



Freeing Kulbhushan

Pakistan's delay in giving full consular access reveals a non-serious attitude to ICJ order

Two weeks after the International Court of Justice at The Hague ruled in favour of India in the case of Kulbhushan Jadhav, Pakistan has yet to take the first step towards implementing the order: providing him “consular access”. In its verdict on July 17, the ICJ had decided near-unanimously that by not informing India immediately of Mr. Jadhav's arrest in 2017, by not informing him of his rights, and not allowing the Indian High Commission to meet with him and arrange for his legal representation, Pakistan was in violation of the Vienna convention on consular relations. Although Pakistan's Foreign Ministry had offered a meeting between Mr. Jadhav and the Indian High Commission in Islamabad on Friday afternoon, the offer came with conditions, including CCTV cameras on proceedings, and a Pakistani official being in the room during the meeting. This was a violation of the unimpeded consular access that the ICJ had ordered, and India decided to reject the offer until Pakistan reconsiders its conditions. India's concerns are three-fold. First, Pakistan's delay in granting full consular access displays a non-serious attitude to implementing a clear-cut order from the UN's highest judicial body. This augurs badly for Pakistan's application of the rest of the ICJ order that calls for a full review of Mr. Jadhav's trial conviction and death sentence for terrorism and espionage charges. Most importantly, the nature of the conditions indicates Pakistan wants to monitor what Mr. Jadhav tells Indian officials closely, as much of their original case, as presented to the public, rested on his purported confession. If he shares adverse details of coercion, the court may well go beyond its current order in the case, and India may have a stronger chance of trying to have the trial overturned.

Islamabad must stop dragging its feet and creating unnecessary hurdles in providing what is a basic human right for Mr. Jadhav, and New Delhi needs to keep its rhetoric low, while pressing its case for access to the former naval officer, consistently and firmly. This will not be easy, as after some relative calm, shelling at the Line of Control has opened up with a new fury in the last few days. The allegations by Pakistan that the Indian Army is deploying cluster-munitions on civilian areas (firmly denied by the government), and the Army's claim that several Pakistani regulars and terrorists were killed in an infiltration attempt by a “Border Action Team” (BAT) have ratcheted up tensions further. The government's ham-handed reaction to the threats, of cancelling the Amarnath Yatra, pulling out tourists and pilgrims and raising security levels in the valley further, have only added to the narrative. It would indeed be a tragedy if the situation overshadows the fate of Mr. Jadhav, just when hopes had been raised by the international court verdict to help secure his freedom.

Bigger and better

More judges are welcome, but SC must focus on its role as interpreter of the Constitution

Any move to increase the strength of the judiciary ought to be welcomed, given the perennial complaint that availability of judges is not increasing in proportion to the institution of cases. In this perspective, the Union Cabinet's decision to raise the strength of the Supreme Court from 31 to 34, including the Chief Justice of India, will help in dealing with the large pendency – 59,331 cases on July 11. The law that fixes the number of judges in the highest court was last amended in 2009 to raise the figure from 26 to 31. Chief Justice Ranjan Gogoi had written to the Prime Minister recently, highlighting the problem of paucity of judges, due to which he was unable to constitute enough Constitution Benches to decide important questions of law. However, a moot question is whether the highest court should go into the correctness of every decision of every high court. Are the judicial resources available being used optimally? Is valuable time being taken up by mundane matters that do not impinge on larger questions that involve interpretation of laws and constitutional provisions? For instance, routine bail matters land up in the Supreme Court within days of persons being arrested. Every major crime or disaster seems to invite a litigant, ostensibly in public interest, who mentions the matter before the Chief Justice for urgent hearing. The court is being invited to even oversee flood relief work.

A mere increase in the court's strength may not be enough to liquidate the burgeoning docket. Another set of measures that would save the court's time, including a reasonable restraint on the duration of oral arguments and a disciplined adherence to a schedule of hearings may be needed. In this case, one of the principal objectives should be to preserve the apex court's primary role as the ultimate arbiter of constitutional questions and statutory interpretation. All other questions involving a final decision on routine matters, especially civil cases that involve nothing more than the interests of the parties before it, ought to be considered by a mechanism that will not detract from the court's primary role. Some countries have brought in a clear division at the level of the apex judiciary by having separate constitutional courts, which limit themselves to deciding questions of constitutional importance. It may be worthwhile considering the 229th Report of the Law Commission, suggesting a new system under which there will be one Constitution Bench in Delhi, and four ‘Cassation Benches’ for different regions of the country. These will be final appellate courts for routine litigation. This arrangement may also increase access to justice to those living in far-flung areas of the country and who may otherwise have to come to Delhi and spend more time and money in pursuing appeals. It may also cut down on the time taken for disposal of cases.

A political reinvention in a moment of crisis

India needs a national party to provide substantive opposition to the government — all is not lost for the Congress



NEERA CHANDHOKE

Today, we, the people of India, are trapped between a rock and a hard place. On one side is the Bharatiya Janata Party (BJP) which continues to bulldoze legislation, controversial at best and ill-intentioned at worst, through Parliament. On the other is the Opposition, unable to mount a concerted and effective critique of government policies. The sluggishness of the non-NDA parties is cause for some puzzlement. After all, 55% of the electorate has voted for them. Unfortunately, this vote is hardly reflected in Parliament.

Political scientists have been, for long, concerned with the often astounding gap between vote shares and the number of seats a party obtains in Parliament. This leaves a majority of the voters unrepresented. Democrats have strongly argued that the “winner takes all” principle needs to be relegated to the wayside and replaced with the system of proportional representation. This is, however, another story. The BJP is hardly likely to initiate an electoral project that might derail its relentless search for power by any means.

Bearish on the economy

What the ruling party is doing with the power it has acquired is equally puzzling. India is heading toward an economic crisis. Economic growth has slowed down, domestic and global capital is reluctant to invest in the economy, and unemployment reaches a new high every day. Seldom have prominent industrialists expressed such public concern about im-

pending economic disaster as they have now. But the BJP hardly shows interest in tackling the situation. It is more interested in demolishing democratic rights and bringing the minorities to heel.

The determined refusal to confront the crisis is symptomatic of a wider problem. The ruling party is not known for either innovative politics or imagination. Its concept of well-being is limited to a free gas connection and an indifferently built flat. Its ideology is stuck in colonial stereotypes of ‘Hindu’ and ‘Muslim’. There is nothing new in its political discourse; merely a rehash of what V.D. Savarkar wrote in 1923. The problem is that the chauvinistic ideology of religious nationalism precludes reflection and self-critique. The great debates of contemporary politics have simply bypassed the party-misculturalism, minority rights, redistributive justice, citizenship or cosmopolitanism.

Forgotten legacy

The Indian National Congress has, in the past, been more inventive because its ideology was forged in the heat of the freedom struggle. Pluralism, secularism, tolerance, citizenship, fundamental and minority rights, cosmopolitanism, non-violence and anti-imperialism were thrown up in the course of the movement. On these planks the Congress was able to mobilise vast masses of people against colonialism. Sadly, the party has forgotten its legacy. We need a national party to provide substantive opposition to the government. The Congress flounders, it is rud-

derless. All is not lost. Moments of crisis can lead to reinvention. The party must reinvent itself, simply because it is synonymous with the history of our freedom struggle, and with enlightened leaders such as Jawaharlal Nehru. Remember



that Nehru's vision inspired great literature, poetry, films, art, theatre, and architecture. What do we have today except mediocre hagiography? A ruling class which cannot inspire cultural creativity can only rule by coercion. In modern politics, this is counted as a failure.

Leading from the front

To reinvent itself the Congress must draw upon five lessons of its own past, some good, some bad, some indifferent. One, its leaders were moral exemplars. They were visionaries and they were courageous. In the middle of Partition violence Nehru was there, in the killing fields of Punjab and Delhi. He persuaded people to desist from violence and he assured Muslims of their safety. Today when Indians are lynched and left to die on the streets, politicians stay safely indoors. Our own people die avoidable deaths and leaders are silent. We need leaders who motivate us by example.

Two, the Congress could lead the mainstream freedom struggle because it had a robust organisation, both decentralised and democratic. The party formed a coalition of what has been called ‘big men’: heads of caste groups, peasantry, industry, religious formations, and workers organisations. When the party initiated or called off a movement, it relied upon se-

Pulling a Vietnam in Afghanistan

Mired in Afghanistan, America's retreat strategy mirrors its Vietnam war campaign



STANLY JOHNY

By the late 1960s, it became evident to American leaders that they could not win the Vietnam war. Richard Nixon, who was elected President in 1968, assigned Henry Kissinger, the National Security Adviser, to hold talks with the communist North Vietnam, seeking “peace with honour”. The Americans were actually prolonging a war they had already lost. The goal was not to defeat North Vietnam but to stop them from taking over the South, the American ally. Daniel Ellsberg, who leaked the Pentagon Papers, called this approach the “stalemate machine”.

Cut to today's Afghanistan. It's hard to miss the similarities in the U.S.'s strategy. After 18 years of fighting – longer than America's direct military involvement in Vietnam – the U.S. has realised that it cannot win the Afghan war. The American goal is no longer defeating the Taliban but to stop them, at least for now, from taking over Kabul. Veteran diplomat Zalmay Khalilzad is the new Kissinger. Just as Nixon wanted to get out of Vietnam, President Donald Trump too wants to get out of Afghanistan.

The U.S.'s involvement in Vietnam goes back to the last years of

French colonial rule. The U.S. first backed France against the Viet Minh guerrillas. After France exited Vietnam in 1954, the U.S. backed South Vietnam against the communist-led North. Initially, the U.S. involvement was limited to advisory roles. But after the U.S. destroyer, USS Maddox, was attacked by North Vietnamese torpedo boats off the Vietnamese coast, in August 1964, the Lyndon Johnson administration steadily escalated the U.S.'s role. At its peak, in 1968, American troop deployment in Vietnam reached 549,500 personnel. The U.S. went into Afghanistan after the September 11, 2001 terrorist attacks, launching its war on terror. At the peak of the war here, there were over 1,00,000 troops. Despite the massive deployment of troops and superior air power, the U.S. got stuck and failed to stabilise the country.

From a position of weakness

In Vietnam, the U.S. was negotiating from a position of weakness. By the late 1960s, American public opinion had largely turned against the war. Despite massive troop deployment, both the U.S. and its South Vietnamese allies had failed to make substantial gains. America's search and destroy operations in communist-dominated villages in the south and its disastrous air campaign in the north only fuelled Vietnamese hostility. The U.S. had dropped more than three times as many bombs on Vietnam as the Allied forces had during the Second World War. Besides, the South



Vietnamese regime was unpopular, oppressive and weak. In a visit to Saigon, the South's capital, a few months after he assumed the presidency, Nixon promised peace and asked the communists to reciprocate. He badly wanted a deal, and Mr. Kissinger was his bet.

Nixon first started “Vietnamising” the war – reducing U.S. troop presence in Vietnam and shifting the focus from direct participation in land war to training and advisory roles, while continuing with air strikes. At the same time, Mr. Kissinger started talks with Le Duc Tho, a North Vietnamese revolutionary and diplomat. When talks were deadlocked, the U.S. offered to pull out of the South as a compromise. In 1973, the U.S., North Vietnam and representatives of South Vietnam and Viet Cong, the communist guerillas from the South, signed the Paris Peace Accords. The North and the South agreed to a ceasefire and continue holding peace talks, while the U.S. agreed to pull troops out of Vietnam.

In the case of Afghanistan as well, the U.S. is negotiating from a position of weakness. The war entered a stalemate long ago. America's allies stand divided. The go-

cond rung leaders. The central leadership left State politics, for example the conflict over linguistic States, to regional bosses.

Three, diversity of opinions and interests in the party encouraged members to engage in dialogue and persuasion. They negotiated and accommodated class, caste, and group interests within the organisation. The Congress found place for most demands, from interest groups, from individuals desirous of social reform, and from individuals stirred by the desire for power and prestige. The Congress was accommodative and a dialogical party. It practised democracy.

Long shadow of centralism

Four, the decline of the party in the late 1960s and the early 1970s was caused by organisational atrophy. At one point of time, the Congress possessed the ability to address, negotiate, and resolve competing demands. As the party became the captive of the leader, it lost this skill. Even as Ms Indira Gandhi began to forge a national constituency over the heads of State leaders, the party slid into centralism and the politics of the durbar. The power of individual members depended on their proximity to the leader. The BJP should learn from this history. Recollect that even ministers of the party are faceless and anonymous, their fates are held hostage by the leader.

Five, the decline of the Congress took place at a time when politics demanded new forms of legitimacy. In the two decades following Independence, the Congress was legitimate because the party and its leadership were identified with the freedom struggle. Twenty years later, a new generation had no direct memory of the liberation movement. The Congress was however in thrall to its

government in Kabul, which the U.S. backs, is known for infighting and chronic corruption. The security forces are struggling to ensure basic security to the public, even in the capital city. Like Nixon's “Vietnamisation”, U.S. President Barack Obama had started “Afghanising” the war – pulling out most troops and moving the remainder to training and advisory roles. The Afghan war is also unpopular in America. Mr. Trump, who campaigned to wind down America's foreign interventions, wants to end it. But the U.S. cannot unilaterally pull out, especially when the Taliban is on the offensive. That would cause a lasting stain on America's already battered reputation as the world's pre-eminent military power. Hence, it needs a deal; finding one is Ambassador Khalilzad's mission.

Advantage Taliban

Mr. Khalilzad has already held multiple rounds of talks with the Taliban's representatives in Doha, Qatar. As in Vietnam, the main demand of the Afghan insurgents is a complete U.S. troop withdrawal. The U.S. and the Taliban have agreed to a road map for peace: the U.S.'s withdrawal in return for the Taliban's assurance that Afghanistan would not be used by terrorists.

The U.S. has already made two big compromises in its rush for an exit deal. It has given in to the Taliban demand that the Afghan government should be kept away from the peace process. The Taliban does not recognise the Kabul

leader; it failed to read the message of the time. By the late 1960s, simmering discontent came to pervade large parts of the country, and groups under the leadership of J.P. Narayan mobilised to target an unresponsive state and an equally unresponsive party system. The Congress had, however, mislaid the ability to contain discontent; it opted for coercion. Mrs Gandhi declared an Emergency.

Today, India faces imminent economic catastrophe. We confront serious threats to our democracy and to the Constitution. The ruling party is not particularly wedded to democracy. Right-wing authoritarianism has no love for any fundamental right that constrains the exercise of absolute power. Civil society will continue to struggle against violations of democracy. Scholars will write of the threat posed by wielders of absolute power to our constitutional democracy. But civil society has to function along with a democratic political party. Regional parties have degenerated into one-person dictatorships, or become family concerns. We have to call upon a party that had fought the first freedom struggle. The Congress has to step in after it reinvents itself. For only a democratic party can understand what the people of India want, desire and aspire for.

It is our duty to remind the Congress that it owes the people of India. What else can we say? We can only repeat Mark Anthony's words in Shakespeare's *Julius Caesar*: ‘For I have neither wit, nor words, nor worth/Action, nor utterance, nor the power of speech/To stir men's blood/ I only speak right on/ I tell you that which you yourselves do know.’ If the party does not respond, our future is an uncertain one.

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government and has made it clear that it would hold talks with the government only after a pullout of foreign troops. Second, the U.S. continued to hold talks even in the absence of a ceasefire. As a result, the Taliban continued its terror campaign even when the peace process was under way.

U.S. officials have hoped that a deal could be reached by September 1. It is anybody's guess what will happen to the Afghan government once America is out. When the U.S. was forced to pull out of Vietnam, the Southern and Northern governments hadn't reached any settlement but for the ceasefire. The plan was for talks to continue, seeking a final agreement. The ceasefire did not last long. In the two years after the U.S. pulled out, the communists captured Saigon and the government crumbled like a house of cards.

In the case of Afghanistan, there is not even a ceasefire between the government and the Taliban even as the U.S. is preparing to make an exit. The winning side is the Taliban, which, unlike the Viet Cong, is a anti-modern, anti-woman, anti-minority fundamentalist machine, whose earlier regime was notorious for excessive sectarian violence. The Taliban is part of the problem, not a solution. The Communists unified Vietnam, and after early years of struggle, modernised the economy and rebuilt the country into an Asian powerhouse. For Afghanistan, the tunnel gets longer and darker.

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LETTERS TO THE EDITOR

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Sengar's stronghold

That the residents of Unnao, Uttar Pradesh, are defending Kuldeep Singh Sengar, the expelled Bharatiya Janata Party (BJP) MLA, despite the fact that he is in jail and charged with raping a young woman, speaks volumes about the money and muscle power of politicians belonging to the ruling party (Front page, “Despite the outrage, Unnao bats for rape-accused Kuldeep Sengar,” August 4). Earlier, some BJP MLAs in the erstwhile Jammu and Kashmir government had expressed their solidarity with those involved in the Kathua rape episode. Acts that show tolerance towards the alleged

perpetrators of heinous crimes have been on the rise under the previous and current Central governments. The BJP high command, by not reining in such criminals, has only emboldened them and this has had a detrimental impact on the peaceful coexistence between communities. Those in authority should do their best to bring justice to the victims of these crimes.

A. JAINULABDEEN,
Chennai

■ The way in which the Unnao episode is unfolding makes me wonder whether our society has lost all sense of morality and ethics. Even after two years of the incident, the case remains

unsolved and amidst so many twists and tragic turns, it has required the Supreme Court's intervention to fast forward the investigations. Indian society needs to recalibrate its moral compass if we are to progress as a civilisation. With its brute majority, the government should deal with rape cases with a firm hand without showing favour to anybody. Bringing justice to those affected by such crimes is as important as maintaining national security, the government's pet theme.

A.S. SRINIVASAN,
Chennai

Build-up in Kashmir

The surge in troop deployment and the eviction of tourists and pilgrims from

Kashmir have left the people flummoxed and fearful. (Front page, “Uncertainty grips Kashmir Valley,” August 4). At the same time, one cannot question the government's right to adopt pre-emptive measures based on actionable intelligence about possible attacks. Though the government cannot be expected to reveal the exact details of the intelligence reports, a reassuring clarification that the security blanket is not to further any political agenda will help to assuage the people's concerns.

V.N. MUKUNDARAJAN,
Thiruvananthapuram

■ The situation in Kashmir, in the wake of the Centre's decision to ask Amarnath

pilgrims to cancel their trips and its move to increase the number of troops in the Valley, is a cause for concern. The government's actions give an impression that its top echelons are planning something ‘big’ and its unilateral handling of all issues is bound to have serious repercussions. The BJP would do well to remember that notwithstanding its brute majority in Parliament, democratic governance is premised on consensus.

J. ANANTHA PADMANABHAN,
Tiruchi

UAPA amendments

India undoubtedly needs tough laws to combat terrorism, but the proposed amendments to the Unlawful

Activities (Prevention) Act may be misused by leaders to settle political scores. A wrongful designation of an individual as a terrorist will cause irreparable damage to his/her reputation and career. The amendments also give more power to the Centre, encroaching on the authority of States. The law can become one more weapon in the hands of a regime hell-bent on delegitimising dissent. The government needs to be mindful of fundamental rights of citizens while legislating against terror (“UAPA Bill gets Rajya Sabha nod,” August 3).

T.S.N. RAO,
Bhimavaram, Andhra Pradesh

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