



Mass messaging

The BJP is recklessly reinforcing ethnic and religious fault lines in the Northeast

Protests in the Northeast, especially in Assam and Tripura, over the Centre's move to push through the Citizenship (Amendment) Bill in Parliament highlight the dangerous pre-election adventurism of the BJP. The Bill seeks to confer Indian citizenship to persecuted migrants from the Hindu, Jain, Sikh, Parsi, Christian and Buddhist communities from Pakistan, Afghanistan and Bangladesh who came to India before 2014. The Bill, contentious in itself for its exclusion of Muslims, is seen by many as a ploy to legitimise the presence of Hindu Bengalis who had reached the Northeast in the aftermath of the birth of Bangladesh in 1971. The BJP's ally in the Assam government, the Asom Gana Parishad, an ethnic party at its core, called it quits on Monday when the Union Cabinet cleared the redrafted Bill for introduction in the Lok Sabha. It was passed on Tuesday. While the BJP-led governments at the Centre and in Assam have often given the assurance that the extra burden of people is not solely the State's, the Rajendra Agrawal-led Joint Parliamentary Committee's report is categorical: "The Assam Government should help settle migrants especially in places which are not densely populated, thus, causing lesser impact on the demographic changes and providing succour to the indigenous Assamese people." Thus, an alliance with the BJP became politically impossible for the nativist AGP.

The blowback from the Bill in the Brahmaputra valley is not lost on the BJP either. It has tried to offset the impact with two decisions aimed at appealing to the Assamese electorate. These, the constitution of a committee to resurrect and operationalise the crucial Clause 6 of the 1985 Assam Accord stipulating "constitutional, legislative and administrative safeguards for the Assamese people", and the proposal to accord Scheduled Tribe status to six major communities that are currently classified as OBCs, are of a piece. They are intended to assuage and assure Assamese speakers that the party can merge Hindutva obligations with local interests. The ST status could turn Assam, which has a 34% Muslim population, into a tribal State with a majority of seats reserved. The panel could recommend reservation of seats in the Assembly and local bodies and in jobs for the indigenous populace. The point, however, is that for now the measures count as messaging. The Citizenship Bill and the ST Bill have yet to be passed in the Rajya Sabha. And the panel on Clause 6 has until July 6 to submit its report. The BJP knows that with reverses expected in the rest of the country in the Lok Sabha elections, it needs to retain, if not augment, its seats from Assam to come anywhere close to its 2014 haul. It is doing all it can ensure that, but with little thought to the ethnic and communal fault lines it is aiding.

Korean consensus?

Kim Jong-un's visit to China is likely to force next steps after the Singapore summit

The visit to China of North Korean leader Kim Jong-un, at the invitation of President Xi Jinping, is significant for two distinct reasons. It is evidence of the continuing calm in the Korean peninsula for nearly a year since the thaw between Pyongyang and Washington that culminated in the Singapore summit in June 2018. The meeting also coincides with the resumption of trade negotiations this week between U.S. and Chinese delegations in Beijing. Expectations are that the dialogue between the regional neighbours could impact the trade dispute between the world's two largest economies. Whereas Mr. Xi is keen on securing sanctions relief for Mr. Kim, U.S. President Donald Trump will be equally eager that his peace deal continues to resonate in the region and beyond, notwithstanding the practical hurdles it has encountered. The Xi-Kim meeting cannot have overlooked the stalled progress on the denuclearisation of the Korean peninsula that Mr. Kim and Mr. Trump agreed on in Singapore. The American and North Korean leaders have in recent days reiterated their willingness to schedule another bilateral summit, a hope they have held out for months. But unlike the ambiguous promises issued in the Singapore declaration, Mr. Kim now wants to talk specifics. This could raise the stakes beyond diplomatic niceties and sound bites. In his New Year address, he emphasised the easing of economic sanctions as a priority, on which Beijing's diplomatic clout could prove critical despite the lack of movement on the nuclear question. In that speech, Mr. Kim also insisted on a permanent end to the annual joint military exercises between the U.S. and South Korea. Another demand was for multilateral negotiations to declare a formal end to the Korean war in place of the truce that has obtained since 1953. The latter issues have acquired greater weight in view of the ongoing rapprochement between Seoul and Pyongyang. This is exemplified by their decision to convert the Demilitarised Zone that separates the two countries into a peace park, and to disarm the joint security area.

Formal negotiations between North Korea and the U.S. have made little headway since the Singapore summit. Access to North Korea's nuclear installations has proved elusive to U.S. officials. The sudden cancellation of Secretary of State Mike Pompeo's visit to Pyongyang last August was an indication of the stalemate. A North Korean test of a new tactical weapon in November was seen as a way to pressure Washington for concessions, if not a return to the hostile posturing of previous years. The uneasy calm that has been sustained on the peninsula for over a year now is no doubt a respite from Pyongyang's successive nuclear tests to rattle the U.S. mainland. But Washington is impatient for information on the North Korean weapons stockpile. Pyongyang is anxious about sanctions relief. Something has to give.

Judicial evasion and the status quo

In high stakes cases, the Supreme Court must ensure that judgments are timely and clear



GAUTAM BHATIA

On October 26, 2018, a three-judge Bench of the Supreme Court, headed by the Chief Justice of India, was confronted with a straightforward legal question: whether the decision taken by the Central Vigilance Commission (CVC) and the Central government to divest Central Bureau of Investigation (CBI) Director Alok Verma of his powers and functions was legally valid. The question was a straightforward one, because it required the court to interpret three legal instruments: the Delhi Special Police Establishment (DSPE) Act (that brought the CBI into existence), the CVC Act, and the Supreme Court's own prior judgment in *Vineet Narain*.

The counsel for Mr. Verma argued that the DSPE Act made it clear that the CBI Director had a guaranteed, two-year tenure, and could not be transferred without the consent of a high-powered committee consisting of the Prime Minister, the Leader of the Opposition, and the Chief Justice of India. This interpretation of the Act was buttressed by the Supreme Court's exhortation, in *Vineet Narain*, that the Director must be protected from political influence. The Attorney-General, on the other hand, argued that the committee's role was purely recommendatory, that the power vested with the Central government, and that in any event Mr. Verma had not been "transferred".

As the Supreme Court itself acknowledged, what was at stake was a "pure question of law". Yet this

pure question of law took six hearings and more than two-and-a-half months to resolve, and yielded an unclear decision where the court agreed with the principal legal contentions of Mr. Verma, but passed a judgment whose ambit left everyone scratching their heads.

Judicial evasion

The Alok Verma Case – or "CBI vs CBI", as it has come to be popularly known – reveals some of the pathologies that have plagued the Supreme Court's conduct in recent high-profile cases. As indicated above, when Mr. Verma approached the court, the legal question was straightforward: were the CVC and the Central government authorised to divest him of his functions as CBI Director? It was a question that, when the court finally got around to it, took it no more than eight pages to answer.

Why then did the case take six hearings and two-and-a-half months? A perusal of the Court's orders reveals the following: on August 26, the court directed that the CVC finish its pending investigation against Mr. Verma, under the supervision of a retired Supreme Court judge. On November 16, the court received the CVC report in a "sealed cover", and allowed Mr. Verma to respond (also through a sealed cover). On November 20, the court passed a cryptic order stating that "for reasons that need not be recorded, we are not inclined to afford the parties a hearing today", and adjourned the case to November 29. It was reported that the Chief Justice was "annoyed" that some of the contents of the "sealed cover" had been leaked. On November 29, the case was listed for hearing final arguments, which then took place on December 5 and 6. The



court reserved its judgment on December 6, and finally delivered it January 8.

It should be clear from the record that there were two parallel proceedings taking place in the Supreme Court. The first was Mr. Verma's original challenge to the process of his divestment – that came up before the court in October, and was heard in December. The second – which occupied the court through the month of November, and through the now familiar, depressing cycle of "sealed covers" – was the substance of the allegations against Mr. Verma, that the CVC and the government were claiming justified his divestment. However, if Mr. Verma was correct in his claim – and the Supreme Court finally held that he was – then the substance of the allegations against him was irrelevant to his legal challenge against his removal.

Effectively, therefore, by mixing up the two questions, the Supreme Court dragged on for months a case that could have been decided within days. And this was of crucial significance: Mr. Verma retires at the end of January. It is questionable what, precisely, does it really mean for the Supreme Court to "reinstate" him midway through January.

This is not the first time that an important, time-sensitive case has been dragged on in a manner that materially affects the situation of

the parties. In the Aadhaar challenge, for example, the case was finally heard six years after it was filed, effectively allowing the government to present a fait accompli to the court. This is "judicial evasion": the court avoids deciding a thorny and time-sensitive question, but its very refusal to decide is, effectively, a decision in favour of the government, because it is the government that benefits from the status quo being maintained.

Strange fetters

In the Alok Verma case, the Supreme Court finally returned a clear finding that the CVC and the Central government had acted outside their jurisdiction in divesting Mr. Verma. However, the court then went on to also hold that the correct authority – the high-powered committee – would have to consider the allegations against him, and decide on the case within a week. In the meantime, Mr. Verma was restrained from taking "any major policy decisions".

As a matter of law, this is strange. Mr. Verma's challenge, to recall, was that his divestment was procedurally flawed. The Supreme Court's limited remit was to decide that question. It was not for the court to then direct the committee to consider the case against Mr. Verma. Still less was it for the court, after holding that Mr. Verma's divestment was invalid in law, to place fetters on his powers as the Director, thus presumptively placing him under a cloud of suspicion. All this suggests an attempt to chalk out a "middle ground", which would be appropriate for a durbar engaging in informal dispute resolution. It is not appropriate, however, for a Constitutional Court that is tasked with providing clear answers to the legal questions before it.

In any event, what exactly is a "major policy decision"? What did the court mean when it said that Mr. Verma's role would be "confined only to the exercise of the ongoing routine functions without any fresh initiative"? None of these is a legal term, and the lack of clarity only raises the spectre of fresh litigation, thus further hamstringing Mr. Verma for the remainder of his tenure.

This, once again, is familiar: in the Supreme Court's Aadhaar judgment, although private parties were banned from accessing the Aadhaar database, the ambiguity in the court's holding meant that different parties interpreted the judgment differently – leading to an amendment to the Aadhaar Act that attempts to circumvent the judgment by letting in private parties through the backdoor. This is, once again, a reminder that – much like judicial evasion – ambiguity is not neutral: it primarily benefits the party that has the power to exploit it, and that party is invariably the government.

Setting deadlines

During the Constituent Assembly debates, there was a proposal that all cases involving fundamental rights be decided within a month. The fear was that the more time the court took, the more the government would benefit from the status quo. Recent events have confirmed this fear. In high stakes cases, time-sensitive cases, the court must ensure two things: that the judgment is timely, and that the judgment is clear. The Alok Verma case demonstrates how, when the court fails to do so, it abdicates its role as the sentinel on the *qui vive*, and allows the government to get away with abuse of law.

Gautam Bhatia is a Delhi-based lawyer

The Great Game is not a zero-sum deal

India and China can work together, bilaterally and in multilateral groupings, to build a secure Afghanistan



ANITA INDER SINGH

There is an air of uncertainty about the U.S.'s intentions in Afghanistan. The likelihood of an American pullout raises the spectre of instability in Afghanistan, South and Central Asia. If this happens, security could hinge on efforts made by regional powers to stabilise Afghanistan. Could China emerge as the power broker in Afghanistan? And could India help enhance Afghanistan's security?

Like India, China never had any intention of contributing troops to NATO's anti-Taliban campaign. But as Asia's strongest power and challenger to the U.S., China will shed no tears if the U.S. reduces its military strength or calls it a day after 18 years of a protracted and indecisive war in Afghanistan.

Vital to development

Sharing part of a border with Afghanistan, China has a great interest in its stability. China would be adversely affected by war and chaos, which could spill over into north-western China, Pakistan, and Central Asia. As all these areas are vital in its Belt and Road Initiative (BRI), peace in Afghanistan is

critical.

Over the last decade, China has gained considerable economic and diplomatic influence in Afghanistan. Unsurprisingly, Afghanistan's President, Ashraf Ghani, made China the destination of his first official trip abroad in October 2014. China then announced its intention to build regional consensus on Afghanistan's security.

It has joined the U.S. and Russia in several peace talks with the Taliban and is part of the four-nation Quadrilateral Coordination Group (with Afghanistan, Pakistan and the U.S.). It is giving military aid to Afghanistan, with the express intent of fighting terrorism and increasing security cooperation.

Despite the prevailing instability in Afghanistan, China has used diplomacy and finance to appear influential and generous. It has invested in projects such as mining, roads and railways, and health. A rail link, completed in 2016, and running from far eastern China via Uzbekistan to the river port of Hainan in northern Afghanistan, could reduce the time taken to make shipments, from six months by road, to just two weeks. Infrastructure problems have halted work on the railway for a while, and the three countries are in talks to resume operations.

China's diplomacy has highlighted its contacts with all parties to the conflict and enhanced its status as a power broker. In 2012, it



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brought Afghanistan into the regional diplomatic processes by giving it observer status in the Shanghai Cooperation Organisation (SCO). At the 18th SCO summit at Qingdao, China, in 2018, Chinese President Xi Jinping declared China's readiness to train 2,000 law enforcement officers 'for all parties' in the next three years. The initiative was welcomed by Central Asian countries. For example, Tajikistan and Uzbekistan, which share a border with northern Afghanistan, are concerned about the Taliban and other terrorist groups becoming powerful in Afghanistan, and posing a threat. The SCO's programme for 2019-21 also calls for combating terrorism, and generally enhancing security cooperation.

Dealing with Pakistan

If the U.S. withdrawal exacerbates conflict, southern Russia will also face the threat of an extremist spillover. Therefore, Russia and its Central Asian 'near abroad' would be willing to expand their cooperation with China to curb insecurity.

How will China deal with Pakistan, its all-weather friend which trains and exports extremists across the Durand Line? Pakistan has become a crucial link in the BRI. And China has reportedly invested billions in the China-Pakistan Economic Corridor (CPEC), which cuts across disputed territory in Pakistan-Occupied Kashmir.

Since 2011, China has continually blamed Pakistan for exporting extremists to Uighur in Xinjiang, and for extremist attacks on Chinese workers in the CPEC area. But these incidents have not affected their friendship. Could China have some leverage over Pakistan? Pakistan remained the largest recipient of Chinese arms imports (2013-17). Would China's strategic and economic interests prompt it to press Pakistan to stop exporting terrorists across the Durand Line? These are the big questions.

India supports China's role in international negotiations on Afghanistan, the activation of the SCO-Afghanistan Contact Group and other mechanisms of dialogue and cooperation for restoration of peace and development in Afghanistan.

For its part, India has certainly contributed much 'soft power' ranging from telecommunications to education, Bollywood movies and pop music. The building for the National Assembly was built with Indian assistance to support Afghanistan's democracy. Indian

reconstruction largesse, amounting to some \$3 billion, has earned it goodwill and popularity.

Sitting across the table

India, which has been against holding talks with the Taliban for a long time, finally sent two retired diplomats, at the 'non-official level', to join them at the Moscow peace parleys in November last year. But India's lengthy absence from regional diplomacy has resulted in its limited contribution to the negotiations that are necessary to stabilise Afghanistan.

The Afghan government would like to see India-China economic cooperation in Afghanistan that could boost progress and enhance human security. Last October, in a first, India and China started a joint training project for Afghan diplomats. They could expand cooperation by facilitating Afghanistan's full membership of the SCO.

China's leadership role of the SCO and contacts with all parties (the U.S., the Taliban, the Afghan government, Pakistan, Russia and the five Central Asian states) could give it a vantage in crafting a regional solution on Afghanistan. That should not prevent India and China from working together, bilaterally and in the SCO, to build a secure Afghanistan.

Anita Inder Singh is a Founding Professor of the Centre for Peace and Conflict Resolution in New Delhi

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Citizenship Bill

Why is the government passing Bills that require extensive debate at the fag end of its tenure? The aim appears to be to capture a vote bank without pondering over the after effects on other Indian citizens (Page 1, "Lok Sabha passes Citizenship Bill amidst Congress walkout" and "Protests rock northeastern states", both January 9). The Bill appears to be only another form of selective immigrant appeasement.

GEORGI K. JEEMON,
Ernakulam, Kerala

■ The Bill falls short of the government's own laudable claims and objectives of providing shelter to the minorities in India's neighbourhood on at least two counts. One, it sets a cut-off date of December 31, 2014, which leaves in the

lurch those who may face persecution and seek shelter in India after this date. This is inhuman abandonment of the spirit of protecting the persecuted minorities... Two, the Bill restricts its concerns to the minorities of three Muslim-majority countries in the neighbourhood, ignoring the fact of persecution in other countries bordering India.

Indeed, people from a Hindu background have not only faced denial of rights and violence but have even been forced to flee at least two of India's neighbouring countries not mentioned in the Bill. Moreover, by not providing any shelter to those who face persecution for their dissent and human rights work or for their sectarian identity and contrarian views within Islam, the Bill takes a narrow conception of minority and persecution and thereby fails

India's constitutional spirit and tradition of humanity and large-heartedness.

FIROZ AHMAD
New Delhi

Gandhian symbols

The article, "The un-Gandhian cane" (Editorial page, January 8), glows like a red beam in gathering clouds on the horizon in the form of the Reservation Quota and Citizenship Bills. The menacing symbol of the lathi, being wielded in the name of the people, evokes the image of not only a cowering community of artists and liberals but also of the coercive arm of the law over institutions. Sane voices are being shouted in the mass hysteria being produced in the name of nation and identity while democratic processes are being subverted by divisive politics. Equality before the law, economic justice and

secularism are being whittled down one by one. What a tragic turn to the trust with destiny that the nation had once dreamt about.

A. KURIEN
Kozhikode, Kerala

This is not science

Our leaders and some academicians seem obsessed with our glorious past, which no one disputes or challenges (OpEd page, "Single File" - "Regaining respect," January 9). Regrettably, what they do not seem to comprehend is that it is no answer to our present-day tribulations. Across the border, in China, there is an urge to become a technological master. There is deep understanding that achieving the logical route to achieving technological dominance. We seem to be doing the opposite. According to 'scientists' in India, 'many of the modern

day discoveries and inventions were already known to our ancestors'. If so, why is there a need for a Science Congress? If we persist in the pursuit of such esoteric beliefs it will spell doom for our science, welfare and growth.

H.N. RAMAKRISHNA,
Bengaluru

■ I am a researcher in one of India's prestigious institutions. Any scientific result needs to be validated through rigorous experimentation, review and independent verification. Researchers often battle low

funding and pay, a negative outlook and apprehensions about the work we do. We find preposterous claims such as some of those made in the Science Congress disheartening. Such 'findings' are not the image we want projected. The scientific community needs to voice its concerns against the pseudoscience going around. Otherwise, Indian science will become the object of global ridicule. This would be heartbreaking.

ANIL VISHNU G.K.,
Bengaluru

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CORRECTIONS & CLARIFICATIONS:

>>>In the front-page story, "SC reinstates Alok Verma as CBI Director, but clips his wings" (Jan. 9, 2019), the opening paragraph and the accompanying graphic wrongly said that the Supreme Court ordered Mr. Alok Verma to "cease and desist" from taking any major policy decisions till a committee "decides" the question of Mr. Verma's divestment in a week. Actually, the committee would meet and "consider" his divestment in a week.

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