



Impasse ends

Now, a fresh memorandum of procedure for judicial appointments must be agreed upon

Good sense seems to have prevailed at last. The Centre has cleared the elevation of Justice K.M. Joseph to the Supreme Court, seven months after the five-member collegium first recommended his appointment. The Centre had no option but to elevate the Uttarakhand High Court Chief Justice once the collegium reiterated its original recommendation after the Law Ministry returned his name. The collegium had combined its reiteration of his name with two other names so that three Chief Justices could be elevated in one go. The Centre's objections to Justice Joseph's candidature were unconvincing from the very beginning. It made an issue of his relative lack of seniority among the Chief Justices of the various high courts, adding somewhat curiously that his elevation would give excessive representation to Kerala. It also spoke of an imbalance in regional representation. It was obvious that these were not good enough reasons to turn down his appointment. It only served to strengthen the suspicions that Justice Joseph found himself in disfavour because he was on a Bench that quashed the imposition of President's Rule in Uttarakhand in 2016, a charge the government vehemently denied. Now that his elevation is all set to go through, these issues may not appear to be relevant anymore. However, it is difficult not to see a pattern in the government's conduct. It has been splitting recommended lists and selectively approving proposals from the collegium, while holding back or returning some names. In the case of Justice Joseph, his name was sent along with that of senior advocate Indu Malhotra to the Centre in January. However, three months later, the government cleared only one of the two names, while seeking reconsideration of Justice Joseph's candidature. Such decisions tend to alter the *inter se* seniority among sitting judges, a factor that determines who becomes Chief Justice of India and who joins the collegium.

The Centre's right to seek the reconsideration of a recommendation, on the basis of information available to it, cannot be disputed – but it is worrying that one or two names are held back from a number of batches. The reasons for seeking reconsideration need to be explicitly stated in every such instance. Even in its adherence to the norm that reiteration of a recommendation is binding, the Centre has not been consistent. Recently, it returned a recommendation concerning two appointments to the Allahabad High Court for the second time. The other issue is delay – there is no justification for sitting on files without taking a decision one way or another, particularly given the backlog in the Supreme Court. The current controversy may have come to a close, but the possibility of other flashpoints cannot be ruled out. If the judiciary and the government want to dispel the impression of a prolonged conflict, a fresh memorandum of procedure for appointments has to be agreed upon: it is unclear what exactly is holding it up.

Hope in Harare?

Zimbabwe needs to move on quickly from the post-election violence this week

His victory as President in this week's general election confers popular legitimacy on Emmerson Mnangagwa. Zimbabwe's military-installed leader since November 2017. The two-thirds majority for the ruling Zanu-PF party in Parliament will tighten its control over state institutions. There had been palpable relief in Harare when the 37-year-long dictatorship of the veteran liberation leader Robert Mugabe was brought to an end in a soft coup last year. But the euphoria soon gave way to speculation over the substance of the military-inspired transition. Mr. Mnangagwa, after all, had been Vice-President under Mr. Mugabe, before being sacked by his political mentor. Now, General Constantino Chiwenga, who was instrumental in Mr. Mnangagwa's return from a brief exile, is his Vice-President, and the army top brass wields influence over the government. But the 75-year-old President has in recent months sought to project himself as a political reformist and an economic liberal. His invitation to international observers to monitor the polls was in sharp contrast to the conduct of previous elections. Zimbabwe's return to the Commonwealth and re-engagement with multilateral institutions are his priorities.

The realisation of these aspirations hinges on the conduct of free and fair elections and the restoration of the rule of law. The international community has been watching for cues on where Zimbabwe is headed in terms of restoring the rule of law after the excesses of the Mugabe years. Closer to the elections, there had been concerns that the process of voter registration was not transparent, especially in the Zanu-PF's rural strongholds. But there was acknowledgment of a more open political climate, compared to the large-scale violence following the 2008 elections. This was confirmed by a high turnout, and the voting was largely incident-free. But the bloody violence witnessed since the start of counting, which has been blamed on the military, has drawn justified global condemnation. The opposition too is not blameless. Nelson Chamisa, leader of the Movement for Democratic Change, recklessly claimed the party was in the lead even before the election commission announced results. The elections show that the change Zimbabweans yearn for is painfully slow to be realised. The country needs to build on the sliver of hope that this election has afforded for lasting stability. Zimbabwe has been without a currency for nearly a decade and the bond notes used as a proxy for the dollar fetch less than their face value in the market. It needs to attract investment, promote industrialisation and foster employment generation. Mr. Mnangagwa must convert his business-friendly rhetoric into action.

Engaging Naya Pakistan

Imran Khan offers a chance to deal with Pakistan's deep state, but no outcome is likely before the Lok Sabha polls



HAPPY MON JACOB

The victory of Imran Khan's Pakistan Tehreek-e-Insaf (PTI) in the recent general elections in Pakistan poses both challenges and opportunities for India. The challenge would be to engage a newly minted Pakistani Prime Minister who is yet to reveal his way of conducting diplomacy. The opportunity, even so, lies in the fact that the rise of Mr. Khan will enable India to deal with the Pakistani 'deep state' more effectively.

Mr. Khan's 'victory speech' had several well-meaning and conciliatory references to India which, if logically followed up, could potentially yield long-term benefits for the two countries. But it may be unrealistic to expect much movement in bilateral ties till India's own general elections are concluded.

A popular leader

Despite allegations of a rigged election in Pakistan in which the army is said to have enabled Mr. Khan's victory, it is widely recognised that there was a major groundswell of support for him. The fact that his PTI left the rival Pakistan Muslim League (Nawaz) far behind in terms of seat share, and that the PTI, until recently a provincial party, made stunning inroads in all of Pakistan's provinces shows that the big story is also the rise of a charismatic Pakistani political leader seen as incorruptible and visionary by young voters.

More significantly, despite concerns in India, religious parties have once again failed to convert their street power into political



REUTERS

outcomes, which goes to highlight the sheer lack of mass base for terror outfits and their affiliates in Pakistan, and the moderate nature of its polity. This is not to say that Mr. Khan has a clean record: he has been a supporter of Pakistan's blasphemy law and has in the past flirted with rightwing parties and terror outfits in Pakistan, which earned him the moniker 'Taliban Khan'.

The central Indian concern, and a legitimate one, about Mr. Khan's victory is whether he can independently navigate a sustained policy process with New Delhi. India fears that the Pakistani deep state, i.e. the army and the Inter-Services Intelligence (ISI), will decide the India policy, and Mr. Khan will merely carry it out, if he is kept in the loop at all. A related concern is that the Pakistani deep state is not keen on a dialogue process with New Delhi. While it is difficult to predict the nature of the evolving relationship between an extremely popular Mr. Khan with the Pakistani deep state, let's assume, for argument's sake, that Mr. Khan will be subservient to the Pakistan army with regard to the country's security policy. Whether that is desirable for the Pakistani state and its democracy is not a question that should

detain us here.

The question that should bother us is whether Mr. Khan being a puppet in the hands of the Pakistan army is detrimental to Indian interests or not. India's grievance in regard to civil-military relations so far has been three-fold: one, the Pakistani deep state has a nefarious agenda vis-à-vis India; two, dialogue with the Pakistani political establishment has often not been successful since the Pakistani security establishment is often not on board the dialogue process; three, New Delhi's desire for peace becomes a casualty in the turf war between Pakistan's deep state and its political establishment.

Logically then, one could argue that the only way India can have a steady dialogue process with Pakistan is when there is agreement between Pakistan's deep state and its Prime Minister on what the country's India policy should be. If so, Mr. Khan's closeness to the Pakistan army should be viewed as an opportunity to have a fruitful dialogue with the Pakistani deep state without New Delhi's message to Rawalpindi getting lost in Islamabad. New Delhi, while engaged in a dialogue with Islamabad, would not need to second-guess Rawalpindi's intentions.

Does the Pakistan army desire

peace with India? Pakistan's Army Chief, General Qamar Javed Bajwa, has on several occasions spoken of the need to build peace with India, underscoring that bilateral dialogue can lead to peace and stability in the region. There is, of course, no need to take it at face value. However, if the Pakistan army proposes dialogue and if the new Prime Minister is assumed to be on board such an objective, wouldn't it suit Indian interests?

This begets more questions. Can this new-found civil-military equation in Pakistan withstand the force of Mr. Khan's personality traits and Pakistan's political dynamics in the days ahead? Will Mr. Khan's relationship with the deep state continue as expected or will his unpredictable temperament create more confusion? One would have to wait and watch.

The China question

Yet another angle that needs to be factored in while engaging Naya Pakistan is the rising regional influence of China and the further strengthening of China-Pakistan ties. Both the Pakistan army and the political class in Pakistan are upbeat about the China-Pakistan Economic Corridor and Chinese investments in Pakistan, notwithstanding Mr. Khan's initial reservations about China. It is possible that China could pacify some of Pakistan's revisionist tendencies towards both Afghanistan and India. In Wuhan, Prime Minister Narendra Modi and Chinese President Xi Jinping agreed to carry out joint projects in Afghanistan. This is perhaps the opportune time to implement them. If (and that's a big 'if') Beijing can get the Pakistan army to agree to a reconciliation process in Afghanistan, and if New Delhi and Beijing can collaborate in Afghanistan, we may witness some move towards regional stability. This would be helped by

Mr. Khan's desire to improve Pakistan-Afghan relations.

The Kashmir hurdle

In this plausible scenario, Kashmir is likely to be the wild card. Two lessons stand out from earlier India-Pakistan negotiations: talks with Pakistan are unlikely to succeed if Kashmir continues to be a domestic challenge for India; and talks with Kashmiri separatists will not get anywhere without a parallel process with Pakistan. In other words, unless New Delhi reaches out to Kashmiri separatists and to Pakistan in parallel, a dialogue process with Pakistan is unlikely to succeed. Given that the Bharatiya Janata Party – after having pulled out of a difficult coalition with the Peoples Democratic Party in Jammu and Kashmir – is gearing up to use the Kashmir issue in the upcoming elections, there is unlikely to be much appetite in New Delhi to open a serious dialogue with Kashmiris, and Pakistan.

In any case, Mr. Modi might not want to take a chance with Pakistan at this point since a failure to show anything substantive from a peace process with Pakistan could have domestic political implications, especially if ceasefire violations and terror attacks continue to take place.

Therefore, notwithstanding the positive statements from Mr. Khan and Mr. Modi's gracious phone call to him, we might not witness much progress in bilateral ties in the short term. The interlude between the general elections in Pakistan and India is a period of extreme caution and careful domestic calculations, and hence not conducive for bold foreign policy initiatives, especially on something as fraught as India-Pakistan relations.

Happy Mon Jacob is Associate Professor of Disarmament Studies at JNU, New Delhi

Checking the new abnormal

The U.S. experience shows that anti-lynching laws are not enough – this must be a political battle



SATVIK VARMA

Dismaied by the increasing number of cases of lynching across the country, the Supreme Court observed last month that "it is the responsibility of the States to prevent untoward incidents and to prevent crime."

Preventive guidelines

Towards this goal, in *Tehseen S. Poonawalla v. Union of India* (July 17, 2018), the court directed that certain guidelines be implemented. The court took note that what may have started out as isolated acts by fundamentalist right-wing groups has now become a widespread malaise. As the court noted, "When any core group with some kind of idea take the law into their own hands, it ushers in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society. Vigilantism cannot, by any stretch of imagination, be given

room to take shape, for it is absolutely a perverse notion."

The preventive guidelines require every State to designate a senior police officer, not below the rank of Superintendent of Police, as the Nodal Officer in each district. This officer will constitute a special task force to collect intelligence on persons likely to commit such crimes or who are involved in spreading hate speech, provocative statements and fake news. Nodal Officers, upon being designated, have been directed to "take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means." Additionally, both the Central and State governments have been directed to broadcast public notifications on radio, television and other media platforms informing the public of the consequences of taking the law into their hands.

Amongst the remedial measures, the Supreme Court has directed that in case of an incident of lynching or mob violence, the jurisdictional police station shall immediately lodge a first information report (FIR). The Station House Of-



GETTY IMAGES/ISTOCK

ficer, in whose police station such an FIR is registered, shall intimate the Nodal Officer whose duty it will be to ensure that the victim's family members are not further harassed. Nodal Officers have been made duty-bound to ensure that investigation and prosecution of such cases is strictly carried out, the charge sheet filed within the prescribed time period, and the trial concluded through fast-track courts within six months. The court has also directed that upon conviction, the maximum sentences provided for various offences be awarded, and this should hopefully act as a deterrent.

In the course of arguments, reference was made to the U.S. where lynching was rampant at one point, and several American judgments were cited to emphasize that every citizen must abide by the law. This, however, may be an oversimplification, for in the case of the U.S., it took almost a hundred years between the Civil War (1861-1865) and the Civil Rights Movement (1954-1968) for the repugnant practice of mob violence to be wiped out. Pertinently though, in the American context, between 1882 and 1968, nearly 200 anti-lynching bills were moved in the U.S. Congress, and seven Presidents, between 1890 and 1952, petitioned Congress to pass a federal law. However, no bill was approved by the Senate, due to the opposition by the conservative South. Eventually, in 2005, the U.S. Senate formally apologised for not passing an anti-lynching law when it was most needed.

No luxury of time

As a nation, India cannot wait that long. The executive must immediately implement the directions of the Supreme Court. Unfortu-

nately, barely a few days after the verdict, Rakbar Khan was lynched to death in Alwar. In this case, it is not just the attackers who must be brought to justice; the role of the police in Khan's death must be investigated with reports stating that the cops on duty delayed getting him medical attention that may have saved his life. What this incident tells us is that we need more than just laws to deal with the deep-rooted hate which appears to have set in below the surface, and is corroding our moral fibre. Most cases of lynching have the appearance of premeditated acts of violence. There appears to be an attempt to change the social and cultural fabric of India forever, deepening the divide between 'us' and 'them'. Deep-seated insecurities are being stoked, especially among young people frustrated by the lack of employment opportunities, to spread a fundamentalist agenda. This agenda cannot be fought by court directives, legislation and police procedures alone. It must be fought politically.

Satvik Varma is a litigation counsel and corporate attorney based 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.

The NRC test

West Bengal Chief Minister Mamata Banerjee is simply overreacting ("It's super emergency in the country, says Mamata", August 3). The issue is undoubtedly very serious but her remarks are not mature. The fact that the missing names from the NRC draft include relatives of a former President of India and an MLA is worrying, but it is more worrying that an elected Chief Minister speaks of the possibility of a civil war. Ms. Banerjee's divisive agenda has few takers.

D.V.G. SANKARARAO,
Vizianagaram

The nationalist narrative has gained so much acceptance over the decades that the Opposition parties, barring a few like the Trinamool Congress, do not deem it necessary to take a humanitarian approach to the citizenship issue. The clash between

nationalism and humanism is stark. Imagine the state of the people who will be rendered stateless? It is not enough to be Indians; it has become necessary to be "genuine Indians" now, to borrow a phrase from the Union Minister of State for Home, Kiren Rijju. The NRC exercise should not dent India's image as a land of disparate races and religions co-existing peacefully for millennia.

G. DAVID MILTON,
Maruthancode

Mr. Rijju has said that no "genuine" Indian will be left out of the NRC. Who is a genuine Indian? If people have lived in a place for 50 years, are they not genuine? Do they deserve to be called stateless suddenly? Where will they go? Bangladesh is not going to accept these people nearly 50 years after the war. The country just accepted thousands of Rohingya and will not be able to

accommodate more people with its limited resources. The government needs to ask itself: if people lived here for almost 50 years and the situation was peaceful until now, how can they suddenly become a threat to national security?

CHAITANYA S. HIWARKAR,
Nagpur

New PM, new ties?

It is amusing that hopes about improved relations have sprung up once again ("Will Imran Khan's win further set back Indo-Pak ties?", August 3). This optimism is based on wishful thinking, not logic. The fate of India-Pakistan relations has always been dictated by the military in Pakistan, not by its political leaders. Mr. Khan has unwittingly played into the hands of the military. He will also find it difficult to make decisions on his own as he is dependent on smaller parties to stay in

power. However, India should engage with Pakistan even if solutions seem elusive.

V. SUBRAMANIAN,
Chennai

The new government in Pakistan will probably be a greater threat to India than when the army was ruling there. Going by his statements, Mr. Khan does not seem to harbour a friendly attitude towards India the way Nawaz Sharif did. And since Mr. Khan won the election with the support of the army and the ISI, the army will be the real ruler. Prime Minister Narendra Modi will need a novel approach to repair ties.

Y.G. CHOUKSEY,
Pune

It is welcome news that Imran Khan may be extending formal invitations to former cricketers Sunil Gavaskar, Kapil Dev and Navjot Singh

Sidhu, and actor Aamir Khan to attend his swearing-in-ceremony ("Kapil, Sidhu pin hopes on Imran Khan", August 3). It will be good if the rapport that these cricketers enjoy contributes to improving India-Pakistan ties. Perhaps sportspersons and artists can succeed where politicians have failed.

C.G. KURIAKOSE,
Kothamangalam

CORRECTIONS & CLARIFICATIONS:

>>The headline of the story regarding the passage of a Constitutional Amendment Bill providing for a National Commission for Backward Classes as a Constitutional body (Aug. 3, 2018) should have been: "Constitutional status for BCs panel."

>>A sentence in "Congress stance on NRC affects India's sovereignty: Jaitley" (Aug. 2, 2018) read: "Though ... Mr. Rajiv Gandhi took a particular position in 1972 and 1985 for the deletion and deportation of foreigners..." It should have been *detection* and *deportation*.

>>From the text of the report headlined "NRC issue rocks Rajya Sabha again" (Aug. 2, 2018), a word which was expunged by the House Chairman from the records of the proceedings subsequently has been deleted in the web editions.

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, Kasturji Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com