as on date.

The relevancy of the date of stay

In most cases, there is no stay of conviction, as the Supreme Court has often said only suspension of sentence and grant of bail, pending appeal, were normal remedies, and stay of conviction should be given only rarely. The examples of political leaders who lost their membership of the legislature and went on to either succeed or lose in their appeal did not create any major controversy. For instance, the late J. Jayalithaa, whose conviction for corruption resulted in loss of her office and membership in 2014, failed to get any stay of conviction. Therefore, a by-election was held after her seat was declared vacant. She succeeded in appeal before the Karnataka High Court and had to re-enter the Assembly and regain her office as Chief Minister only through a by-election.

However, Lakshadweep MP Mohammed Faizal, who was convicted and sentenced to a 10-year prison term in January, managed to get a stay of conviction from the Kerala High Court. However, by then, the Lok Sabha secretariat had notified that his seat was vacant. The Election Commission even fixed a date for the by-election, but when he challenged this in the Supreme Court, the Commission said it would honour the court's stay order. Yet, Mr. Faizal's Lok Sabha membership is yet to be restored. The probable reason is that the date of conviction is the date on which the disqualification comes into effect, but the stay of conviction operates only from the day the stay is granted. This means that during the intervening period, the member did suffer disqualification. Therefore, can the membership be restored or restituted with retrospective effect from the date of conviction?

Possible solutions

A simple way out is that the secretariat of the respective Houses should give effect to the order of stay on conviction fully, by restoring the legislator's membership without further ado, until the appeal is disposed of.

Another step that can be adopted as a matter of practice is for the secretariat to wait until the convicted member approaches higher courts for stay of conviction, and notify a vacancy only if the application is rejected.

However, there may be some scope for the Supreme Court to re-examine some of the issues involved. Mr. Faizal's case provides an opportunity to decide whether the legislative secretariat should wait for an appellate remedy before declaring a seat vacant.

The issue of whether the President, or Governor in the case of State legislators, should formally declare a person disqualified as required under Article 103 and Article 192 instead of using the 'automatic' disqualification route is also open.

NEPAL ON HIGH ALERT AS INDIA SAYS AMRITPAL CROSSED BORDER



Supporters of 'Waris Punjab De' chief Amritpal Singh stage a protest at the Golden Temple on Monday. AFP

Delhi informs Kathmandu that the absconding pro-Khalistan group leader could be trying to escape through the neighbouring country; Nepal police sends a team to border-crossing areas

Nepal on Monday put out a high alert on the possibility of wanted pro-Khalistani group chief Amritpal Singh entering the country over the land border, in response to a special request from India.

In its letter, the Indian Embassy in Kathmandu "informed" the Nepal Ministry of Foreign Affairs that Amritpal Singh, the leader of the separatist group Waris Punjab De, is on a "Look Out Circular" in India, and is at present believed to be hiding in Nepal and could use his Indian passport or that of another country to escape through Nepal. The letter, a copy of which was seen by The Hindu, has reportedly been circulated to all government departments concerned and other authorities.

Describing Amritpal Singh's physical features and enclosing recent photographs, the Embassy asked Nepali authorities not to permit him to travel through the country, and to inform immigration officials if they apprehend him. Nepali newspapers quoted senior officials as saying that a team from Nepali police's Special Bureau and Intelligence Bureau have been dispatched to the border crossing areas between the countries.

"We have received a written note along with a copy of his passport from the [Indian] embassy suspecting that Amritpal Singh might have entered Nepal," said Kamal Prasad Pandey, the Nepali Immigration Department's Information Officer. The MEA did not confirm sending the letter and declined to comment on the request to Nepal for action against Mr. Singh in case he is apprehended there.

SEBI SET TO REGULATE INDEX PROVIDERS

The government has squarely put the onus of regulating the practices of market index providers on the Securities Exchange Board of India (SEBI), amid concerns about the safety of passive investors' savings parked in funds linked to indices that have added or retained several Adani group stocks, despite their meltdown following the release of the Hindenburg Research report.

"The Parliament has entrusted SEBI with protecting investor interests, so it must do whatever it takes to meet that mandate and is moving to regulate index providers," a senior government official told The Hindu. "The government nominees on its board will place our concerns and views about regulating indices, but we cannot second-guess the regulator or intervene if some indices' reconstitution or other such issues crop up," the official added.

Wednesday meeting

SEBI, whose board will meet on Wednesday, had stressed the need for greater oversight on currently unregulated index providers like NSE Indices (a National Stock Exchange subsidiary) and the Asia Index Pvt. Ltd. (a BSE joint venture with Dow Jones), citing their growing dominance due to the "proliferation" of index funds.

A draft regulatory framework for index providers mooted by the market watchdog in December had raised concerns about possible conflicts of interest that could arise in their governance.

These firms could "exercise discretion through changes in methodology resulting in exclusion or inclusion of a stock in the index or change in the weights of the constituent stocks" and their decisions can impact the volumes, liquidity and price of such stocks, as well as investors' returns from index funds, the market watchdog had cautioned.

Ambit widens

Markets watchdog had put out a draft regulatory framework for index providers in December

- SEBI sees need for greater oversight of currently unregulated providers
- Need for regulatory oversight felt due to growing dominance of such providers amid 'proliferation' of index funds
- SEBI believes index firms can 'exercise discretion' resulting in exclusion/inclusion of a stock from an index, and impact investor returns



Govt. puts onus of regulating index providers on SEBI, amid concerns about the safety of investors' savings parked in funds linked to indices that have added or retained several Adani group stocks, despite their recent meltdown

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HDFC GETS NOD TO RAISE ₹57,000 CRORE VIA NCDS



Mortgage lender HDFC Ltd. on Monday said its board has approved raising funds through non-convertible debentures (NCDs) in tranches aggregating to ₹57,000 crore.

The board has cleared issuance of unsecured, redeemable, non-convertible debentures under a Shelf Placement Memorandum, aggregating ₹57,000 crore, in various tranches, on a private placement basis, HDFC said in a filing.

This is in accordance with the approval granted by the shareholders of the HDFC at the 45th AGM held on June 30, 2022, it said. Besides, "the board has approved increase in the overall borrowing powers of the corporation from ₹6 lakh crore to ₹6.50 lakh crore, outstanding at any point of time and recommended the same for approval of the members of the corporation by way of postal ballot," HDFC said.

The decision was taken since the outstanding borrowings of HDFC as on date is approximately ₹5.70 lakh crore and it would need to borrow further for its business purposes till the effective date of merger.

FM SAYS 54 CHINA FDI PROPOSALS PENDING

As many as 54 foreign direct investment (FDI) proposals pertaining to investors or beneficial owners from China and Hong Kong are pending decision with the government, Finance Minister Nirmala Sitharaman told the Lok Sabha.

She also said there was no proposal to ease the restrictions on foreign investments from entities of countries which share a land border with India.

As per the amended FDI policy, such entities "or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the government route."

Also, a transfer of FDI ownership in an Indian entity, resulting in the beneficial ownership falling within the aforesaid jurisdiction(s), will also require Centre's approval, she said.



Nirmala Sitharaman

CHINA'S INDUSTRIAL PROFITS SLUMP AS COVID PAIN LINGERS



Profits at industrial firms in China declined 22.9% in the first two months of 2023 from the year before, official data showed on Monday, as the factory sector struggles to claw its way out of the slump caused by COVID-related disruptions.

The contraction followed a 4% fall in industrial profits for the whole of 2022, data from the National Bureau of Statistics (NBS) showed, pointing to a downbeat start to the year for factories at large.

Industrial profit numbers cover firms with annual revenues of at least 20 million yuan (\$2.91 million) from their main operations. The Monday data follows a flurry of economic indicators that show an uneven road to recovery from a bruising three-year battle against the pandemic.

Factory output growth accelerated to 2.4% in January-February, data showed earlier this month.

While retail sales swung back to growth, property investment continued to decline despite robust government support aimed at reviving the ailing housing market. Beijing is seeking to get the economy back on a recovery track and set a modest growth target of 5% for this year at this month's annual parliamentary gathering.

China's central bank this month unexpectedly cut the amount of cash that banks must hold as reserves for the first time this year to help support the economic recovery. Combined January and February data are published for most economic indicators to flatten out distortions from the shifting timing of the Lunar New Year.

PPF, SUKANYA SAMRIDDHI INTEREST RATE HIKE UNLIKELY

Investors in the popular small saving schemes Public Provident Fund (PPF) and Sukanya Samriddhi Account (SSA), whose rates have not been hiked since January 2019, are unlikely to get higher returns anytime soon, a top government official has indicated.

This is because the government is no longer in complete agreement with the Shyamala Gopinath Committee formula adopted in April 2016 to reset small savings interest rates every quarter in line with the prevailing yields on government bonds of comparable tenures.

The last time the PPF and SSA interest rates were tweaked was when they were slashed sharply in April 2020.

At the time, the PPF rate was brought down to 7.1% from 7.9%, while the SSA's returns were pared to 7.6%. The returns of these two schemes have remained static even as rates on some other small savings instruments were hiked for the third and fourth quarters of 2022-23.

"We disagree with the Shyamala Gopinath Committee's formula in respect of those items where tax advantage is the main consideration," a senior Finance Ministry official told The Hindu, stressing that incomes from both the PPF and the SSA are tax-free.

The Gopinath panel's formula, he stressed, ignored the fact that the comparable government securities to whose yields small savings rates are linked, are taxable. "People need to take a call on whether they want tax breaks or higher returns. If it's the latter, they can opt for the other small savings

schemes that are taxable," a top government official told The Hindu.

A 10 to 30 basis points (bps) hike was granted for five of 12 small savings schemes for the October-December 2022 quarter, while eight schemes' returns were raised by 20 bps to 110 bps for the current quarter. One basis point equals 0.01%.

As per the formula prescribed by a panel led by former Reserve Bank of India (RBI) Deputy Governor Shyamala Gopinath, the PPF rate should have been hiked to 7.72% and the Sukanya Samriddhi Account's returns ought to have been raised to 8.22% during the October to December quarter.

Yields on government bonds have not changed significantly over recent months and a similar hike may be deduced from the formula for the coming April to June 2023 quarter, whose rates will be announced this week. But except for political economy considerations that may come into play, hikes are unlikely for these two schemes.

"Almost all the investors in these two schemes are taxpayers and the tax-adjusted yield is much higher than the 7.1% paid out on PPF. For those in the highest income tax bracket of around 39%, the return is roughly 11.6%," the official pointed out.

"Even if you're in the 20% income tax slab, the returns on PPF and SSA are much higher than any comparable investment. So we are giving more than that margin through the tax benefit, that's why we are neither raising these schemes' rates, nor are we inclined to do so," the official stressed.

DWINDLING ALLIES

Taiwan is facing pressure as China's relations with the U.S. deteriorate

By formally establishing diplomatic relations with China on March 26, 2023, Honduras has joined a growing list of countries that have recently switched recognition from Taipei to Beijing. Taiwan now has only 12 countries, besides the Vatican, with which it has diplomatic ties, including four small Pacific island nations, Eswatini in southern Africa, Paraguay, and six central American and Caribbean nations. Chinese Foreign Minister Qin Gang, who signed the communiqué with his Honduran counterpart Eduardo Reina, said it showed Honduras made "a choice to stand on the right side of history...". Taiwan has accused Honduras of seeking financial assistance as a precondition to continue relations, and President Tsai Ing-wen said, after the switch, that Taiwan "will not engage in a meaningless contest of dollar diplomacy with China". She also accused China of "persistently [using] any and all means to suppress Taiwan's international participation, intensify its military intimidations... and disrupt regional peace".

The switch by Honduras, as well as Taiwan's concerns about its shrinking international space, point to the growing stress on the current status quo across the Taiwan Strait. The status quo has generally served both sides across the strait well, preserving peace against tall odds. In Taiwan, a thriving

democracy with a highly developed economy, the status quo remains the popular choice for most people, according to numerous public opinion surveys. A minority support Taiwan declaring independence or unification with China. However, both Beijing and Taipei have been accusing the other of changing this status quo. In Taipei's view, Beijing has exerted growing diplomatic pressure to isolate Taiwan as well as stepped up military muscle-flexing, as seen in exercises that surrounded the island last year following the visit of then U.S. House Speaker Nancy Pelosi. In Beijing's view, the ruling DPP in Taipei, with the support of Washington, bears responsibility for the tensions by pursuing de facto independence. Beijing had warmer relations with the previous KMT regime, with a landmark meeting between leaders Xi Jinping and Ma Ying-jeou in 2015. The Xi government has warned the U.S. that Taiwan remains a red line for China, but with worsening relations between the two countries, Taiwan has yet again emerged as a friction point, as seen by the Pelosi visit last year. Beijing continues to refuse to rule out the use of force for what it calls reunification, should Washington or Taipei cross what it sees as a red line. The tussle between the world's two biggest powers has left the 23 million people of a vibrant and prosperous island caught in the middle.

HIGH COURT SEEKS ChatGPT's RESPONSE ON BAIL PLEA

As the usage of Artificial Intelligence (AI) continues to grow globally, the Punjab and Haryana High Court, in a first-of-its-kind attempt, sought a response from ChatGPT — an AI chatbot — to assess the worldwide view on bail when the assault was laced with "cruelty".

The court, however, made it clear that the AI reference in the matter is only intended to present a broader picture on bail jurisprudence, where cruelty is a factor. Justice Anoop Chitkara, in the order, made it abundantly clear that any reference to ChatGPT and any observation made is neither an expression of opinion on the merits of the case nor shall the trial court advert to these comments.

The case pertained to the alleged murder of Ramandeep Singh in Ludhiana district in 2020. The accused had approached the court for bail. Justice Chitkara, while dismissing the bail plea, observed that causing death is cruel but if the cruelty causes death, the tables turn and when the physical assault is done with an element of cruelty, the parameters of bail change. "When the offence is heinous and the crime is brutal, cruelty becomes one of

the factors in granting or refusing bail. The impact of individuals who act with cruelty is devastating not only for those on whom the direct harm and pain is inflicted but also on a systemic level. Cruel individuals contribute to sustain the greater deficiencies of society like gender, economic and social inequalities..." The question put forth to ChatGPT was, "What is the jurisprudence on bail when the assailants assaulted with cruelty?"

ChatGPT responded: "The jurisprudence on bail for cases where the assailants have assaulted with cruelty will depend on the specific circumstances of the case and the laws and regulations of the jurisdiction where the case is being tried. However, in general, if the assailants have been charged with a violent crime that involves cruelty, such as murder, aggravated assault, or torture, they may be considered a danger to the community and a flight risk. In such cases, the judge may be less inclined to grant bail or may set the bail amount very high to ensure that the defendant appears in court and does not pose a risk to public safety."

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BORROWERS SHOULD BE HEARD BEFORE ACCOUNTS ARE CLASSIFIED AS FRAUD: SC

The Supreme Court on Monday held that borrowers must be given an opportunity to be heard before their accounts are classified as fraud.

A Bench led by Chief Justice of India D.Y. Chandrachud said the civil consequences of an account being declared as fraud under the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016, or the central bank's 'Master Directions on Fraud' amount to "civil death" to borrowers. The principle of natural justice — 'audi alteram partem' (hear the other side) — demands that borrowers should be given a chance to be heard first.

"Since the classification of an account as fraud entails serious civil

consequences for the borrower, the Directions must be construed reasonably by reading into them the requirement of observing the principles of natural justice," the CJI held.

HC's view

The judgment came in appeals filed by the Reserve Bank and other banks against a Telangana High Court decision that the principles of natural justice must be read into the provisions of the Master Directions on Frauds.

"Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower...", the apex court said.

'PREPARED TO DEAL WITH ANY SITUATION ALONG LAC'

Chief of the Army Staff General Manoj Pande on Monday said transgressions remain the potential trigger for escalations along the Line of Actual Control with China, and asserted India has adequate reserves and was prepared to deal with any contingency.

He said China has accrued significant capacities for force mobilisation, application, and sustenance of military operations and maintained the long-pending boundary issue cannot be divorced from bilateral relations.

General Pande said Chinese attempts to carry out transgressions across the LAC remain a matter of concern for India, but the Army's preparedness remains of a high order.

S&P EXPECTS RBI TO INCREASE RATES THAT ARE 'ALREADY HIGH'

S&P Global Ratings on Monday retained its 2023-24 GDP growth projection for India at 6%, but revised China's growth projection for calendar year 2023 to 5.5% from 4.8% and said this will help other economies in the Asia-Pacific region "dampen but not offset" the effects of slower growth in the U.S. and EU. The rating major said it expects the Reserve Bank of India to raise "its already high" policy rates further due to a recent upside surprise on inflation. The RBI's Monetary Policy Committee will convene on April 3 to review its stance amid calls from industry to pause rate hikes.

While India's economy is traditionally driven by domestic demand, S&P Global averred it had become more sensitive to the global cycle lately, "in part due to rising commodity exports; and its year-on-year GDP growth slowed to 4.4% in the fourth quarter [of calendar year 2022]".

The firm also flagged that "COVID-induced output losses in emerging market economies are likely to be permanent" with large gaps in market economies, particularly in India, the Philippines and Thailand", when one compares "actual GDP in 2022 with the size of the economy along the trajectory for current estimates of trend growth since 2019".

"India's Consumer Price Index (CPI) inflation should moderate to 5% [from an average of 6.8% in 2022-23] in fiscal year 2024 (2023-24) but we also anticipate upside risks, including from weather-related factors," the firm said in a research note.

GOLDEN FIST

Indian women boxers, with their gold haul, should inspire others

Indian women boxers collected four gold medals — like their predecessors in 2006, M.C. Mary Kom, Sarita Devi, K.C. Lekha and R.L. Jenny — in the Delhi World championships to make an emphatic statement ahead of the Hangzhou Asian Games, a qualifying event for the 2024 Paris Olympics. Seventeen years ago, when India recorded its best ever showing of four golds, one silver and three bronzes, the event was still young and women's boxing was six years away from making its Olympics debut. The current performance of four golds, when the sport is in the Olympics and the event receiving 300-plus entries from 65 countries (this despite the boycott by some prominent nations as Russian and Belarusian athletes were participating under their flags amid the Ukraine war) is remarkable as it has propelled the third-time host to top the table. Golden girls Nitu Ghanghas (48kg), Nikhat Zareen (50kg), Lovlina Borgohain (75kg) and Saweety Boora (81kg) had different accomplishments but needed to prove themselves again. Nitu, a Commonwealth Games gold medallist, was keen on making a mark at the elite level. Nikhat, the 52kg World champion, who came down to an Olympic weight and was unseeded, had to face six tough opponents and assert herself in the new class to become the second Indian after Mary to win more than one World title. Olympic medallist Lovlina, also a two-time World bronze

medallist, was determined to establish herself in a new Olympic weight. Thirty-year-old Saweety, a 2014 World silver medal, wanted to underscore that she was no less. Some exciting talents that included 19-year-old Preeti Sai Pawar (54kg) and Jaismine Lamboria (60kg), impressed everyone. With multiple boxers vying for each spot, the coaches face a 'good problem' in the build-up to the Olympics.

The event, demonstrating the competitiveness and appeal of women's boxing, should encourage the International Boxing Association (IBA), which is in conflict with the International Olympic Committee due to its exclusion from the Olympics over various issues. The IBA, monitored on site by an independent McLaren team, tried to ensure transparency and fairness. It took action against below-par match officials and athletes who seemingly enjoyed an unfair advantage. It offered a lucrative prize purse, including \$100,000 to each winner, and financial support to boxers as an incentive to boost participation. The successful conduct of the event, barring the odd blip, has encouraged the IBA to look at India, a potential market, as a boxing destination. Eyeing a better performance in the Olympics, the Boxing Federation of India's desire to stage more elite events will inspire the boxing community further.

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NEPAL, A CRUCIBLE OF FRAGILE COALITIONS

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In a short span of time since being in power from December 25, 2022, Nepal Prime Minister Pushpa Kamal Dahal 'Prachanda', supremo of the Maoist Centre (MC), has had to face a vote of confidence twice — on January 10, 2023 and again on March 20. Though it would seem unusual, it is not an unexpected happening given the state of disarray contemporary Nepali politics is in after the general election in November 2022.

As in the earlier three general elections, the November 2022 election too resulted in a hung Parliament, where the Nepali Congress (NC), the Unified Marxist-Leninist (UML) and the MC were placed first, second and third, respectively, in the House of Representatives. The smaller parties and independents have a combined strength of 76 seats.

The NC-led five-party ruling alliance (formed in July 2021 with the aim of checking the rise of K.P. Oli and his party, the UML) consolidated further with a pre-poll alliance, thus gaining in the elections in two ways. This camp scored a majority, falling short by only two seats, in the 275-member House; the net result is that each of the alliance partners gained more than what they could have achieved in their individual capacity. But when this alliance was about to form a government, things crumbled, which was not unexpected.

In the first instance, Sher Bahadur Deuba, President of the NC, did not keep his word in giving 'Prachanda' prominence as head of the post-election government. He relied on Mr. Oli's false assurance to back the NC's plan B, i.e., invoke Article 76(3) of the Constitution that has a provision for the formation of a minority government by the largest party in Parliament.

In the second instance, 'Prachanda' has a track record of being a leader who shifts stands for the sake of power, an example being his move from being a lead actor of a radical/progressive/pro-identity group to admission into the NC-UML-led conservative camp in 2015, at a critical time of Constitution making. There was also a break up of the alliance with the UML in 2016, and again in 2021 (after sensing that Mr. Oli was not honouring an agreement to hand over premiership in his favour) to team up with the NC. There was also a pre-poll alliance with the UML in the 2017 general election despite his party finding a place in the Deuba-led cabinet.

The ambition of 'Prachanda' to become the first Prime Minister in a power-sharing arrangement by rotation of premiership was fulfilled by the UML; consequently, a new seven-party coalition government was formed. This lasted for only two months, which was not unexpected because of the incompatibility within the Prachanda-Oli team.

An ambitious 'Prachanda' had to govern under the shadow of a hawkish Mr. Oli, whose will prevailed in even the distribution of cabinet portfolios (the Prime Minister's party did not get strategic portfolios such as home, finance, and foreign affairs). The UML, with 78 seats in the House, dominated the MC with 32 seats. Fringe coalition partners took sides with Mr. Oli. Surrounded by UML-men in strategic posts such as speaker of the House, chair of the National Assembly, chief justice of the Supreme Court, and even the heads of all 12 constitutional commissions (auxiliary government), Prime Minister 'Prachanda' was close to being a toothless tiger. To counter the UML's high-handedness in state affairs, 'Prachanda' used the election of President to escape, for which he had to breach an earlier agreement to support the UML's candidate.

In a confidence vote in support of 'Prachanda' on January 10, 2023, the NC indicated that it was aligned with the MC's game-plan which, in retrospective, was the first step in damage control, kept it out of power despite being the largest party in the federal Parliament and also with four out of seven provincial

Assemblies.

Politics and the President

The post of the President of the republic of Nepal has transformed itself to become lucrative. Both Ram Baran Yadav, the first President and former General Secretary of the NC, and his successor, Vidya Devi Bhandari, the former Vice-Chair of the UML, enjoyed power beyond the ceremonial role assigned to the head of state in a parliamentary democracy. There is much evidence to show the President blocking Cabinet decisions on account of the Prime Minister being from a different political affiliation.

'Prachanda' wanted to retain a seven-party coalition government while choosing a person of his choice for presidency — which eventually went to the NC leader, Ram Chandra Poudel. But by withdrawing from the government on February 27, 2023, the UML was seen to have overreacted, paving the way for a change in political equations.

There is also another factor. Nepal's power politics are not free from the influence of geo-politics. China's intent is to ensure the return of a Left alliance/government in Nepal so that the Himalayan state moves from a network under the Belt and Road Initiative to become a part of the Global Security Initiative (that was put forth by Chinese President Xi Jinping). The United States and India are aware of the impact of such a possibility in the Asia-Pacific Strategy. It is with reason that a number of high-ranking U.S. officials have been visiting Nepal. The visit by India's Foreign Secretary V.M. Kwatra to Nepal in the second week of March 2023 has had an impact as well.

Short-lived governments

A 'Prachanda'-led 10-party ruling coalition is in the making. But the question will arise about its survival and longevity. Here, a statement by 'Prachanda' about facing a confidence vote for the second time is noteworthy. When UML lawmakers felt that 'Prachanda' might need to face another confidence vote within the next two months, Mr. Oli said, "We have not promised to never cooperate with the NC." In response, 'Prachanda', while recalling his contributions in making Mr. Oli the Prime Minister twice (in November 2015 and February 2018), and Mr. Oli's support for his election as the Prime Minister in December 2022, said it was the UML that needed to be reminded of reciprocity one more time in the future.

This highlights Nepal's past experiences and experiments. No government formed since the dawn of democracy in Nepal, in 1951, has survived its full term. Even the one-party majority government lasted for 18 months in 1959-1960, and for three years in 1991-1994 and 1999-2002. It has been bad in the case of coalition governments, especially the ones led by the third largest party. It is no exaggeration to say that the average life of a coalition government in Nepal is nine months, and a 'Prachanda'-led coalition government is unlikely to be an exception.

For the sake of a stable government, the architect of the new Constitution in 2015 worked on making a no-confidence motion a complex and complicated process. It could not be entertained in the first two years of the government formation (if it happens any time after two years of rule but fails to endorse such a motion, it cannot be rejuvenated for the next one year. This increases to another one year if there is a failure of such a motion). To do justice to this provision, it is sensible to amend the Constitution to ensure that the Prime Minister of a coalition government should be from the party with the largest number of seats among the alliance partners, in Parliament.

THIS HELICOPTER PROGRAMME CANNOT GO INTO A TAILSPIN

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The chequered history of India's indigenous Advanced Light Helicopter (ALH-Dhruv) touched a low when a Dhruv (IN-709) in the Indian Navy's newly-acquired fleet of ALH Mk-III MRs was in the news on March 8, 2023. The 'maritime role' (MR) helicopter, which was on a routine flight, reportedly experienced a "sudden loss of power and rapid loss of height" close to the coast of Mumbai in the forenoon. The three member crew managed to carry out an unplanned ditching (a forced or precautionary landing on water), exited the craft and were recovered safely.

This is the first accident involving the Indian Navy's ALH fleet since the Intensive Flying and Trials Unit (IFTU) was set up at the Indian Navy air station, INS Garuda, in Kochi, Kerala, in 2003. While there have been about 17 major

accidents involving the ALH being used in other services, the Indian Navy and the Indian Coast Guard have managed to keep their slate clean till this year. However, there was another incident, on March 26, when an Indian Coast Guard ALH Mk-III MR (CG-855) on a test flight, crashed at Cochin International Airport soon after takeoff from the Coast Guard base at the airport.

What caused a brand-new helicopter with less than 600 hours of flight to force land into the sea off Mumbai is now under investigation by a naval board of inquiry. According to reports, members from the Indian Army and the Indian Air Force are also a part of the team.

If one correlates the Indian Navy's statement with available footage, it is evident that the ditching went off well. Initial reports and pictures show the

helicopter floating upright using emergency floats that performed their intended purpose. Rescue teams reached the spot without delay and salvage teams used additional floats to enhance the helicopter's buoyancy. Floating cranes lifted the copter in a clean manner and it was brought ashore. The safe outcome indicates good returns on the investments made in modern survival aids, crew training, search and rescue, and crash and salvage operations. All ALH pilots in the Indian armed forces undergo rigorous training in flight simulators.

The Indian Navy and the Indian Coast Guard suspended their ALH operations soon after. Within two days of the accident, the entire ALH fleet across the services was grounded for essential safety checks — an indication that the Indian Navy may have found evidence of a potentially serious failure that could affect all marks of the ALH (the major variants, according to its manufacturer Hindustan Aeronautics Limited (HAL), are Dhruv Mk-I, Mk-II, Mk-III and Mk-IV). Such a grounding for one-time checks usually follows in the wake of major accidents; it is due to technical reasons and should not be seen as cause for alarm.

The crash at Kochi happened at a time when the services had just begun clearing batches of helicopters to fly. Video footage from Kochi shows the helicopter turning in circles soon after lift-off before crashing onto the runway shoulders. CG-855 is among the first of the 16 Mk-IIIIMR inducted by the Coast Guard over the last two years. This accident is likely to impact the span and the duration of the ongoing grounding exercise, one of the longest in recent times.

Focus on possible flaws

Globally, most air accidents (over 80%) are on account of human error. However, some failures are 'one too many' — untenable for a certified helicopter. The ALH fleet has had major accidents that have been caused or attributed to critical failure or breakage in the flight control chain. Such failures will almost always be catastrophic. Certification thus requires a level of reliability and redundancy of

these systems to preclude a major failure in the entire lifespan of the fleet. Yet, there have been at least four or five reported cases of a sudden loss of control on the ALH due to breakages in flight control rods (also called 'boosters') that provide longitudinal, lateral and collective control.

The ditching in Mumbai indicates that not enough has been done to fix serious flaws. It is understood that the regulatory body, the Centre for Military Airworthiness and Certification (CEMILAC), in Bengaluru, has taken a serious view of the Mumbai accident and the control failures on the ALH.

There is a lot at stake

In the inter-service jostling to meet ambitious 'Atmanirbhar Bharat' targets, no side can afford to lose focus on safety. Both IN-709 and CG-855 are brand new helicopters, each having flown less than 600 to 800 hours. The fleet cannot remain grounded for long as these helicopters are a lifeline to defence personnel in many remote defence posts; these will now have to be serviced by an ageing Chetak/Cheetah fleet. Two accidents in three weeks does not augur well for any side, given that HAL is, by all indications, becoming the one-stop-shop to meet all helicopter needs of the services.

If not fixed in time, possible flaws in design, production, quality control or certification will also impact the civil and export potential of the ALH. It makes eminent sense for all stakeholders to work on a war footing to address design and production failures. There is much more at stake than reputation such as the safety and longevity of all subsequent derivatives (the Light Utility Helicopter, the Light Combat Helicopter, and the Indian Multirole Helicopter) for instance. More than 300 of these machines form the backbone of the vertical lift service in the Indian military. And the customers have nowhere else to go. There has to be quick action.



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