Collegium controversy

An unusual change of decision brings the judicial appointments system under scrutiny

The controversial collegium system of judicial appointments is under public scrutiny once again. This time, the potential for embarrassment to the superior judiciary is much higher. Former Chief Justices of India, a sitting Supreme Court judge, and the Bar Council of India have taken exception to the collegium's unusual action of revisiting decisions made at an earlier meeting, and recommending the elevation to the apex court of Justice Dinesh Maheshwari and Justice Sanjiv Khanna, instead of two judges whose names had been considered earlier. The allegation is not merely one concerning the seniority or the lack of it of the two appointees; rather, it is the much graver charge of arbitrarily revoking a decision made on December 12 last year. The official reasons are in the public domain in the form of a resolution on January 10. It claims that even though some decisions were made on December 12, "the required consultations could not be undertaken and completed" in view of the winter vacation. When the collegium met again on January 5/6, its composition had changed following the retirement of Justice Madan B. Lokur. It was then decided that it would be "appropriate" to have a fresh look at the matter, as well as the "additional material". The only rationale for the names of Rajasthan High Court Chief Justice Pradeep Nandrajog and Delhi High Court Chief Justice Rajendra Menon being left out is the claim that new material had surfaced. However, it is not clear what the material is and how it affected their suitability.

Former Chief Justice of India R.M. Lodha is right in underscoring the institutional nature of decisions by the collegium. Can the retirement of one judge be a ground to withdraw a considered decision, even if some consultations were incomplete? There is little surprise in the disquiet in legal circles. Another curious element in the latest appointments is that Justice Maheshwari, who had been superseded as recently as last November, when a judge junior to him was appointed a Supreme Court judge, has been found to be "more suitable and deserving in all respects" than any of the other chief justices and judges. There is no objection to the elevation of Justice Khanna except his relative lack of seniority. There is little substance in this criticism, as it is now widely accepted that seniority cannot be the sole criterion for elevation to the Supreme Court. However, the fact that there are three other judges senior to him in the Delhi High Court itself – two of them serving elsewhere as chief justices – is bound to cause some misgivings. The credibility of the collegium system has once again been called into question. The recent practice of making public all resolutions of the collegium has brought in some transparency. Yet, the impression that it works in mysterious ways refuses to go away. This controversy ill-serves the judiciary as an institution.

Learning little

The reading and arithmetic abilities in rural schools are shockingly dismal

The latest assessment of how children are faring in schools in rural areas indicates there has been no dramatic improvement in learning outcomes. The picture that emerges from the Annual Status of Education Report, Rural (2018) is one of a moribund system of early schooling in many States, with no remarkable progress from the base year of 2008. Except for a small section at the top of the class, the majority of students have obviously been let down. The survey for 2018 had a reach of 5.4 lakh students in 596 rural districts. It should put administrators on alert that while 53.1% of students in Class 5 in rural government schools could in 2008 read a text meant for Class 2, the corresponding figure for 2018 stood at 44.2%; for comparison, private schools scored 67.9% and 65.1% for the same test in those years. Arithmetic ability showed a similar trend of under-performance, although there has been a slight uptick since 2016: an improvement of about 1.5 percentage points in government schools and 1.8 percentage points in private institutions, among Class 5 students. Himachal Pradesh, Punjab, Kerala and Haryana did better on the arithmetic question with over 50% students clearing it, compared to Uttar Pradesh, Madhya Pradesh, Rajasthan and even Karnataka, which scored below 20%. A significant percentage of students were not even able to recognise letters appropriate for their class, highlighting a severe barrier to learning.

Now that the ASER measure is available for 10 years, the Centre should institute a review mechanism involving all States for both government and private institutions, covering elementary education and middle school. A public consultation on activity-based learning outcomes, deficits in early childhood education, and innovations in better performing States can help. At present, children start learning in a variety of environments: from poorly equipped anganwadi centres to private nurseries. The enactment of the Right to Education Act was followed by a welcome rise in enrolment, which now touches 96% as per ASER data. Empowering as it is, the law needs a supportive framework to cater to learners from different backgrounds who often cannot rely on parental support or coaching. There is concern that curricular expectations on literacy and numeracy have become too ambitious, requiring reform. It is worth looking at innovation in schools and incentivising good outcomes; one study in Andhra Pradesh indicated that bonus pay offered to teachers led to better student scores in an independently administered test in mathematics and language. The solutions may lie in multiple approaches. What is beyond doubt is that governments are not doing their duty by India's children.

The seats around the Afghan round table

India must shed its diplomatic diffidence as a stakeholder, even with the Taliban's presence

RAKESH SOOD

One year ago, on New Year's Day, the Indian establishment welcomed U.S. President Donald Trump's tweet: "The United States has foolishly given Pakistan more than 33 billion dollar in aid over the last 15 years, and they have given us nothing but lies & deceit, thinking of our leaders as fools. They give safe haven to terrorists we hunt in Afghanistan, with little help. No more!"

This year, in a Cabinet meeting on January 3, he rambled, "I get along very well with India and Prime Minister Modi. But he is constantly telling me he built a library in Afghanistan. Okay, a library... That's like, you know what that is? That's like five hours of what we spend [in Afghanistan]. And he tells it and he is very smart. And we are supposed to say, oh, thank you for the library." This left those in the Indian establishment miffed and scratching their heads, only to conclude that Mr. Trump possibly mistook the Parliament building in Kabul built by India at a cost of $90 million for a library.

Mr. Trump is frustrated with his Afghanistan policy and is desperately seeking a way out. To be fair, when he announced his Afghanistan policy in August 2017, he had said that his original instinct was to pull out. He was persuaded otherwise by his then Defence Secretary James Mattis, Chief of Staff John Kelly, National Security Adviser H.R. McMaster, and Afghanistan commander Gen. John W. Nicholson, all of whom have since been replaced, making it easier for him to follow his 'instinct'.

Failure of the Afghan policy

Currently, the U.S. spends $45 billion a year in Afghanistan, including $5 billion for Afghan security forces and $780 million on economic assistance. The balance is for U.S. forces and logistical support. These figures have reduced over time, as U.S. troop deployment is down to 15,000 now from 100,000 in 2010. However, over the last 18 years, the cumulative cost to the U.S. has been estimated at $800 billion on U.S. deployments and $105 billion in rebuilding Afghanistan. About 2,400 U.S. troops have been killed though casualty figures since 2015, when the U.S. withdrew from combat operations, are down to 12 a year. Despite expending this blood and treasure, the situation on the ground continues to deteriorate. Mr. Trump's questioning of the usefulness of continuing U.S. military presence in Afghanistan is justified.

The 2017 policy aimed at breaking the military stalemate by expanding the U.S. presence by 5,000 troops, putting Pakistan on notice, and strengthening Afghan capabilities. More than a year later, clearly the policy has failed. The military situation has improved in favour of the Taliban, while the Taliban and Haqqani Network sanctuaries in Pakistan remain intact.

Afghan security forces are suffering unacceptable attrition. Since 2015, when the Afghan security forces took charge of combat operations, they have suffered around 30,000 casualties. Civilian casualties are over 3,000 a year. With recruitment drying up and desertions on the rise, the Afghan security forces are down by more than 10% from their sanctioned strength.

Parliamentary elections were conducted on October 20 last year with much fanfare but the announcement of the final results has been repeatedly postponed amid allegations that more than one-fourth of the votes cast were rigged.

R.V. MOORTHY

Unconfirmed reports that the U.S. was withdrawing 7,000 troops from Afghanistan began to circulate hours after James Mattis's resignation as Defence Secretary. The White House backtracked by subsequently clarifying that this was one of the options being explored but no decision had been taken. However, it is clear which way the wind is blowing.

Accumulating mistakes

The reason is that over the last 18 years, the U.S. (and coalition partners) have made a series of mistakes, of omission and commission. The Afghan Constitution, adopted in 2004, centralised power in a U.S.-style presidential system but lacking the institutions of legislature, judiciary and civil society, checks and balance were missing. Governance structures were weak as an entire generation had been lost in the anti-Soviet jihad and Taliban conflicts.

The Iraq invasion in 2003 rapidly sucked in more and more U.S. resources as the focus shifted away from Afghanistan. By 2006, when the Taliban had regrouped and begun to engage in suicide attacks and IED blasts in Afghanistan, the U.S. was unwilling to acknowledge it and preferred to bribe Pakistan to gain its cooperation.

Poppy production grew to finance the Taliban insurgency. Since 2002, the international community has spent nearly $15 billion on counter-narcotics, and yet, in 2017, poppy production was four times what it was in 2002. International troop presence from 34 countries lacked a unified command and control and adopted different rules of engagement. British troops, deployed in Helmand, were the first to reach a quiet understanding with the local Taliban by ignoring the opium cultivation.

Hamid Karzai was President from 2001 to 2014. During the Barack Obama administration, his relations with the U.S. grew increasingly strained with both sides engaging in frequent sniping. His open criticism of Pakistan's duplicity irritated the U.S., which was even more dependent on Pakistan after the surge in U.S. troops in 2010. Mr. Obama's decision to announce the surge along with a timetable for withdrawal only emboldened the Taliban.

The strength of the Afghan security forces was hurriedly doubled to enable them to take combat lead in 2015 but lack of training and equipment soon began to take its toll. Only the Special Forces (Ktah Khas) raised in 2015 have successfully blunted Taliban onslaughts. But their numbers are limited and they are dependent on U.S. airlift and intelligence imagery.

The cumulative effect is that the U.S. has lost goodwill and its troop presence is a liability. It is hardly surprising that the U.S. is now seeking an exit. Managing the optics of withdrawal is critical though and that is what Zalmay Khalilzad, as the Special Representative for Afghanistan Reconciliation, is tasked to ensure. The Afghan presidential election has been pushed by three months to July 20 but it is unlikely that the election machinery can be reformed and the promised biometric ID system put in place. The national unity government led by President Ashraf Ghani and Chief Executive Abdullah Abdullah has lost legitimacy and cannot continue beyond July.

Since the security situation does not permit new elections, the U.S. is likely to push for a new version of the 2001 Bonn Conference to set up an interim government that can plan a Loya Jirga and an election in a year or two. The process would provide the window for a U.S. exit. The difference is that unlike in 2001, it is clear that the Taliban will be present at the table, speaking from a position of strength. This is evident from their announcement on January 8 that they were calling off the next round of talks with the U.S. on account of differences on issues relating to release of Taliban prisoners, participation of Afghan government officials and U.S. troop withdrawal. Reflecting the Taliban's growing legitimacy, Russia is planning another regional conference in the Moscow format. Pakistan had engineered a meeting of the Taliban with Saudi Arabia and the UAE while a Taliban delegation was in Tehran in end-December.

What India should do

India needs to shed its diplomatic diffidence because unlike in the 1990s, India's options for engagement today are not restricted. It may not have the leverage of being a spoiler but neither does it carry uncomfortable baggage. During the last 18 years, India has earned goodwill cutting across Afghanistan's geographies and ethnicities. Instead of playing favourites, it has supported institution building and shown that its interests coincide with the idea of a stable, secure, independent and peaceful Afghanistan. What is needed is more active and coordinated diplomacy, official and non-official, so that India remains at the table as Afghanistan's preferred development partner through its transition.

Rakesh Sood is a former diplomat and currently Distinguished Fellow at the Observer Research Foundation

The view from the outside

As a democracy, India must have a better record of upholding human rights

PRIYA PILLAI

The role that India can and should play on the world stage is a topic that elicits much excitement and, of late, hyper-nationalism. It is often stated that it is time for India, as the world's largest democracy, to take on an increasingly significant mantle in the international realm. Aspects such as economic and military power have been the usual focus of this debate. However, an important component of this enhanced stature necessarily relates to the safeguarding and protecting of human rights. In India, there is a blind spot in relation to rights and the intersection with foreign relations and policy discussions, and ignoring this has its perils.

Track record on human rights

Recently, India's Deputy Permanent Representative to the United Nations expressed concern over the "politicisation of human rights as a foreign policy tool", while addressing the work of the UN and the Human Rights Council. If part of the argument that India seeks to make is that it is a torchbearer of democracy and should therefore have a greater say, including on issues such as UN reform, an integral part of the case to be made relates to upholding international laws and standards pertaining to human rights. So, how does this stand up to scrutiny?

Within the country, many lawyers, activists, academics and human rights organisations have pointed to the deteriorating climate in relation to human rights. But how is the track record on human rights perceived outside the country, particularly by international law and human rights experts appointed as part of the UN human rights machinery? It is instructive to assess the record of UN independent experts towards India. For clarity, this assessment excludes the Human Rights Council, made of a group of states which can run the risk of allegations of partisanship based on membership. Instead, only statements of UN Independent Experts or Special Rapporteurs are examined, being thematic or subject matter

RITU RAJ KONWAR

experts on specific aspects of law (such as freedom of expression, extrajudicial executions, human rights defenders, etc.).

Negative statements

On January 11, four UN Special Rapporteurs – on summary executions, torture, freedom of religion, and the situation of human rights defenders – issued a statement drawing attention to "extrajudicial" killings in Uttar Pradesh. In a strongly worded call, the UN experts expressed concern about the "patterns of events", including arrest, detention and torture prior to summary executions of 59 individuals since March 2017. This enhanced and negative scrutiny by Independent Experts follows on the heels of the first ever UN report on human rights violations in Kashmir, conducted by the Office of the High Commissioner for Human Rights – an indicator of how far the situation has deteriorated, as well as the inevitable enhanced scrutiny. A review of the press releases by the UN human rights office from 2010 to date shows that there have been 26 critical statements (mostly by UN experts, with some by the UN High Commissioner for Human Rights). Nine were issued in 2018, which was the year that saw the highest number of negative statements on India in the period examined. The statements have dealt with a number of issues, including the Assam National Register of Citizens process (in photo), online hate speech, the killing of journalist Gauri Lankesh, jailing of human rights defenders, deportation of Rohingya refugees, and excessive police response to protests.

These statements indicate a few things. First, there has been enhanced scrutiny by international experts of the deteriorating human rights environment in India, particularly in 2018. Second, the magnification of domestic rights violations in the international sphere is inevitable. Third, the metric of human rights and compliance with international law cannot be dismissed.

Inevitably, there will be the counterarguments, many of which can be addressed. Yes, this is not a comparison to other countries, but based on self-made claims of enhanced stature in the international arena – so how we fare in the eyes of international experts is important. No, this is not a question of external interference which can be dismissed out of hand – these statements are extremely serious, not issued lightly and are an integral part of the machinery of accountability for human rights violations in the international realm and will be a part of India's human rights record for posterity.

India's record of upholding human rights is abysmal; it must do better. The primary consideration should be the welfare and rights of individuals within the purview of the state. The secondary consideration should be perception and the place that India wants for itself in terms of stature and prestige. From both perspectives, the respect of the rights of individuals must be non-negotiable.

Priya Pillai is an international lawyer, with expertise in human rights and humanitarian issues

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.

Confusion in Karnataka

The events taking place prove that any post-poll alliance will hit many roadblocks; only a government formed with a majority can survive the full term ("Relief for Congress as dissidents relent" and "We are not trying to pull down govt. in Karnataka, says BJP", Jan. 17). Before elections, politicians beg for votes and make grand promises. After winning, they concentrate only on their welfare. The trend now seems to be to stay at lavish hotels and amass wealth by threatening defection to the Opposition. Given all these threats to defect and attempts to poach, it is better that a majority government comes to power.

D. SETHURAMAN,
Chennai

Earlier, horse trading, crossing the floor and defections happened behind the scenes. There was fear that these acts would be exposed by the media. In the last decade or so, these acts have become so brazen. "Resort politics" has become the norm. How does a legislator who wants to hop over to the opposite camp face his voters?

R. KRISHNAMACHARY,
Chennai

Sedition yet again

The editorial is right that the charges are exaggerated, but the action against the students should not be seen as an "attempt to criminalise contrarian view" ("Sedition and politics", Jan. 17). Shouting slogans about splitting the country or against the hanging of anti-India elements like Afzal Guru certainly do not come in the category of radical politics or democratic rights.

Y.G. CHOUKSEY,
Pune

The Supreme Court had reiterated in 2016 that sedition and defamation cannot be invoked for criticism. The filing of sedition charges against three former JNU students, and also against an Assamese scholar and two others, shows that the government is desperate before the elections.

V. PADMANABHAN,
Bengaluru

Section 124A of the IPC states that sedition charges can be slapped only if there is an attempt to create public disorder. The JNU students did not attempt to do that. College campuses ought to nurture different opinions. The ignorance of the law of the land and the crackdown on every dissenter is a sign that our democracy is eroding.

ASMITA SINGH,
New Delhi

The students shouted slogans against the hanging of a man who masterminded the attack on Parliament. These are no ordinary slogans. Parliament is the citadel of democracy. No doubt it took years to frame a charge sheet but it is highly unfortunate that your editorial is so one-sided.

SESHAGIRI ROW,
Hyderabad

Brewing trouble

K.L. Rahul and Hardik Pandya should have merely been suspended for two matches for their sexist comments ("Players brought the game into disrepute, so did the CoA and the BCCI", Jan. 17). An orientation programme should be put in place for young players who don't know how to deal with all the new-found money and fame that comes their way.

K.M. SRINIVASA GOWDA,
Bengaluru

The article rightly condemns the short-sightedness and high-handedness of the cricket administration. However, it is unfair to pin the blame on Pandya's parents. People are brought up differently and it's not right for us to judge them.

VIKRAM SUNDARAMURTHY,
Chennai

I am confused. What did Hardik Pandya say that brought disrepute to the game? What he does in his personal life is not a matter of concern to us. What he tells his parents is none of our business. Calling him a "woman hater" is harsh; if the women he hit on didn't have a problem with him and nor did his parents, who are we to judge? Given the hypocritical attitude that we have about sex in this country, I'm glad that we are at least talking about sex and the importance of carrying protection on air. The writer takes the moral high ground by castigating Pandya's parents, which is unfair. This is moral policing.

JAYARAJ MENON,
Thiruvananthapuram

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