

## THE UNSOLVED PROBLEM

THE SUPREME COURT'S decision granting conditional stay of operation of the order setting aside Mrs Gandhi's election to the Lok Sabha is not likely to give a quietus to the controversy raging in the country. The Supreme Court ruling deals with two aspects: one, the nature of the stay to be granted in the case and two, Mrs Gandhi's rights as Prime Minister under other provisions of the Constitution and the law. As regards the stay of operation of the order unseating Mrs Gandhi and disqualifying her for a period of six years, the Supreme Court held that there would be a stay of operation of the order of the Allahabad High Court including the disqualification, subject to the condition that Mrs Gandhi could sign the register of Members but not participate in the proceedings of the Lok Sabha, nor vote, nor draw remuneration as a member. The Supreme Court thus adhered to its earlier precedents that save and except signing the register to keep alive the membership against lapse by non-attendance for a continuous period of 60 days under Article 101 (4) of the Constitution, the person concerned will exercise no rights or privilege in the House. In substance, the Supreme Court rejected Mrs Gandhi's request for an unconditional stay without restraint on her participation in the debates and voting in the House. It may be recalled that an identical order of stay was passed in Dr Chenna Reddi's case also. Dr Chenna Reddi, like Mrs Gandhi, had a right to be a Minister without being a member of either House for six months. As a Cabinet Minister, he had also the right to address either House of Parliament under Article 88 of the Constitution as was claimed on behalf of Mrs Gandhi and yet, Mrs Gandhi, at that time, held that norms of parliamentary democracy required that Dr Chenna Reddi should step out of office. The Law Minister has explained that the point regarding the right to participate in the debates of either House of Parliament was

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—R. V.

not raised in Dr Chenna Reddi's case and that there was no ruling thereon. But what is overlooked is that Dr Chenna Reddi resigned immediately on the delivery of the judgment against him according to parliamentary convention, which was accepted by Mrs Gandhi as correct. Had Dr Chenna Reddi not resigned, he would have been dismissed on the ground that he had not observed proper parliamentary convention. Unfortunately, our democracy is such that what is sauce for the gander is not sauce for the goose.

As regards the second aspect, namely, the right of a Prime Minister-qua-Prime Minister, the Supreme Court held that independently of the conditions imposed in the stay order, the Prime Minister's right, so long as she held that office, to function in accordance with the provisions of Articles 74, 75, 78, 88, etc., of the Constitution and to draw her salary under the relevant statute shall not be affected or detracted from on account of the conditions imposed on the exercise of her rights as a member of the Lok Sabha. In effect, the Supreme Court recognized the right of the Prime Minister to advise the President, to appoint Ministers, to communicate decisions of the Council of Ministers to the President and to participate in either House of Parliament or at a joint sitting of both the Houses without the right to vote and to draw her salary as Prime Minister even though the stay order prohibited her from participating in the Lok Sabha and drawing the salary as a member. Thus, the Supreme Court held that the other articles of the Constitution relating to the Prime

Minister's rights, duties and functions should be given full effect to uncontrolled by the conditions in the stay order. At the outset, it must be recognized that Mrs Gandhi's rights as Prime Minister under other provisions of the Constitution was not directly in issue before the Supreme Court and this has been conceded by the learned Judge himself in the following words: "This appeal, it is plain, relates solely to the Lok Sabha membership of the appellant and the subject-matter of her office as Prime Minister is not directly before the Court in this litigation." All that the learned Judge did in this case was to clarify that the conditional stay order passed by him did not have the effect of overriding the rights, if any, which the Prime Minister-qua-Prime Minister had under other provisions of the Constitution or the relevant laws relating to salaries of Ministers. Nevertheless, observations in the judgment on the applicability of the various provisions of the Constitution, though they may fall under the category of *obiter dicta*, are still entitled to the greatest weight and respect.

Without commenting on the judgment of the Supreme Court, it is necessary for us to examine the consequences of the ruling. The Supreme Court's ruling, as pointed out by the Law Minister, sets a "new precedent". One immediate result is that while an ordinary member found guilty of corrupt electoral practice may be debarred from participating in the proceedings of the House and drawing salary as such member during the pendency of his appeal, a Minister, including the Chief Minister or Prime Minister similarly placed, will have the right to participate in the proceedings of either House under Article 88 of the Constitution and also draw salary under the relevant law. This may encourage ministerial misdemeanour instead of abating it. Another effect of the Supreme Court decision may be that hereafter, no Minister found guilty of corrupt electoral practice will resign from his office but, instead, will continue to stick to the seat

of power with possibilities of abusing it against those responsible for his misfortune. Instances of such abuse of authority are not rare in our country as to dismiss the apprehension as far-fetched. A third and not altogether inconceivable consequence may be that even after an adverse final verdict in an election dispute, a powerful party boss may get himself appointed as Minister for successive terms of five months and 29 days under Article 75 (5), exercise his right to address the House under Article 88 and also draw salary during that period. Since Article

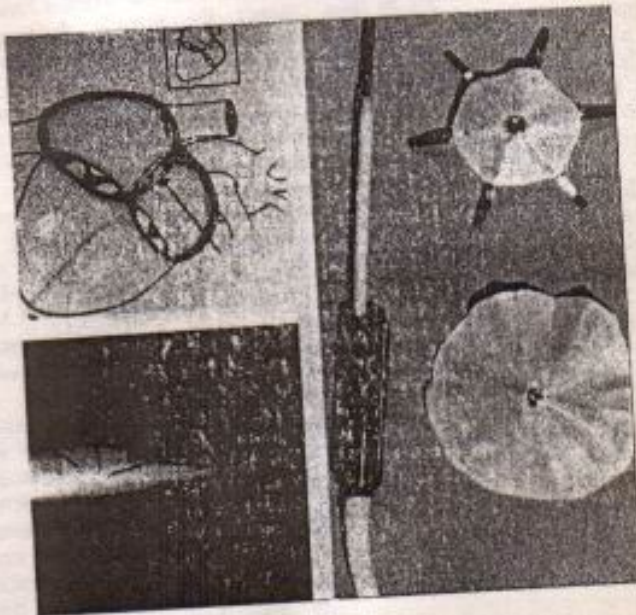
75 (5) enabling the appointment of Ministers for six months without electoral sanction does not specifically state that such person should not be disqualified under Article 102, a long legal battle may ensue on this.

Each one of these distortions can be avoided if the healthy parliamentary convention, of a Minister found guilty of electoral as well as other offences stepping out of office till cleared by the superior court, is rigorously followed irrespective of the personalities involved. It is a pity that the real issue has been

clouded and confused leading from one absurdity to another. As stated by us in an earlier editorial, the real issue is not a legal but a moral one.

### OIL PRICES

Ursine by the eroding value of the dollar, the oil exporting countries have decided to use the Special Drawing Rights as the basis for accounting instead of the United States Dollar from October of this year. This implies that countries with weak currencies which include India among other developing nations will have to pay a price higher ranging up to 50 cents per barrel of oil. In fact, the decision of the Organization of Petroleum Exporting Countries will hurt more the developing countries, even though their consumption of oil is not as high as the developed countries because of the low resource level of the emerging nations. That the oil exporting countries have to pay higher prices for their imports is one of the consequences of their own oil pricing policy. In the final analysis, one would get more or less the same quantum of goods for the same quantum of oil, though one will go through the illusion of earning more dollars in the short run. Furthermore, high prices will naturally curtail the demand considerably. There is already a glut in the oil producing countries and cases of under-selling and under-cutting by smaller producers have come to the surface. It also appears that the world stock of oil is none too limited and that fresh discoveries of oil are made from time to time. The emergence of China as an oil producer and the possibilities of striking oil in Vietnam cannot be ignored. Taking note of all these factors, it may be in the ultimate interest of the oil exporting countries themselves to take full advantage of the existing market and go slow on their proposal to revise oil prices upwards. But, if, by any chance, the OPEC increase the oil prices, the consequences may be serious to the developed countries and to the oil exporters themselves in the long run.



A 17-year-old Louisiana girl has become the first person to undergo a 90-minute procedure that could eliminate the need for open-heart surgery to correct certain defects in children. Developed by doctors at the Ochsner Foundation Hospital in New Orleans, the new technique involves the introduction of an umbrella-like device by a tube through a large vein in the leg. Inside the heart, the device expands on either side of a hole in a chamber wall and seals the defect voiding the need for additional surgery.

To repair a hole in the wall between the upper chambers of the heart (drawing in square at left), two stainless steel and dacron "umbrellas" and a catheter are used. The umbrellas are fitted into a capsule attached to the end of the tube, which is pushed through a small incision in the leg and through a large vein to the heart. In position, the umbrellas are expanded on either side of the defect (arrows in large drawing and X-ray view). The sealed wall allows blood to flow normally.