

Tribute to Kargil martyrs

In the Kargil war, 527 brave soldiers of our army had laid down their lives so that our motherland and her people live a life of honour, dignity and freedom. On July 25, the nation paid tribute to them on the 14th Vijay Diwas at Drass, Udhampur and several other places across the country. The occasion inspired the entire nation with a sense of pride and sacrifice for the country.

Despite vehement denials by Pakistani official sources, it became increasingly impossible for them to hide the truth that the Kargil attack was conspired by their agencies. Pakistani Army Generals had most secretly planned the Kargil attack without taking the civilian Government or the Pakistani Air Force and Naval Chiefs into confidence. Planning had been made in advance and taking the advantage of Indian troops having vacated the strategic posts during winter months, something that was a common practice with both sides, nearly 200 Pakistani regulars clad in mujahideen dress were deployed to capture around 140 Indian posts along the Kargil mountain spur of Salto. By the end of April 1999, they had intruded ten miles inside Indian territory in Kargil sector and established their camps. General Pervez Musharraf, Pakistani army chief claims to have visited the newly established camp and spent one night in it.

Soon after getting the wind of Pakistani intrusion in Kargil, Indian Army began its retaliatory action. The enemy was strongly entrenched and had brought sufficient ammunition to hold on to the occupied posts with all tenacity. The Bofors guns deployed by Indian Army relentlessly pounded the enemy and with it Indian soldiers made the charge. For next two weeks our troops could not make much headway owing to the enemy having taken position at some height. But then our gallant soldiers not entertaining an iota of fear made fiercest attacks on the enemy so much so that at some places hand-to-hand fighting ensued. The strategy of the enemy was to cut the Srinagar - Leh route somewhere near Drass and Kargil and thus pave the way for taking Kashmir by force of arms. But contrary to their expectations, Indian Army once again proved far more superior to them. The consequences of Kargil war brought humiliation to Pakistan and her army. Civilian Government led by Mian Nawaz Sharif was ousted and the deep divide between Pakistani army and the civil society came to fore. Pakistan's Kashmir cause was immensely weakened because the entire world came to know that there were no jihadis or so called Kashmiri freedom fighters fighting in Kargil but it were Pakistani regular forces fighting at the command of their seniors in GHQ. Thus today the entire world recognizes Kashmir turmoil as naked terrorism and not at all a freedom fight as was orchestrated by the terrorist leadership. Another important lesson that Pakistan ought to learn from Kargil war is that Indian Army and policy planners cannot be hoodwinked by them in any case and more particularly in the case of Kashmir. J&K is integral to the Indian Union and soldiers including those from J&K have shed their blood in defence of integrity and solidarity of the country. No power on earth can take Kashmir away from India. It is so because the people of Kashmir have legally, formally and without pressure from anybody voluntarily acceded to the Indian Union. It is the duty of the Indian Union to maintain its territorial integrity.

No army in the world is more disciplined than our Army. It has an enviable record of performing its duty with dedication and honesty. Thousands of Indian soldiers and officers have laid down their lives while fighting terrorism, separatism and conservatism in Kashmir. The only dispute about Kashmir is that the part of the State illegally occupied by Pakistan and China has to be taken back as stated in Parliament resolution on 22 February, 1994. We salute the martyrs of Kargil war. Their memory is our cherished treasure and we shall keep it for all times to come.

Another feather in INSAT's hat

The country will rightfully boast of another conspicuous success in the area of space science explorations. India National Satellite System (INSAT-3D) has been successfully launched from the spaceport of Koron in French Guiana. This is an advanced version of the payloads with the new dimension of weather monitoring.

Weather monitoring is of much importance to our country because India is mostly an agricultural country where weather condition is closely connected to material progress. The INSAT-3D has the potential of sending back important and crucial weather data, which would help us in forecasting disasters and search and rescue services. During monsoon season many parts of the country are threatened by floods and storms, which cause much damage and destruction of life and property. As per reports the INSAT-3D is equipped with newly developed atmospheric sounding system helping in monitoring the profile of temperature, humidity and integrated ozone from surface to top of the atmosphere.

It is heartening that our country is keeping pace with the advanced countries of the world that are exploring the space for services that fully support development on earth without endangering the elements. Our scientists and technocrats have proved more than once that given work culture conducive to research studies they can exhibit potential of doing big things. Gradually and steadily India is building her image as a country, which wants development through the support of modern science and technology. Our own scientists have carried on space explorations indigenously. We are expecting richer and more useful explorations by them in due course of time.

Strengthening judiciary

Arun Jaitley

In the past the world has witnessed a large number of countries where democracies have collapsed. In recent years there have been positive movements for restoration of democracy in several nations. India presents to the world an example where despite cynicism, poverty and being a developing economy, we have continued to strengthen each of our democratic institutions. We have an independent Election Commission, an independent and strong judiciary, a professional military and a strong and vibrant media, a powerful civil society and vibrant multi-party democracy with a strong parliamentary institution.

When I analyse the history of India's Judicial institutions, I find satisfaction in the fact that it has immense credibility and has stood the test of times. It has upheld the constitutional values, strengthened the fundamental rights and acted as an adjudicator in disputes between citizen and citizen on one hand and the citizen and the State on the other. Its decisions are widely respected. Historically, individuals who man this institution have been men of credibility whose decisions are well regarded by the society. As someone who is committed to judicial independence and with my experience at the Bar, in the government and in Parliament, I set upon the task of introspecting where the institution stands today. I flag the following subjects with the intention of strengthening the judicial institution.

The Judiciary

The judiciary is failing to attract the best available talent. In the post liberalization scenario, when commercial litigation has increased manifold, the incomes of lawyers have increased substantially, the best at the Bar are reluctant to take up career as judges. They find the service conditions relatively modest and are not willing to regard assignment as judges as a part of national duty. I do believe that there is a need to substantially improve the service conditions of the judicial officers and judges at all levels. The service conditions should be able to attract the best talent. Awareness needs to be created amongst the members of the Bar that the system needs the best to be elevated as judges.

Appointments

We have gone through an evolution in the appointment process of judges. We started off with a statutory process where the Chief Justice of India recommended the names to the Government for elevation in the High Courts and the Supreme Court and the Government ordinarily accepted the

recommendation. The 1982 Judgement of the Supreme Court categorically gave primacy to the word of the Executive and their view started prevailing. With the backdrop of the 1973 supersessions and the 1975 transfers of inconvenient judges during Emergency, the government began to assert itself in the 1980s. This decade witnessed politicization in the matter of appointment of judges. The 1993 judgement of the Supreme Court was a reaction against this politicization. The consultation with the Chief Justice of India soon became a binding advice of the Chief Justice. The Chief Justice became the key individual in the matter of appointment of judges. What if the CJI did not exercise the power judiciously? The 1998 reference shifted the eventual authority to collegiums created in the High Courts and the Supreme Court. That is the system under which we function.

The collegium system is certainly superior to the system where the Executive had the last word. We should never consider going back to the age of Executive primacy but I do believe that the collegium system has failed to select the very best and select them expeditiously. At any given point of time a very large number of vacancies in the High Courts remain unfilled. This is contributing to the pendency of arrears in the High Courts. The collegium system both at the level of High Courts and Supreme Court has several shortcomings. Firstly, there has been a tendency of members of the collegium to promote those who have been close to them. In the High Courts members of the collegium have nudged the cases of their favourites; at times even at the cost of ignoring merits. Secondly, the collegium system is resulting in the art of the possible - by accommodating various members of the collegium, a balancing act is arrived at and a panel of names prepared. Thirdly, in the Supreme Court it has been observed that there is the creation of an unstated institution known as 'The Constituency Judge'. Naturally, judges of the Supreme Court who would be more concerned about the parent High Court to which they belong. Their ability to influence appointments in that High Court is unprecedented. This has resulted in both quicker elevation of some people as also denial of appointments to many of the deserving persons. The denial of elevation or a delay in elevation of those whom the constituency judges did not favour is a reality. This veto has not always been exercised for reasons connected with merit.

I do believe that time has come to re-view the system of collegium as it functions today. I would support the constitution of a National Judicial Commission which should be empowered to deal with appointments and also such disciplinary matters which fell short of the requirements for an impeachment. The National Judicial Commission should comprise of senior judges of the Supreme Court, the Law Minister as a representative of the Executive and some eminent public persons (people with legal background or otherwise) who could be appointed by a collegium comprising the Prime Minister, the Leader of Opposition in the Lok Sabha and the Chief Justice of India. For appointments in the High Court the Chief Minister and the Chief Justice of the High Court could be added.

I am deeply concerned with the fact that in several High Courts appointments have been made where the best had been ignored and underserving have been elevated. The National Judicial Commission will have to follow an objective criteria which is statutorily defined. Judicial officers who are elevated to the High Courts have service records which represents their potential. It is important that such an exercise should be undertaken with regard to Members of the Bar also. The world has been made easier with the advent of the information technology. How many cases a lawyer has argued? How many publications does he have to his credit? What were his academic credentials? How many judgements, in cases that he argued, have been reported? How many juniors has he trained? What is his declared income? After he crosses the threshold on basis of an objective criteria which is in-built in the above mentioned and several other questions it is then for the Commission to judge his temperament, his integrity, his aptitude as a judge. The element of subjectivity needs to be reduced.

Accountability

We are currently following the process of in-house accountability of judges. Judges appoint judges, judges judge judges. The jurisdiction of accountability needs to be shifted to the National Judicial Commission. It is only extreme cases which involve impeachment of an errant Judge the said proceedings will be required to go before the Legislature. Retirement of judges and Post retirement assignment

I am in favour of increasing the retirement age of judges at the level of the Supreme Court and the High Courts. I am, however opposed to the present institution of post retirement jobs to the judges except in very rare cases. The tendency to man

all tribunals and vest certain executive functions to retired judges has created an impression that a large number of judges expect a post retirement assignment almost as a matter of entitlement. Post retirement jobs impinge on the judicial independence. The desire of a post retirement job can influence the pre-retirement judgements. I will refrain from giving examples but at any stage I can assure you that I am aware of many such illustrations. I would recommend that the pension of a retired judge should be equal to his last drawn pay. Once the age of retirement is increased it will be a good case for subsuming the work done by tribunals within the structure of the normal judiciary. Sitting judges are accountable. They have an interest in further enhancement of career. They are accountable to their own institution and even to the Legislature in the event of an impeachment. Retiring judges have no such avenue of accountability.

Separation of Powers

Separation of powers is an important pillar of the Indian Constitutional order. The job of the judicial institutions is to adjudicate issues which arise before it. Law making is a parliamentary function. Governance is an Executive function. Of late, we have witnessed the encroachment on the principle of separation of powers. There are hardly any illustrations where the Executive or the Legislature has encroached on judicial powers. The regrettable truth is otherwise. There has been judicial interference in a case as to how a terrorist hold out should be tackled and how many calories should be fed to the terrorist who attack India's sovereignty. There have been recent adverse comments on economic policy which is a subject purely in Parliamentary or Governmental domain. There has been an adverse judgement on whether citizens can be involved in the battle against Maoism or not. The list of judicial guidelines which substitute the Executive or Legislative powers is increasing.

I am flagging this issue since I do believe that maintaining the balance is in consonance with the constitutional values enshrined by our founding fathers. We cannot afford to tinker with them. Judicial statesmanship and Legislative vision are inherently required for preservation of this balance.

Court monitored investigations

There have been cases of corruption and crime which have shaken the conscience of the Indian society. In some matters the investigative agencies have been reluctant to

undertake an honest and independent investigation. The Supreme Court therefore devised a judicial instrument popularly known as "Continuing Mandamus" or a 'court monitored investigation' which ensures that investigations are undertaken in accordance with law.

Do I support the idea of court monitored investigations? Yes, indeed I do. Investigative agencies have often displayed lack of independence. They are under the control of the governments, be it the Central government or the State governments. Under normal circumstances it is the duty of the investigating agency to undertake investigations. Aggrieved persons, be it the accused or the complainant, can approach the trial court for redressal of the grievances. But there are some cases where absence of fairness is writ large. The nature of the offence is such that it shakes the conscience of the society. It is in such cases that courts direct the investigative agency to act in accordance with law. The courts used their authority under a "continuing Mandamus" to supervise the investigations. This indeed is a welcome step.

However, I need to put a note of caution. Judicial activism and restraint are two sides of the same coin. While putting the process of law into motion the courts must always be cautious as to when and where stop. Investigation is a police function. Trial and appellate jurisdictions belong to the courts. If courts overstep the jurisdiction of supervision even during trials there can be a danger of either the courts doing the hat of supervising and nudging the investigation in a particular direction or alternatively prejudicing a free and fair trial. It is therefore necessary that while courts retain the power of monitoring investigation at the initial stages, the monitoring must stop with the filing of a charge sheet. The judges hearing the appeals or matters arising out of trials could be different from those who have monitored the investigation. It is necessary to ensure that cases are investigated in accordance with law and at the same time the right to a free and fair trial is not prejudiced.

I have made the above suggestions really as 'stray thoughts' on issues pending before the legal fraternity and society in relation to the judicial institution. My intention is that aberrations if any need to be corrected and that we must debate the above suggestions along with several others with the intention of ensuring a free, fair and fearless judiciary in this country.

(The author is opposition leader in Raja Sabha)

Dr Ashwani Mahajan

In the last few months government has been indulging in clearing path for hiking the cap of FDI in several sectors including Telecom, defence and insurance. However this attempt of the government was confronted by not only opposition parties and other groups; even its own ministries were intensely opposing this move. It is notable that Ministry of Home Affairs had vehemently opposed attempt to raise FDI cap in telecom sector to 100 percent and increasing the presence of foreigners in other sectors.

Home Ministry's argument was that if we permit countries like china, Bangladesh, Pakistan, Saudi Arabia and Indonesia, to invest in sensitive sectors as telecom, defence, space, civil aviation etc., we may be creating security risks for the nation. Ministry of Defence had also opposed the move on the similar lines; again raising security concerns and had said that such moves would cause vulnerability of the security of the country and enemy nations may dictate their terms. Home Ministry had written a strong letter to the Department of Industrial Policy and promotion and openly stated in the media that it is opposed to the recommendation of Telecom Commission to allow 49 percent FDI through automatic

FDI as fait-accompl

route. But it is unfortunate that disregarding all well meaning opposition from its own departments, the government decided to raise cap of FDI in 12 important and some very sensitive sectors, perhaps compromising the internal and external security of the nation.

Foreigner's Stranglehold to Increase in 12 Sectors

It is notable that FDI limit in telecom has been increased to 100 percent. FDI cap in case of state of the art defence equipments also has been raised from present 26 percent to 49 percent. Subject to approval from the parliament, FDI limit in insurance has been raised from present 26 percent to 49 percent. Rising of FDI cap in different sectors is unfortunate, as FDI caps have not been raised to help country progress fast by inviting foreign capital; even the declared objective of the government for said step, is that this move will help in overcoming looming payment crisis and depreciation of rupee. Government claims that as FDI caps are raised, investment climate would improve and foreign investors would be attracted to bring more foreign exchange and disequilibrium in the balance of payment would be taken care of, and

depreciating rupee will get support. Old development rhetoric is not being repeated with force by the official circles, as government itself is not sure about the same. What is being said is that we would be able to somehow overcome crisis of diminishing value of rupee.

Weak Rupee and Vulnerable Economy

Rupee had already touched its historic low at rupees 61.20 per US\$, on July 8, 2013. Those who were not taking this depreciation of rupee seriously are seemingly worried now. Finance Minister P Chidambaram was earlier saying that there is nothing to worry, as government is taking steps to engineer recovery and encourage growth. Prime Minister's economic advisor was saying that there is nothing unique and special for India as other Asian currencies are also weakening vis-a-vis US dollar; therefore there is nothing special for India to worry.

Today, common man, the government, economists are all in a situation of shock. Economy, which was already under duress due to hyper inflation, is now facing an added attack from depreciating rupee, which is causing

unprecedented hike in the cost of imported goods, causing inflation to reach at unmanageable situation. Majority of our imports are such that they do not decrease even if rupee depreciates, such as petroleum products, raw materials, gold and silver, machinery etc. On the other hand even exports also do not increase with depreciation of rupee. Under these circumstances our balance of payment position may further worsen if depreciation of rupee continues for some more time. These negative developments on payment fronts may cause our external debt to inflate to unmanageable levels.

Remedy worse than the Disease

To find remedy to the crisis, we must understand the genesis of the problem. Basic question is that how our nation has fallen into this trap of payment crisis, depreciating rupee and rising external debt. Finance Minister tries to shift the blame on import of gold, coal and crude oil. However, Finance Ministry cannot get away with this explanation and hide its blunders. If we talk of petroleum products, their imports valued \$155 billion in 2011-12; and this increased to \$169 billion.

Thus there was increase by merely \$15 billion. If any one item which is a major cause of balance of payment disequilibrium, it is import of gold and silver. Hike in import of gold and silver has not increased in short span of time. In the last couple of years, import of gold and silver has multiplied and reached 60 billion in 2011-12 and little less at 56 billion in 2012-13.

Government was in know of rising imports of gold and silver but chose to be a silent spectator, for reasons best known to them. China in continuing its hostilities against India and is keeping up strategic pressure on India. Trade deficit with China has reached 40 billion dollars. Despite enemy like behaviour, India government instead of restricting or banning imports from China is rather working to promote Chinese interests, by allowing Chinese companies to obtain licences and contacts.

FDI a Cause of Growing CAD

Promotion of foreign investment, being claimed as the policy panacea, is also an important cause of payments crisis. During the five years from April 2008 to March 2013, a total of \$158.8 billion FDI was received in the country, whereas \$128.2

billion were transferred abroad by foreign companies, under the heads of royalty, dividend, interest, salary, etc. during the same period. Last year, that is, 2012-13, FDI we received amounted to barely \$22.4 billion, but the income transferred abroad stood at \$32.2 billion. But in return for this meager net amount of FDI, vital sectors, companies, markets and resources of the country were handed over to foreigners. During this time we have put on ourselves, the burden of future liability for eternity. For the last one and a half decade, the country is bearing the brunt of foreign investment and by inviting FDI today, we are compelling our future generations to pay for the same in the longer run.

What we need today is that Government restricts the import of consumer goods, telecom equipments, power plants and other project good (especially from China). An effective ban on import of gold and silver, lock-in-period of three years should be imposed on Foreign Institutional Investors (FIIs) and stern action be taken on the illegal transfer of foreign exchange by MNCs. The country runs the risk of falling into deep foreign exchange crisis if timely steps are not taken by the Government.

(The author is Associate Professor, Department of Economics, P.G.D.A.V. College (University of Delhi))

Implementation of PNDT Act

Sir, This has reference to the news item 'DDC reviews implementation of PC and PNDT Act' DE July 26.

In view of the declining sex ratio in the State, it may be said here that PC & PNDT Act should be strictly implemented in the State to check misuse of technology to carry out sex selection test.

The declining sex ratio is a cause of concern for the society and it may have numerous ramifications in the future in case this trend is not forthwith. The worst hit State Haryana is an excellent example in this regard. In Haryana, parents are a worried lot as they do not get brides for their sons in the State. Therefore, they go to other State for finding a bride.

Besides, declining sex ratio indicates our medieval mental set up rooted in discrimination against girl child. There is urgent need to change this mentality in case we, the citizens of this great nation do not take the risk of being labelled as obscurantists and illiterates in this modern world.

The administration has a key role to play in this matter by keeping a close watch over ultrasound clinics. Those indulging in illegal activities should be dealt with sternly according to law of the land.

Yours etc....

Ajay Sharma
Gandhi Nagar, Jammu

Adjustment of Lecturers

Sir, The record promotions in the School Education Department have turned out to be mirage for the promotees as well as the department particularly in the Jammu division. The euphoria and enthusiasm generated by the promotions has evaporated and uncertainty and confusion has taken over. The unprecedented promotions across the cadre had sent a feeling that the change of guard will address the issue of stagnation and shortage of faculty in the department for over all welfare of the society. But the unnecessary delay of almost six months in the adjustment of Lecturers and Masters in Jammu has deflated the balloon.

There is growing feeling that the way the promotion orders were issued even on holiday on the eve of discussion on the grants for the department was more out of political considerations than for the betterment of the department. These were aimed at stealing the applause and blunting the criticism in the legislature. The delay in adjustment of common promotees and selective adjustment of the influential at desired places at the highest level reinforce such feelings.

The policy is going to boomerang if corrective measures are not initiated at the earliest. The Dy.Chief Minister shall act to ensure that the promotees are adjusted at the earliest keeping in view the need with minimum displacement and preference to the aged and ill as promised by the Minister himself.

Yours etc....

Mohan S Pathania
Jammu

Readers Write

Kargil Vijay Divas

Sir, As its name signifies, Kargil Vijay Divas is celebrated in the honour of Kargil war heroes who did prefer to die with their boots on for the sake of the motherland. It is named after the "Operation Vijay" which was launched to clear the Kargil sector in 1999.

Due to the continuous infiltration of Pak soldiers and Kashmiri militants, Kargil war was fought for in excess of 60 days from May and did end on 26 July 1999 when the Indian soldiers regained control over the high outposts which had been lost to Pakistani intruders during the Kargil invasion. On 14 July Indian Prime Minister Atal Bihari Vajpayee (PM at that time) declared Operation Vijay a success. Government set conditions to talks with Pakistan and on July 26 Kargil conflict officially came to an end when Indian Army announced complete eviction of Pak intruders. This day reminds us of the valour of Indian soldiers who better chose to die than getting the motherland assaulted.

Yours etc....

Rajat Gupta
on e-mail