



Corridor of hope

Movement on the Kartarpur proposal is timely and potentially game-changing

The announcement by India and Pakistan of plans to operationalise a visa-free corridor between Dera Baba Nanak in Indian Punjab and Kartarpur Sahib in Pakistan's Punjab heeds a longstanding plea of Sikh pilgrims. That demand had gathered pace in 1995, when Pakistan renovated the Kartarpur gurdwara, situated on the site on the bank of the Ravi where the founder of Sikhism, Guru Nanak, spent his last 18 years. Leaders from both sides, including Prime Ministers Atal Bihari Vajpayee and Benazir Bhutto, had pushed for it. In their effort to facilitate travel by Sikhs to important shrines on both sides of the border, they were also alert to the potential of such a move to heal ties amongst their people, and promote dialogue between the two governments. Given its easy logistics, the 4-km-long Kartarpur corridor is a low-hanging fruit as a meaningful confidence-building measure. The announcement now is particularly timely, with the 550th birth anniversary of Guru Nanak falling in November 2019. The initiative can also become a template for cross-border exchanges based on faith, which could provide a balm for many communities such as Kashmiri Pandits, who have long asked for access to visit the Sharda Peeth in the Neelum Valley in Pakistan-occupied Kashmir; Sufis in Pakistan who wish to visit the dargah of Khwaja Muinuddin Chishti in Ajmer, Rajasthan; and Sikhs in India and Pakistan wanting to visit important shrines on both sides of the border.

Much will depend on how quickly India and Pakistan act on their commitment, once President Ram Nath Kovind lays the foundation stone at the corridor's India end on November 26, and Pakistan Prime Minister Imran Khan does so at the other end on November 28. Even more will depend on how the two governments manage their relationship in a way that avoids making pilgrims a pawn in bilateral tensions. Recently, there was an ugly and unnecessary controversy when Pakistan Army Chief Qamar Javed Bajwa revived the Kartarpur proposal in a conversation with Navjot Singh Sidhu, a Minister in the Congress government in Punjab, at Mr. Khan's swearing-in ceremony in August. This had set back bilateral ties, threatening progress on the project proposal. Going forward, it is important that issues related to the corridor are managed in a non-political manner and details left to diplomats and officials to sort out — for instance, the issue of Indian consular access to pilgrims, which flared up on Friday. Given the bilateral freeze, the Kartarpur project will compel India and Pakistan to engage in a positive and purposeful manner, at a time when few other avenues for engagement exist. It is a reminder that dialogue and search for areas of concord are the only way forward for both countries.

Rolling back

Poland's ultra-conservative regime finally reverses the forced retirement of judges

The Polish government's decision to rescind the forced retirement of several Supreme Court justices is a welcome sign of its willingness to improve compliance with the rule of law. This could begin a process to resolve the stand-off between Poland's Law and Justice party (PiS) government and the European Union. The decision to reverse the contested provision in the law, introduced in July, follows the European Court of Justice (ECJ) order last month to suspend the measure. The European Commission had earlier asked the Luxembourg-based institution to freeze the retirement move, pending a final ruling on whether Poland's judicial overhaul was at odds with the bloc's common policies. Brussels has in parallel launched a formal probe into Warsaw's adherence to "fundamental European values". Poland's Supreme Court too had referred the contested provision to the ECJ to ascertain that there was no discrepancy between the national and European statutes. But the referral drew flak from PiS apparatchiks, who regard criticism of domestic policies by the EU as encroachment on Poland's sovereignty. Since winning a commanding majority in 2015, the ultra-conservative government has undermined media freedoms and democratic institutions. The lower age of retirement, which in effect removed a third of the judges, was seen as part of a design to politicise the judiciary. This followed the subversion of the constitutional tribunal, which adjudicates the validity of laws. A 2018 statute that criminalises references to Nazi atrocities too drew condemnation as an assault on freedom of expression.

Poland's principal pro-European opposition party, the Civic Platform, characterises the regressive laws as part of the government's design to pull the country out of the EU. Its improved performance in the October regional elections may well have forced the government to reconsider some of its policies. The PiS will also be keen to project a moderate face ahead of the 2019 polls to the European and Polish parliaments. Developments in Warsaw will be watched closely in the other three Visegrád countries, notably Hungary, where the government's stridently populist stance has brought it into open confrontation with Brussels. In fact, Poland and Hungary face a legal challenge at the Luxembourg court over non-compliance with the policy to share responsibility for the treatment of Syrian migrants. A refrain from these governments has been that the institutional reforms were meant to complete the post-socialist transition. But such an explanation does not wash with civil society, judging from the opposition to the authoritarian lurch. As the biggest beneficiary of EU funds in the current budget cycle, Poland has an interest in improving its standing with an eye on future allocations. As it commemorates a century since gaining independence, it is time the country looked ahead.

Not by ordinance

Proposals to hasten construction of a Ram temple at Ayodhya are extremely ill-advised



RAJEEV DHAVAN

There is a clamour by the Rashtriya Swayamsevak Sangh (RSS) and Sangh Parishad for an ordinance and later a statute (i.e. Act) for building a Ram temple over the ruins of the Babri Masjid in Ayodhya immediately. No more waiting, they say. The supposedly neutral Justice J. Chelameswar, who retired as a Supreme Court judge earlier this year, joined the fray, saying it was possible. The ex-justice is learned and bold, but needed to show the downside.

The Centre's remit

Any ordinance would have to be passed by the Central government if the President (as advised by Prime Minister Narendra Modi's cabinet) "is satisfied that circumstances exist which render it necessary for him to take immediate action" to promulgate an such an ordinance, which will cease if it is negated or lapses. If it lapses, re-promulgation can take place. Repeated re-publication was frowned upon in the D.C. Wadhwa case (1986).

Again, by brute strength an Act may be passed amidst upheavals and rancour throughout India. But can the Central government as statutory receiver pass such an ordinance or even table a Bill in Parliament? There is an immediate conflict of interest. The alternative

is a Private Member's Bill. Given the conflict of interest, the Central government is obliged to oppose it, albeit with a three-line whip. The State of Uttar Pradesh is bound by its stance in the Allahabad High Court that it is not interested in the site.

Even if passed, any such statute would have to cross many hurdles. First, there is the Places of Worship (Special Provisions) Act of 1991. In this Act, the cut-off date for freezing the religious character of a place of worship is August 15, 1947 and all suits regarding their status would abate. Section 6 prescribes punishment of up to three years or fine or both if this is violated. But Section 5 of the Act said: "Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship." This, however, does not pave the way for simply repealing the section, for that would give further protection to the Muslim case.

Second, we have to turn to the Acquisition of Certain Area at Ayodhya Act, 1993, which acquired the site to put an end to the litigation, and vested the property in Central government.

Third, the Act of 1993 was interpreted in *Ismail Faruqui v. Union of India* (1994) so that the property would remain with the Central government as a "statutory receiver", a concept invented by the court. The cessation or abatement of the pending Ayodhya case between the Muslims and Hindus (Section 4(3)) was set aside by the



Supreme Court while unfairly allowing Hindu worship. The court declared: "The best solution in the circumstances, on revival of suits is, therefore, to maintain status quo as on 7th January, 1993 when the law came into force." Any action taken now (i.e. 2018 onwards) would violate this status quo. As the "statutory receiver", the Central government has the responsibility to wait for the result of the suit. No ordinance or statute can sit in appeal on the *Ismail Faruqui* judgment of 1994.

Separation of powers

There is a well-known principle, emanating from the doctrine of separation of powers in the Constitution, that the legislative power of Parliament cannot usurp the judicial power to sit in appeal over the judicial decision-making — still less where the case is pending as a suit or in appeal. This decision, which was considered earlier, was affirmed up on a tax case — *Shri Prithvi Cotton Mills* (1969) — after which there have been dozens of cases going one way or the other. But the legis-

lature can change the basis of the law. It's more complicated than you think. What will a proposed Act or ordinance say? Can it say that this first appeal to the Supreme Court under the Code of Civil Procedure will be taken away? The right to adjudicate cannot be taken away as it would be discriminatory if applied to a particular case to take away a valuable right. The new basis for the law would have to invalidate the Allahabad High Court judgment of 2010, *Ismail Faruqui* (1994) and the orders subsequent to it and then injunct the pending proceedings in the Supreme Court. The justification for this can only be that strident members of the Hindu majority are impatient to reverse the Allahabad decision which gives one-third of the land to the Muslims. There is also a resistance by the Nirmohi Akhara, which claims the entire site and does not want to give the Deity its one-third.

As soon as the ordinance or Act is passed, it will be challenged in the Supreme Court because it is of national importance and affects the jurisdiction of the Supreme Court. True, there is a presumption of the constitutional validity of a statute. Even if no stay is granted, the urgency of the matter may mean an assurance sought by the court that no precipitous steps would be taken during these new proceedings. There will be counter-clamour, protests, news that India favours Hindus over Muslims. Throughout the world the destruction of the Babri Masjid has provoked doubts on the capacity of India to be neutral. India has one of the largest Muslim populations in the world — short of 200

million. The case against the constitutionality of the new ordinance or Act will take some time to decide. The decision in the Ayodhya case will be delayed further.

There is only one part of Justice J.S. Verma's majority in *Ismail Faruqui* (1994) that I like. He begins by quoting Jonathan Swift: "We have enough religion to make us hate, but not enough to make us love one another."

A secular state?

With the rise of an uncompromising fundamentalism, India is faced with extreme populist demands against minorities and the rule of law. The Constitution is secular, but parts of civil society are rabidly communal. The demand for the state to intervene to allow the Ram temple is part of an aggressive Hindu fundamentalism which seeks to suborn the state to its wishes. The state has to remain neutral. To yield to a demand of one faith against another not only condones the destruction of the Masjid, but abandons the very basis of India's multi-religious and cultural ethos which it is bound to protect. It is the Constitution that has pledged our diverse people together. It is not a plaything — still less in the hands of a motivated majoritarianism that puts 'India' to ransom. Muslim fundamentalism is allegedly terrorists, its violent elements banned. Hindu fundamentalism reigns free with its Hindutva, "ghar wapsi", cow protection, violence, murders of activists and the Ram temple movement seeking immediate solution.

Rajeev Dhavan is a senior advocate of the Supreme Court

Looking beyond the optics

Vietnam is crucial to India's Look East Policy — bilateral ties must build on common concerns



SHANKARI SUNDARARAMAN

President Ram Nath Kovind's choice of Vietnam as the first Southeast Asian country to visit in his capacity as the President is not surprising. A close ally of India for over 70 years, and not limited to official diplomatic ties, Vietnam is critical for India's foreign policy at the regional and systemic levels. While Mr. Kovind's visit highlights the "normal" trajectory of a presidential visit, there is a need to understand how Vietnam has calibrated its domestic and foreign policy shifts and where India's relevance can fit into these policy changes.

Domestically, since the start of its Doi Moi policy — its political and economic renewal campaign — in 1986, Vietnam has made dramatic strides. Today it is a rapidly growing, regional economic giant, showing both dynamism and pragmatism in its calculations. While earlier it imported agricultural products, today it is a major exporter. Agricultural competence has furthered Vietnam's entry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The Vietnam Na-

tional Assembly ratified the CPTPP on November 12, asserting its growing economic impact globally, with exports increasing to approximately \$240 billion for the year 2018. Membership to the CPTPP, which accounts for nearly 14% of the global GDP, will boost Vietnam's economic growth, from 6.8% in 2017-18, by a further 1.1% to 3.5% by 2030. One of the core areas of Mr. Kovind's visit focussed on furthering cooperation in agriculture and innovation-based sectors, pushing the potential for increasing bilateral trade to \$15 billion by 2020.

Common ground of health

An area of potential convergence for both Vietnam and India is health care. The 12th National Congress of the Communist Party of Vietnam, in 2016, highlighted the importance of linking economic growth to universal health care, whereby 80% population would be covered by health insurance. India too, since 2011, has been focussing on the need to deliver accessible and affordable health insurance to weaker sections of society. With Indonesia ratifying the India-ASEAN Services agreement on November 13, New Delhi is a step closer to signing the Regional Comprehensive Economic Partnership, bringing India to the forefront of the services sector globally. A potential area of convergence in the realm of health care



through joint public-private partnership agreements can be explored by the two countries.

Internationally, Vietnam's foreign policy is characterised by 'multidirectionalism', which addresses regional asymmetries of the power balance by engaging across a broad spectrum of states to achieve its interests. Increasingly, this asymmetrical power structure in the region, offset by the rise of China, is bringing regional and extra-regional states together to address the shifts in the normative order. Within this context, Vietnam even normalised relations with the U.S., its former opponent, credit for which is given to the late U.S. Senator, John McCain.

Security concerns

Today there is increasing commonality of security concerns between Vietnam and its ASEAN partners — as well as with Australia, India, Japan and the U.S., particularly in the areas of maritime security and adherence to the United Nations Convention on the Law of the Sea. A former Vietna-

mese President, Trần Đại Quang, had earlier this year endorsed the term Indo-Asia-Pacific. Similarly, Mr. Kovind's speech in the Vietnamese National Assembly referred to a 'rules based order in the Indo-Pacific', reiterating India's own concerns over troubled maritime spaces. Finding compatibility between the 'Indo-Asia-Pacific' and the U.S. driven 'Indo-Pacific' necessitates a more nuanced approach whereby regional concerns of ASEAN centrality can be assuaged while accounting for diverse approaches to maintaining regional stability. In pursuance of this, the two countries have planned a bilateral level maritime security dialogue in early 2019.

Focus on sub-regionalism

As ASEAN continues to focus on its centrality in the region, there will undoubtedly be shifts in how smaller members of ASEAN perceive the centrifugal forces of China's rise. Vietnam has helped to mitigate these by focussing on both sub-regionalism and regionalism as the core of its priorities. India too looks at both sub-regionalism and regionalism as priority avenues to pursue its foreign policy. The India-Vietnam Joint Statement of March 2018 reiterates the focus given to sub-regionalism and the Mekong Ganga Cooperation framework. However, another area is emerging in the CLV, or Cambodia-Laos-Vietnam growth

triangle sub-regional cooperation, bringing these three countries together. India and Vietnam can jointly explore the potential for enhancing capacity building and providing technical assistance and training within this sub-regional grouping.

The major takeaway from Mr. Kovind's visit is the reference to the 'cooperation model' India offers, providing choices and opportunities for its friends. This reference highlights India's willingness to address issues on which increasing synergies need to evolve. One such area where convergence is likely, but has been held back due to individual preference, is the \$500 million line of credit offered to Vietnam. Both India and Vietnam possess the capacity to find compatibility in areas promoting defence cooperation and infrastructure simultaneously. Vietnam's role as country coordinator for India in ASEAN will come to a close in 2018. While the ties have progressed under the Look East and Act East Policies, going forward they need to factor in pragmatism, helping relations to move forward. India's ability to look beyond the prism of optics will remain a core challenge.

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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.

Assembly dissolved

The dissolution of the Jammu and Kashmir Assembly by State Governor Satya Pal Malik is illegal and mala fide. It was done for political reasons, to pre-empt the formation of a government in the form of a PDP-NC-Congress alliance. By cutting short the tenure of the Assembly by three years, and for no valid reason, the Governor has undermined the sanctity of democracy. He cannot justify his action by saying that it was needed to stop 'extensive horse-trading' and avoid instability in the restive State. It was not for him to decide the rightness or wrongness of parties with 'opposing political ideologies' coming together to form a government. His role and remit are limited to exploring the possibility of forming a government in accordance with the Constitution and Supreme Court judgments. The BJP's charge without proof that Pakistan was behind the

coming together of the PDP, the NC and Congress is characteristic of the right wing. The Central government should have acted more wisely to have a 'representative' government in place in the sensitive State and send out the message that it is not against the preservation of the State's uniqueness.

G. DAVID MILTON,
Maruthancode, Tamil Nadu

■ One may feel tempted to term the decision of parties — which hitherto considered each other as adversaries in the electoral arena of Jammu and Kashmir — to bury the hatchet and form a government — as a classic example of political opportunism. But the Governor, as the custodian of democracy, should not have remained partisan, and upheld what has been laid down in the Constitution. As things stand, only a fresh election will solve the political imbroglio in the State. The people of Jammu and Kashmir deserve a

stable, democratic government which would address the growing sense of alienation and unemployment.

M. JEYARAM,
Sholavandan, Tamil Nadu

■ Governor Satya Pal Malik's reported statement that he dissolved the Jammu and Kashmir Assembly to 'prevent horse trading' appears to be justified given the confused political situation in the sensitive border State. There are many instances, as seen in the past, of how horse trading — which now includes 'holiday resort' politics — is practised in many States, irrespective of the political party in power, especially in times of continued political instability. Yesterday's political 'foes' become 'friendly' partners of convenience overnight in order to cobble together a 'majority' and to hang on to power. This is indeed very unhealthy for our democracy. What Jammu and Kashmir needs right now

is not instability but early elections so as to enable the people themselves to choose a stable and sincere government.

A. MOHAN,
Chennai

Freebie culture

The Madras High Court's adverse comments on the freebies scheme offered by the Tamil Nadu government has come not a day too soon (Page 1, "Freebies have made people lazy, says HC", November 23). It is a pity that the judiciary has to step in to counsel reforms in governance. While giving succour to the people below the poverty line is appreciable, offering "groceries" to all cardholders defies logic. Perhaps political leaders want to curry favour with the electorate. It is time to review the scheme in the light of the court's observations.

P.K. VARADARAJAN,
Chennai

■ The report raises hope that the Tamil Nadu government

will at least now stop its political stunts and work sincerely with an eye on development. Even a school child would be able to tell you that TVs, cycles, mixies, grinders, fans and laptops are distributed only for political reasons and not really to uplift families that are below the poverty line. The freebie culture seems to be spreading to other States too and needs to be stopped.

H. NAGESH BHANDARKAR,
Chennai

Winning Down Under

No doubt the Australian cricket structure is in turmoil after the ugly incident of ball-tampering in South Africa in March this year (Editorial, "Cricket's final

frontier", November 23). But we all know that winning a Test series against Australia in Australia will always be tough whatever the circumstances. It will be fallacious if cricket experts feel that the Indian tour Down Under will be the best opportunity for India to tame Australia in a Test series in their own backyard. Australia might have lost two key batsmen, but their bowling attack is in full strength, led by Mitchell Starc. Remember, it is the Indian batting that always come as a cropper in Tests in 'away series'.

R. SIVAKUMAR,
Chennai

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CORRECTIONS & CLARIFICATIONS:

In the Take Five page (Nov. 23, 2018), a story under the 'Poll Pourri' column gave the value of the declared assets of Mizo National Front candidate Robert Romawia Royle as ₹55 crore whereas the Data Byte graphic — 'In the reckoning' — gave a figure of ₹44.74 crore. The graphic is correct.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturba Buildings, 855 & 860 Anna Salai, Chennai 600 002, India. All communication should carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com