



## Delhi dilemma

Supreme Court's split decision flags the need to address complexities in Centre-UT ties

The Supreme Court's split decision on the question of whether the government of the National Capital Territory of Delhi (NCTD) has executive control over those in its service points to the inherent complexity of the relations between the Delhi government and the Centre. The disadvantages of not having full statehood status has been felt by many elected regimes in Delhi. But under Arvind Kejriwal's Aam Aadmi Party government, and with the Narendra Modi government at the Centre, the extent of acrimony has been severe. Battles have been fought in the political and judicial spheres over whether some subject or the other falls under the Delhi government or is the exclusive preserve of the Centre. A Constitution Bench ruling last year provided a framework to resolve such issues. It held that the Lt. Governor has to act either on the aid and advice of the Council of Ministers, or abide by the decision of the President on a reference made by him. The power to refer "any matter" to the President did not mean "every matter" should go that way. Specific issues were left to a Bench of Justices A.K. Sikri and Ashok Bhushan, which has resolved most issues. It has upheld the Delhi government's power to appoint prosecutors, levy and revise stamp duty on property transactions and issue notifications under the Delhi Electricity Reform Act.

Both judges agree that there is no 'service' in the Delhi government, as all its employees come under the 'Central services'. Its civil servants are drawn from the DANICS cadre, a service common to various Union Territories. Justice Sikri believes that going by a Constitution Bench decision last year, the NCTD would indeed have the power to deploy officials within its own departments. However, the absence of a public service in Delhi means Entry 41 in the State List (services; service commissions) would imply that it is a matter inapplicable to 'Union Territories', and therefore, the LG need not act on the Delhi government's aid and advice. Therefore, he favours a solution under which transfers and postings of officers in the rank of Joint Secretary and above could be directly submitted to the LG, and those of others be processed by the Council of Ministers and sent to the LG. In case of any dispute, the LG's view will prevail. Justice Bhushan, on the other hand, has ruled that once it is accepted that there is no 'service' under the NCTD, there is no scope for its government to exercise any executive power in this regard. A larger Bench will now decide on the question relating to control over the services. The more significant challenge is to find a way out of the complexities and problems thrown up by the multiple forms of federalism and power-sharing arrangements through which relations between the Centre and its constituent units are regulated.

## Strange emergency

Donald Trump's latest move further undermines American democracy

Declaring a state of national emergency is hardly a trivial decision. While the U.S. has done so in the aftermath of the 9/11 terror attacks and similar exigencies, President Donald Trump has opted for this measure in the context of what he has described as "an invasion of drugs and criminals" from across the border with Mexico. The move has further polarised Washington and put the strident immigration debate front and centre again. The context for the emergency is the longest federal government shutdown in U.S. history, for 35 days, that resulted in the shuttering of nine government agencies and the furlough of 800,000 government workers. The primary cause was Mr. Trump's refusal to sign off on Congressional appropriations bills unless lawmakers agreed to hand over \$5.7 billion to fund his plan to construct a border wall with Mexico. As the cost to the U.S. economy of the shutdown soared close to \$11 billion by late-January, Mr. Trump backed down on his demand, yet warned that unless Congress yielded on the border wall funding, "I will use the powers afforded to me under the laws and the Constitution of the U.S. to address this emergency." Now he appears to have made good on that statement, probably on the basis that during national emergencies U.S. law permits the diversion of funds from military or disaster relief budgets to tackle the "crisis" at hand.

This begs the question of how real the emergency is and why the White House is devoting its considerable political capital to this one policy issue. Mr. Trump frequently alludes to the migration crisis that he believes has engulfed the southern border. It is true that more than 2,000 people were turned away or arrested at the border each day during November 2018, numbers that U.S. immigration hawks have seized upon to press the argument for a wall. Yet this figure has decreased considerably over the past decade, and border crossings by undocumented migrants are at an all-time low, down from 1.3 million in 2001 to about 40,000 in 2018. If this is then a purely political move that panders to Mr. Trump's conservative voter base, it may stand on wobbly legal foundations. Already, the first few lawsuits challenging the emergency declaration are working their way through the courts. Further, Democrats, who now control the House of Representatives, may under their constitutional powers vote to terminate the emergency. This would put the Republican-controlled Senate on the back foot by requiring it to clarify its position on the *status quo*, by either supporting or defeating such a resolution. While Mr. Trump's supporters are doubtless celebrating their Commander-in-Chief's chutzpah for this move, the truth is that it will only take the U.S. further away from the ideal of peaceful coexistence within a pluralistic democracy.

# The challenge in the Pulwama attack

India cannot achieve its strategic objectives if Kashmiris remain targets of harassment, and minorities are vilified



SYED ATA HASNAIN

In recent months, those with experience in monitoring Jammu and Kashmir and Pakistan had been getting distinctly uncomfortable. There were signals emanating from Pakistan pointing to a new turn. Pakistan Prime Minister Imran Khan was trying to make overtures to India and conveying that his government would be one with a difference, a 'Naya-Pakistan' as he called it. Pakistan Army Chief Qamar Javed Bajwa had earlier attempted to confound observers through a long interaction with the media, which came to be touted as the Bajwa Doctrine, and was 'supposed' to be a hand of friendship. The offer to open the Kartarpur Corridor and the fast-track progress to the conduct of ceremonies to launch the construction of the project were uncharacteristic. His presence at the ceremony on the Pakistani side appeared to reflect total consensus and support of the Army.

It was somehow the wrong time for Pakistan to be making peace overtures when the Indian elections were approaching. Pakistan could not have expected any big and strategic decisions, and sure enough India's response to everything was lukewarm. The circumstances did not permit any traction unless a firm commitment was given about the withdrawal of all support from across the border to terrorists.

### New terror tactics

Whenever Pakistan starts to speak the language of peace, it raises

hackles in India because it seems evident that something unusual is in the offing and overtures are primarily there to bait India. It has been proved again at Pulwama, with the most dastardly act perpetrated since the beginning of the 30-year-long proxy war in Jammu & Kashmir.

Two issues are of relevance here. The first is that the return of the car bomb and the improvised explosive device (IED) to the Kashmir theatre was predicted for the last one year. The trend had died out after the last effective IED attack, on an Army bus in July 2008, and the last car bomb attack, again on an Army bus on the very same road, in 2004. IEDs had been rampant earlier but car bombs were few and far between. It was the progressive improvement in the fabrication of IEDs and car bombs in the wars in Syria, Iraq and Afghanistan and the internal security environment of Pakistan that probably gave an impetus to perceptions about their potential usage once again in Kashmir.

The Pakistani experience had also much to do with religiously radicalised young men strapped with explosives detonating themselves at gatherings of people – the suicide bomber as against the suicide fighter. Suicide bombing was neither experienced in earlier years nor has it manifested itself yet in Kashmir. Its threat potential, of course, remains live and its entry could further change the nature of the proxy war.

Pakistan's deep state has been aware that the Indian security forces have achieved much in the last two years in terms of neutralisation of terrorists, although almost the same number have been added through fresh recruitment or infiltration. In order to reduce the domination and effectiveness achieved by the security forces



and to limit their freedom of movement, the reintroduction of these devices could achieve much. That is because the unpredictability factor of IEDs and car bombs is so high that it forces a larger than normal deployment of security forces.

### Sign of Pakistan's confidence

The second relevant issue, or observation, is that Pakistan's self-confidence has been increasing. This has been despite the Financial Action Task Force (FATF) surveillance, its reduced foreign exchange reserves and a failing economy. The backing from China and, most importantly, Pakistan's enhanced geostrategic and geopolitical significance in the light of the U.S. decision to pull out in full from Afghanistan have also contributed to it. The moment that decision on Afghanistan was taken, Pakistan once again acquired leverage with the big powers and all stakeholders for peace in Afghanistan. The realisation that it held the key to the return of the Taliban, the upholding of all its agreements with the foreign forces and future stability, gave Pakistan a strategic boost. The U.S. started courting it in a reversal of President Donald Trump's policy which had questioned the utility of such nations which had taken excess U.S. funding as aid and never delivered strategic advantage to it.

# How the 16th Lok Sabha fared

Important bills were passed; but going forward there must be debate on the anti-defection law



M.R. MADHAVAN

The 16th Lok Sabha had its final sitting last Wednesday, marking an end to a disappointing five-year period. This Lok Sabha was surpassed only by the preceding one in terms of the low number of hours it worked. It met for 1,615 hours, 40% lower than all full-term Parliaments. This shows a decline in the number of sitting days over the decades as well as a significant part of the scheduled time lost to disruptions. This Lok Sabha sat for 331 days (against a 468-day average for all previous full-term Lok Sabhas), and lost 16% of its time to disruptions.

Though there were no extreme incidents – an MP used pepper spray in the 15th Lok Sabha – MPs often broke the rules. The House was often disrupted by MPs carrying placards, entering the well, and even on occasion, blocking their colleagues from speaking. A big casualty was Question Hour – the Lok Sabha lost a third of this time and the Rajya Sabha 60%; consequently, just 18% of the starred questions in each House got an oral reply.

Another notable event was the Speaker blaming unruly behaviour for her inability to count the required number of MPs demanding a no-confidence motion but allowing the Union Budget to be passed in the interim. There was a similar episode at the end of the 15th Lok Sabha when the Speaker was unable to conduct a no-confidence motion but let the House pass the Act to bifurcate the State of Andhra Pradesh.

### Key legislation

However, Parliament made some important laws. The Goods and Services Tax was implemented and the bankruptcy code was enacted. The IIM Act gave premier management educational institutions a level of autonomy not available to other public educational institutions. The Juvenile Justice Act allowed children (between 16 and 18 years) accused of committing heinous crimes to be prosecuted as adults. New Acts were passed: for treatment of mental health patients, and those with HIV/AIDS. Another Act was passed to ensure the rights of persons with disabilities.

There was some effort to address the issues of corruption, black money and leakages. The Prevention of Corruption Act was amended to make bribe-giving an offence. Laws were made requiring a declaration of assets held



outside India, and to declare as fugitives those economic offenders who had fled the country. The Aadhaar Act was passed to create a biometric-based identity system.

### Bill passing

This brings us to the manner in which some Bills were passed. The Aadhaar Act was passed as a Money Bill – and upheld (incorrectly in my opinion) by the Supreme Court. The Constitution defines a Bill as a Money Bill if it contains provisions that exclusively relate to taxes or government spending. Importantly, such Bills need majority support only in the Lok Sabha, with the Rajya Sabha having just a recommendatory role. Arguing that Aadhaar was primarily a subsidy delivery mechanism, and not an identity system seems like a stretch, but that was the majority decision of the Supreme Court. However, there has not been much conversation on the various Finance Bills that have been passed

as Money Bills.

The Finance Bill is traditionally introduced with the Budget, and contains all the legislative changes to tax laws. Therefore, it is usually a Money Bill. However, Finance Bills, in the last few years, have included items which have no relation to taxes or to expenditure of the government. The Finance Bill, 2015 included provisions to merge the regulator of commodity exchanges with the Securities and Exchange Board of India. The Finance Bill, 2016 included amendments to the Foreign Contribution (Regulation) Act which relate to donations to non-profits. The Finance Bill, 2017 went further and changed the compositions of 19 quasi-judicial bodies such as the Securities Appellate Tribunal, the National Green Tribunal and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), and repealed seven other bodies including the Competition Appellate Tribunal.

About half the clauses of the 2018 Bill were on issues unrelated to taxes. Even the Finance Bill, 2019 presented with the interim Budget amended the provisions related to attaching property under the money laundering law. It is difficult to see how these Bills would fall within the narrow definition of Money Bill, as defined in Article 110 of the Constitution. A few other Bills, such as the

the world but also significant international think tanks and media. The Most Favoured Nation status and measures involving control of water under the Indus Waters Treaty remain soft options, sans much optics. It's the military domain which is demanding Mr. Modi's focus. A risk analysis would already be under way to examine a range of options or combinations. It could start with covert operations which can be ongoing, to trans-border raids several notches higher than the surgical strikes and targeting Pakistan Army resources as against terrorist infrastructure, and surgical air strikes against terrorist bases inside Pakistan. Ground-based operations restricted to Jammu & Kashmir and harking back to some of the options of yesteryear could form a part of the overall response. However, it should be remembered that Pakistan will not permit such actions without its military response, which too would be robust.

### Time to be cool headed

The Indian national leadership would do well not to be guided by the immediacy of electoral considerations; national security interests transcend this. Whatever are the selected options, the two things that would make for stronger execution are political consensus and management of internal social cohesion. India cannot achieve its strategic objectives if Kashmiris remain targets of physical abuse and harassment, and minorities are vilified on social media. It is a difficult time for India and the leadership has to work overtime to ensure that the Indian armed forces have a 'firm base' to operate from; that is always a military need anyway.

*Syed Ata Hasnain retired as Lt. General from the Indian Army*

Triple Talaq Bill and the Citizenship Bill, were passed by the Lok Sabha but will lapse as they were not passed by the Rajya Sabha. It is evident that the government was able to have its way on every issue in the Lok Sabha and was held in check only due to a lack of majority in the Rajya Sabha; even this check was bypassed occasionally using the Money Bill route. The government could do this as a result of the anti-defection provision which gives complete control of all party votes to the party leadership. This law has converted MPs from being representatives of the people to delegates of the party. If the party in government has a majority of its own, it can have any provision passed; even coalition governments have to convince just a handful of leaders of their alliance partners.

### Review the anti-defection law

Parliament plays the central role in our democracy by holding the government to account and scrutinising proposed laws and financial priorities. With the end of the 16th Lok Sabha, it is time to ponder on how to make this institution more effective. An important step will be by reviewing the anti-defection law that has hollowed out the institution.

*M.R. Madhavan is the President and co-founder of PRS Legislative Research*

## 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.

### India's response

The Pulwama terror attack is numbing. However, at this critical situation, we are duty-bound to maintain communal harmony for the sake of our great nation. In this connection, some of the shocking developments in different parts of the country are unacceptable ("Centre moves to restore calm in Jammu", "Protests and panic after attack" and "Tension in Haryana village as mood turns against students", all February 17). For example, the threats being issued to people from Kashmir are spoiling the atmosphere of peace and communal harmony. Those who are seeding more enmity and disturbing harmony are the real enemies of India. We need to act against them too just as we would handle external aggression.

ABDUR RAUF,  
Mumbai

■ Given that Pakistan is bragging about its nuclear status and geo-political importance (*vis-à-vis* Afghanistan) – using it as leverage to attain its own ends with the U.S. and the Western bloc – and also enjoys an all-weather friendship with China, most of the global condemnation is wont to be nothing more than paying lip service with no concrete action being taken against terror outfits. India-Pakistan peace overtures have been scuttled by the war-happy Army of Pakistan; never mind even if it has proven to be detrimental for that nation. The all-powerful security establishment of Pakistan cares very little for the welfare of Pakistanis.

NALINI VIJAYARAGHAVAN,  
Thiruvananthapuram

■ The Kashmir issue is far more complicated than it appears, especially when

there seems to be a sense of alienation in the Valley. An eye for eye leaves the whole world blind and giving the Indian Army full freedom to act can escalate tension in the Valley. The lives of our soldiers are important but any retributive step needs to be well thought out.

ASMITA SINGH,  
New Delhi

■ Political unity in India and the government revoking MFN status to Pakistan are fine, but the point is about effective moves after this. Terrorism is a growing industry, made easier through modern communication technology. India should reach out to the civilian population in Pakistan so that the influence of the deep state is eliminated. Global consensus on a accepted definition of terror remains in limbo because there is no meeting ground. Quick-fix solutions

are not the answer and the world must needs to be realistic on how to deal with the menace of terror.

HARSAHBH SINGH,  
Ludhiana, Punjab

■ India has waited enough, by requesting Pakistan and appealing for international intervention, in asking that some of the most wanted terrorists are handed over. If from miles away the U.S. was able to get Osama bin Laden, can't India plan a similar offensive across the border, perhaps enlisting the cooperation of Afghanistan and Iran?

S.V. VENKATAKRISHNAN,  
Bengaluru

### Bailing an airline out

One can only see a clear winner in the bank-led rescue attempt of Jet Airways – Nareish Goyal, who will be laughing all the way to the bank, with the banks becoming majority

shareholders while management control could remain with Mr. Goyal ('Business' page, "In rescue effort, banks to acquire majority stake in Jet", February 15). Conversion of bank debt into equity at a notional value of ₹1 is nothing but recognition that the debt would not be paid. To add insult to injury, banks have also committed themselves to meet a "funding gap" of ₹8,500 crore, which is nothing but taking a quasi-equity exposure at debt pricing. There seems to be little new contribution by the promoters in the entire scheme by way of fresh funds. What benefit would lenders have by becoming majority shareholders with nominees on the board? There are various interconnected reasons as to why banks essentially fund through debt rather than equity. If banks began

preferring equity exposure to debt, for whatever reasons, the cost of financial intermediation would rise substantially, making Indian industry totally non-competitive. Overall, the deal appears to be another case of public resources being used for private gain.

SUSHIL PRASAD,  
Hyderabad

### A pat for Odisha

It is no surprise that Odisha has won the *Sportstar* Aces award for 'Best State for Promotion of Sports' ('Sport' page, "Odisha is now a key sports destination", February 17). The three big ticket events have enhanced Odisha's name. Sport teaches one about the importance of team work and fosters healthy competition. Odisha has shown us the way.

RIVAZURRAHMAN,  
Ramanagara, Karnataka

MORE LETTERS ONLINE:  
www.hindu.com/opinion/letters/