BLINKEN, WANG YI TRADE ACCUSATIONS OVER SHOOTING DOWN OF 'SPY BALLOON'

Officials from both countries meet for the first time since the incident; the U.S. Secretary of State warns that 'this irresponsible act must never again occur'; China calls U.S. actions a violation of the International Civil Aviation Covenant

Top diplomats of the U.S. and China have held their first talks following the recent crisis in relations over the shooting down of a Chinese "spy balloon", with both sides trading accusations over the incident.

Meeting on the sidelines of the Munich Security Conference this past weekend, Secretary of State Antony Blinken, who cancelled a highly anticipated trip to China over the balloon, met Chinese Politburo member and Director of the Central Foreign Affairs Commission Wang Yi.

Mr. Blinken "directly spoke to the unacceptable violation of U.S. sovereignty and international law by the PRC high-altitude surveillance balloon in U.S. airspace, underscoring that this irresponsible act must never again occur", State Department spokesperson Ned Price said.

"The Secretary made clear the United States will not stand for any violation of our sovereignty, and that the PRC's high altitude surveillance balloon program — which has intruded into the air space of over 40 countries across 5 continents —has been exposed to the world."

The Chinese Foreign Ministry, which pointed out that Mr. Blinken had sought the meeting, in a statement said Mr. Wang had conveyed China's "strong position" that "what the U.S. side has done was apparently an abuse of the use of force and violation of customary international practice and the International Civil Aviation Covenant."

"China deplores it and strongly protests it," he said. "It is the U.S. who is in fact the number one country in terms of surveillance, whose high-altitude balloons illegally flew over China multiple times."

'Fix the damage'

Warning of the consequences to relations, Mr. Wang said the U.S. "needs to…demonstrate sincerity, and acknowledge and resolve the damage its abuse of force has done to China-U.S. relations." "If the U.S. side continues to fuss over, dramatise and escalate the unintended and isolated incident, it should not expect the Chinese side to flinch. The U.S. side should be prepared to bear all consequence arising from an escalation," he warned.

Mr. Blinken said the U.S. "will compete and will unapologetically stand up for our values and interests, but that we do not want conflict with the PRC and are not looking for a new Cold War." Mr. Wang, for his part, reminded the U.S. of its commitments on the Taiwan issue calling for it to "follow through on its statement of 'not supporting Taiwan independence'".

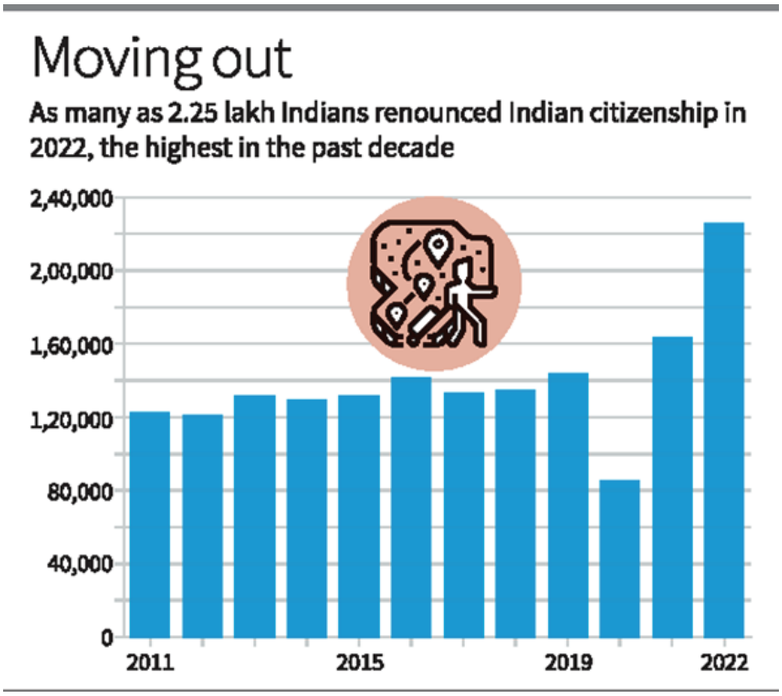
Both sides also differed on the Ukraine crisis, and Mr. Blinken had "warned about the consequences if China provides material support to Russia or assistance with systemic sanctions evasion." Mr. Wang rejected the warning, saying China "does not accept the U.S.'s finger-pointing or even coercion targeting China-Russia relations."

BANKS' NET INTEREST INCOME SOARED IN THE DECEMBER QUARTER

25.5 The percentage by which net interest income of banks grew in the December quarter year-on-year to ₹1.78 lakh crore, driven by a healthy credit off-take and a higher yield on advances. Net interest margin also rose by 17 basis points to 3.28% as banks repriced existing loans higher at a faster rate, according to an analysis by Care Ratings. PTI

INDIANS GO WEST, TAKE UP 'RESIDENCE BY INVESTMENT'

High net-worth individuals are making a beeline for such programmes in U.S., Portugal, Australia, Malta and Greece in search of better opportunities, healthcare, quality of life and education



VIJAITA SINGH

Pankaj Sharma, 50, moved to Canada in 2019. He followed his wife, Pooja Tandon, an IT professional who was offered a role there. In 2022, they applied for permanent residency that will make them eligible for citizenship after five years, on fulfilling certain conditions.

"The primary reason to move was professional, but after coming here, we realised that our daughter was at a stage in her life that we could not change her education system too often, so we applied for permanent residency and got it," Mr. Sharma said. He said his daughter, who often fell sick in Delhi due to air pollution, has not complained of chest infection since they moved to Canada.

In 2022, over 2.25 lakh Indians renounced Indian citizenship, the highest since 2011, according to data from the Ministry of External Affairs. The data reflect how Indians, especially high net-worth individuals (HNIs), are moving westward in search of better opportunities, healthcare, quality of life, and education, among other factors.

HNIs are those who have wealth of over $1 million or ₹8.2 crore. According to the Henley Global Citizens Report, there were3.47 lakh HNIs in India in December 2021.Of these, 1.49 lakh HNIs were found in just nine cities: Mumbai, Delhi, Kolkata, Bengaluru, Hyderabad, Pune, Chennai, Gurugram, and Ahmedabad.

Industry representatives say there has been a surge in requests for residence-through-investment programmes, especially the U.S. EB-5 visa, Portugal Golden Visa, Australian Global Talent Independent Visa, Malta Permanent Residency Programme, and Greece Residence by Investment Programme.

According to the report, India ranked fourth in the world in terms of privately-held wealth, after the U.S., China, and Japan.

Shilpa Menon, senior director of the Indian branch of LCR Capital Partners, a global private investment firm, said: "India is really rising in the ranks among successful applicants for the Portugal Golden Visa, climbing to fourth place [globally] in 2022, from fifth place in 2021, and ninth in 2020." The Portuguese scheme benefits individuals and families, providing them with the right to live, work, study, or retire in Portugal and the rest of European Union. "Since the programme's creation, more than 130 visas have been issued to Indian nationals," she said.

Among the qualifying requirements, purchasing property worth Euro 500,000 (₹4.4 crore) in a high-density area and creating at least 10 jobs for Portuguese nationals, are mandatory. Five years after the investment, the individual can obtain a Portuguese passport, making them eligible to visit over 150 countries without a visa. Portugal last week decided to end its Golden Visa Scheme, as per a Reuters report.

The EB-5 visa programme of the U.S., which requires a minimum investment amount of $800,000 (around ₹6.6 crore) over a period of 5 to 7 years and the creation of 10 permanent jobs for U.S. citizens, is also much sought after. The visa makes an individual eligible for American citizenship after five years.

Goldi Chawla, of CanAm Enterprises, said that in 2021, Indians received 211 EB-5 visas, the third highest of any country. He said that Indian parents were among the highest applicants, investing to give their children faster access to a green card. " [Also] HNIs like business owners, entrepreneurs, and professionals such as doctors and engineers are also enthusiastic applicants," he said.

For the EB-5 programme, funds are collected in an escrow account and are given out as loans for development and construction projects. "As soon as the project is complete, the borrower refinances this loan with a long-term debt from the bank and repays this in about five years. Most projects, including residential development in the Bay area (San Francisco and adjoining areas) and commercial towers in New York, have done well. Some people have also invested in the hospitality sector," Abhinav Lohia of Golden Gate Global said, adding that the trend did not necessarily mean a flight of wealth from India; instead, it could mean a diversification of funds.

It's not just about investments though. Ms. Menon says that HNIs have broadened their definition of wealth. "Today, wealthy families want better healthcare, open and flexible business environments, and access to better academic and professional opportunities. Alternative residency programmes provide them these options.

NAVY PLANS FOR ANOTHER VIKRANT-SIZE CARRIER BEFORE VIKRAMADITYA RETIRES

The Navy will continue to study the need for a larger and more capable carrier, after placing a repeat order for the INS Vikrant-sized carrier, says Navy chief; Cochin Shipyard officials say they can deliver vessel in 8 years from date of order

DINAKAR PERI

As aircraft carrier INS Vikramaditya gets ready to sail out of the dockyard after a long refit, the Indian Navy is finalising plans to repeat the order for an INS Vikrant-size Indigenous Aircraft Carrier (IAC)-2, with some modifications, which, given the long timelines, may be close to the time INS Vikramaditya leaves service, effectively becoming its replacement. While placing a repeat order for the INS Vikrant-sized carrier, the Navy will continue to study the need for a larger and more capable carrier, according to the Navy chief, Admiral R. Hari Kumar.

"If we have to design a new carrier, it will take time and we need to bring in new technologies because the present arresting gear and catapult system are undergoing changes. It will be an entirely new design and the ship-building facilities have also to be upgraded. So we thought, if we went for the repeat order of Vikrant, the work would start very soon.

The case will go faster, work can start immediately, and cost will also be little less, and we can make some improvements," Admiral Kumar said, speaking at the Aero India show last week.

Operationally, new technologies and drones are coming in that can be launched and recovered from the carrier, which can enhance operational capabilities, he noted.

Three-carrier system

Initially, the plan was that the IAC-2 should be bigger than IAC-1, he elaborated. INS Vikrant's size is around 44,000 tonnes and the IAC-2 planned was around 65,000 tonnes. The Indian Navy requires three aircraft carriers because when the ship undergoes maintenance, it takes time given its size and the possible delays.

Cochin Shipyard Limited (CSL) has acquired considerable expertise in building an aircraft carrier with INS Vikrant CSL officials have expressed confidence in being able to build an INS Vikrant-sized carrier (with modifications) within eight years from when the order is placed. The country's first IAC, INS Vikrant, was commissioned in September 2022 and is currently undergoing aviation trials. It is expected to be operationally ready by the end of 2023. The 262m-long and 62m-wide INS Vikrant, displacing 44,800 tonnes, is powered by four General Electric LM2500 engines, which give it a maximum speed of 28 knots and an endurance of 7,500 nautical miles.

A 27% INCREASE IN ORGAN TRANSPLANT NUMBERS

15,000 The number of organ transplants in 2022 according to Union Health Secretary Rajesh Bhushan. There was an annual increase of 27% in the transplant numbers, he said. Mr. Bhushan also stressed the need for rational use of the country's technical manpower. PTI

BATTLE FOR THE SENA

The Thackerays are ceding ground to the Shinde faction

The faction of Maharashtra Chief Minister Eknath Shinde has, at least for now, won the battle for the Shiv Sena legacy, with the Election Commission of India (ECI) allotting the party name and the bow and arrow symbol to it. The ECI overruled the plea by the other faction led by former Chief Minister Uddhav Thackeray to withhold the decision until the Supreme Court of India decides on a set of interlinked questions related to the split in the party, that led to Mr. Thackeray losing the CM's chair to Mr. Shinde in June 2022. 'The 'test of majority' principle applied by the ECI went in favour of the Shinde group which has 40 MLAs and 13 MPs, compared to the 15 MLAs and five MPs on the Thackeray side. The Shinde group represented significantly more voters than the Thackeray faction, among those who voted for the party in the last elections, the ECI concluded. The ECI decided not to go into the 'test of party constitution', a second touchstone applicable in such situations, in an indictment of Mr. Thackeray, who made changes to the Sena constitution unilaterally and self-servingly. The ECI decision is a setback to Mr. Thackeray who is struggling hard to retain control of the party founded by his father in 1966.The Court is scheduled to start hearing on petitions by both camps that claim to be the real Shiv Sena, from February 21 onwards.

Whichever faction is accepted to be the real Shiv Sena would have the authority to coerce legislators through whips, as in provisions of the anti-defection law. The Shinde faction argues that the Chief Minister took control of the party following an internal rebellion, and as per majority desire; and nobody has defected, as is being accused by the Thackeray faction. The Court is also examining whether a presiding officer, whose legitimacy is itself under a cloud, could go on to determine the disqualification of legislators under the anti-defection law. Considering that these questions will be argued in the highest court in the coming week, the ECI could have waited. It is not likely that the ECI's decision on the name and the symbol will also be raised in court. This legal tussle apart, the real combat between the two factions is for the popular base. On this count too Mr. Thackeray appears to have ceded ground to Mr. Shinde who is expanding his hold over cadres and networks. Evidently, Mr. Shinde's political alliance with the Bharatiya Janata Party is more palatable to party workers, who have been fed on high doses of religious extremism and regional fanaticism over the years, than Mr. Thackeray's opportunistic experiments with the Congress and the Nationalist Congress Party.

ALDERMEN ALTERCATION

By barring L-G's nominees from voting, top court has scuttled mischief in Delhi

The Supreme Court has rightly shot down the brazen and legally untenable claim that nominated members of the Municipal Corporation of Delhi (MCD) may be allowed to vote in the election of its Mayor. The Bharatiya Janata Party (BJP) sought to bend the rules to allow the 10 aldermen, nominated by the Lieutenant-Governor, to vote in the election, despite the law limiting the process to elected Councillors. That a question concerning a mayoral election should engage national attention is due to the political acrimony between the ruling BJP at the Centre and the Aam Aadmi Party (AAP), which runs the elected regime in the National Capital Territory of Delhi. The BJP sought to interpret the relevant provisions in the Constitution and the Delhi Municipal Corporation Act in such a way that the specific bar on nominated members voting in "meetings" of the corporation should not be applied to its first meeting, at which the Mayor and Deputy Mayor are elected. It takes a particularly perverse political imagination to argue that "meetings" do not include the "first meeting". Three attempts to hold the mayoral election, following the MCD polls that took place in December 2022, were stalled by clashes between AAP and BJP councillors over this question. The verdict vindicates the position of AAP, which has 134 councillors in the 250-member Council, against the BJP's 104.`It is unfortunate that before the Court, the Lt. Governor also took the questionable political stand that the restriction on the right to vote in Article 243R(2) of the Constitution and the proviso to Section 3(3)(b)(i) of the Act was limited to regular meetings, and not to the first meeting of the Council. The Court rejected the argument, noting that the law provides for the nomination of 10 people "with special knowledge and experience in municipal administration", but without any voting right. In keeping with the Court's order, Lt. Governor V.K. Saxena has now approved February 22 as the date for the election of the Mayor, Deputy Mayor and six members of the Standing Committee. Last year, Parliament passed a law to merge the three corporations in Delhi into a single entity, a decision criticised for reversing the trend of having compact local bodies for better delivery of civic services. Delhi's lack of statehood is a source of conflict between the Centre and the elected regime in the capital territory, but the political protagonists should not allow Delhi's administrative structures to be plagued by the tussle. The core message from a Constitution Bench judgment of 2018, that elected bodies should not be undermined by unelected administrators, is yet to hit home.

THE CURIOUS CASE OF THE DISQUALIFICATION OF A POLITICIAN

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The instance where the Kerala High Court, in January this year, suspended the verdict passed by the Kavaratti District and Sessions Court (in an attempt to murder case) in which the then sitting Member of Parliament (MP) of Lakshadweep and Nationalist Congress Party leader Mohammed Faizal P.P. was sentenced to 10 years in jail, has raised an interesting question on his disqualification. The issue is on whether disqualification for conviction is final or whether it can be revoked. This issue can arise whenever a legislator is disqualified. This is not very rare — Samajwadi Party Member of the Assembly Abdullah Azam Khan was disqualified from the Uttar Pradesh legislature just a week ago.

The Background

The facts are as follows. Mr. Faizal was convicted by the Kavaratti sessions court on January 11 for attempt to murder, and sentenced to 10 years imprisonment. On January 13, the Lok Sabha announced that he was disqualified as an MP with effect from the date of conviction. On January 18, the Election Commission of India (ECI) fixed February 27 as the date for by-election to that constituency, with the formal notification to be issued on January 31. Mr. Faizal appealed to the Kerala High Court for a stay on his conviction and sentence, which the High Court suspended on January 25.

The High Court said that the consequence of not suspending the conviction is drastic not just for Mr. Faizal but also for the nation. The cost of a parliamentary election would have to be borne by the nation and developmental activities in Lakshadweep will also stop for a few weeks. The elected candidate will have just 15 months to function till the end of the term of the current Lok Sabha. Given these exceptional and irreversible consequences, it suspended his conviction until disposal of the appeal.

Mr. Faizal challenged the ECI's announcement in the Supreme Court of India. On January 30, the ECI said it was deferring the election.

The question now is whether Mr. Faizal will automatically resume his membership of the Lok Sabha. The answer lies in deciding whether the cancellation of disqualification takes effect from January 25 (when the High Court suspended the conviction) or whether the clock can be rolled back to the date of conviction and disqualification.

The specific provisions

The provision for disqualification is given in Article 102 of the Constitution. It specifies that a person shall be disqualified for contesting elections and being a Member of Parliament under certain conditions.

These include holding an office of profit, being of unsound mind or insolvent, or not being a citizen of India. It also authorises Parliament to make law determining conditions of disqualifications. There are analogous provisions for members of state legislatures.

The Representation of the People Act, 1951 provides that a person will be disqualified if convicted and sentenced to imprisonment for two years or more. The person is disqualified for the period of imprisonment and a further six years. There is an exception for sitting members; they have been provided a period of three months from the date of conviction to appeal; the disqualification will not be applicable until the appeal is decided. The differential treatment of candidates for elections and sitting members was challenged under Article 14 (right to equality). A Constitution Bench of the Supreme Court, in 2005 (K. Prabhakaran vs P. Jayarajan), decided that the consequences of disqualifying a contestant and a sitting member were different. In the latter case, the strength of the party in the legislature would change, and could have an adverse impact if a government had a thin majority. It would also trigger a by-election. Therefore, it was reasonable to treat the two categories differently. The Court also considered whether in case of a disqualified candidate who is later acquitted, the disqualification would be removed with retrospective effect. It stated that this could not be done as this would require the results of the election to be cancelled. Therefore, the removal of disqualification would be prospective and for future elections.

In 2013, a two-judge Bench of the Supreme Court again considered whether this exception was constitutionally invalid (Lily Thomas vs Union of India). It stated that Article 102 empowers Parliament to make law regarding disqualification of a person "for being chosen as, and for being, a member of either House of Parliament".

It interpreted this phrase to mean that whereas Parliament could specify conditions for disqualification, those conditions would apply equally to candidates and sitting members. Therefore, the exception carved out for sitting members was unconstitutional. The judgment further cited Article 101 that if a Member of Parliament was disqualified under Article 102, "his seat shall thereupon become vacant". Therefore, the disqualification was automatic and had immediate effect if the conditions of Article 102 were met.

The implications

So what happens if the conviction is suspended? Navjot Singh Sidhu was convicted and sentenced to three years imprisonment when he was an MP. He resigned his seat but wanted to contest the election, and appealed for a stay on

his conviction. The Supreme Court stayed his conviction in 2007, which removed the disqualification until the appeal was decided. This decision allowed him to contest the election.

This issue was also discussed in the Lily Thomas judgment (2013). The judgment stated that a disqualified person may obtain a stay on his conviction, and cited an earlier 2007 judgment that the disqualification would be removed from the date of the stay order.

So what happens now? The Lakshadweep seat was declared vacant but the ECI, after the stay order, announced deferring the by-election. The Lok Sabha has kept the seat vacant and has not yet re-instated the MP

The reason the High Court granted the stay was to avoid an expensive election. The question is whether the removal of disqualification can be back dated as if it never happened and the election avoided. Or whether the disqualification is removed only from the date of the stay order, and, therefore, the vacated seat be filled only through a by-election. This conundrum arises because the Lily Thomas judgment requires the seat to be vacated immediately upon disqualification whereas the Kerala High Court stay tries to ensure that the MP retains the seat until the appeal is decided. The answer will also have implications for similar cases in the future.

A PICTURE OF ISLAM THAT IS QUITE DIFFERENT

ZIYA US SALAM

Towards the end of 2022, a hugely significant moment in the post-Independence history of Indian Muslims slipped by under the radar. The Jamiat Ulama-i-Hind, the oldest Muslim organisation in India, with its roots in the national freedom struggle, filed a petition in the Supreme Court of India seeking reservation for Dalit Muslims for admission to schools, colleges and government jobs. In a country where demands are periodically made for reservations on the lines of caste or region, not many comprehended the significance of this demand. It was the first time ever that a Muslim body in India was explicitly admitting to the presence of caste system among Indian Muslims — Islam, in essence, is a casteless faith with an emphasis on egalitarianism.

The same is not necessarily true of Indian Islam; yet, this was the first time that a Muslim body made bold to embrace social reality and seek reservations on the lines of caste; Islam and caste did not seem to be an anomaly any more. It was another step towards Indianisation of the religion, and quite contrary to the teachings of Prophet Muhammad who, in his last sermon, emphasised the equality of the human race reminding the faithful, “An Arab has no superiority over a non-Arab, a White over Black and vice-versa”. Yet, here was the Jamiat tacitly admitting to the ‘superior’ status of ashrafs (Sheikhs, Syeds and Pathan, etc.) and explicitly seeking the benefit of affirmative action for lower caste Muslims (Ansaris, Saifis, Abbasis, etc.) so that they could climb the social ladder.

The action may have stemmed from the increased activity in socio-political circles around Pasmanda Muslims, but whichever way one looks at it, the Jamiat’s petition was an undeniable acceptance of caste among Indian Muslims. Yes, caste among Muslims is not exploitative as in pockets of Hindu society — in early January there was a case of a Dalit man being tortured with burning logs for visiting a temple in Uttarakhand — but it is almost always present as a mark of identity, and even worn as a badge of honour in many circles.In the years gone by, in many towns of Uttar Pradesh and Bihar, it was not unusual to see a poor cyclist, probably hailing from the so-called lower caste, alighting from his vehicle on seeing a Syed or Pathan coming by his bike or car from the opposite direction.

Whatever the top court’s verdict, in the years to come, the Jamiat’s petition is likely to play as important a role in the annals of post-Independence India as the acceptance of secular democracy by the Jamaat-e-Islami Hind.

A GRADUAL CHANGE

The Jamaat was founded in 1941 by Abul Ala Mawdudi with the express purpose of ushering in a hukumat-e-ilahiya or the Islamic state. Mawdudi believed that the very promulgation of the Kalima, the first tenet of Islam, made it incumbent upon the believer to strive to establish an Islamic state or god’s kingdom. He believed in striving for a transformation of India into a Darul Islam (land of faith), and was fundamentally opposed to secular democracy where all faiths were regarded as equal, and the law was made on non-religious lines. In fact, the early rules of the Jamaat made it essential for its members to oppose any legislative assemblies which made laws not derived from the Shariah. The pre-Independence Jamaat opposed a secular judiciary and an economic system based on riba or interest which is haraam (forbidden) in Islam. A person who gives and takes interest is said to be at war with god and his messenger. However, as Mawdudi shifted to Pakistan following India’s independence, the Jamaat too turned a new leaf and gradually came to not only accept but also embrace secular polity. The change was gradual, well considered and a quiet acceptance of the new reality of the country post-Partition.

In 1961, the Jamaat sought the opinion of the ulemma on whether the faithful could participate in democratic elections, and then allowed its members to not only vote in general or State elections but also contest them,

INTERTWINING OF RESPONSIBILITIES

Likewise, before the 2019 general election which coincided with the month of Ramzan, the Jamiat Ulama-i-Hind advised fasting Muslims to first cast their vote in the morning before retiring to their homes for rest and prayer. Responsibilities as an Indian and a Muslim were intertwined. It brought back the words of Hussain Ahmed Madani, a prominent Jamiat leader, who once told the faithful, "Our religion tells us Adam descended in India. It was from here that his race spread. It is necessary for the Muslims to understand that this country was their old native place." He could have well said this country and its social practices. Interestingly, at the just concluded three-day conclave of the Jamiat, Mahmood Madani made headlines for merely repeating Hussain Ahmed's words. He said, "India and not Arabia is the birthplace of Islam.The first prophet descended here. India belongs to all of us equally. It belongs as much to Narendra Modi and Mohan Bhagwat as Mahmood." A day later, his uncle Arshad Madani chipped in with his take on oneness of god, stating, "What Hindus worship as Om, Muslims worship as Allah."

Between them, the Jamaat-e-Islami Hind and Jamiat Ulama-i-Hind, in their different ways, have managed to present a picture of Islam which is quite different from the Islam of Arabia, but a thriving entity with a uniquely Indian identity. It has room for caste identities, dialogue with the Rashtriya Swayamsevak Sangh, and claims on oneness of god, irrespective of differences in religion.

THE SC ON SEALED COVER JURISPRUDENCE

The "routine" handing over of sealed covers in court by the state, the contents of which are unknown to the other parties, often fighting for life, freedom and personal liberty, is eroding public confidence in the 'open court' principle of justice administration

KRISHNADAS RAJAGOPAL

LETTER & SPIRIT

The Chief Justice of India D.Y. Chandrachud firmly refused the 'suggestions' offered by the government in a sealed cover on the formation of a proposed committee to enquire into the Hindenburg report on the Adani Group. This signals the Supreme Court's acute awareness of how 'sealed cover jurisprudence' has begun to threaten the very credibility of the judicial institution. The decision of the three-judge Bench led by the CJI to keep the government's sealed cover at a distance and do "its own thinking", made it evident that the dialogue on sealed covers was no longer an academic discourse on how to balance the right to know and the need to protect national security.

The "routine" handing over of sealed covers in court by the state, the contents of which are unknown to the other parties, often fighting for life and personal liberty, is eroding public confidence in the 'open court' principle of justice administration. The petitioners are unable to defend themselves, not knowing what they are supposed to defend against. Passing on materials in a sealed cover to the court compels judges to accept the state's version, that too, in cases in which the government's narrative is under challenge.

A history of sealed covers

The origins of sealed cover jurisprudence can be traced to service or administrative cases. Official service records and promotion assessments of individual personnel were received in sealed cover in order to avoid harm to the reputation of officers. The court continues to receive confidential documents in sexual assault cases to protect the identity of survivors. However, recent times have seen the government produce myriad documents, ranging from status reports to 'notes', alleged evidence collected during investigation into terror and money-laundering cases. Even court-appointed committee reports, as in the BCCI case, have been accepted in sealed covers.

Sealed cover documents have been received by the apex court in cases such as the Rafale jets' purchase deal, Assam National Register of Citizens case, Ayodhya title dispute, Gujarat Police 'fake' encounter case, Narendra Modi biopic release case, in the sexual harassment case concerning then Chief Justice Ranjan Gogoi, the electoral bonds case, Bhima Koregaon case and the anticipatory bail plea for former union finance minister P. Chidambaram. In these cases, sealed cover had risen to the status of 'due procedure'.

Rule 7 of Order XIII of the Supreme Court Rules, 2013 provides that the Chief Justice or the court can, through a judicial order, direct any document to be kept confidential in a sealed cover if publication of the records is "considered to be not in the interest of the public". Section 123 of the Evidence Act of 1872 provides that the government should give prior permission to a person who wants to give evidence "derived from unpublished official records relating to any affairs of state".

Only in 'extenuating circumstances'

However, the Supreme Court is now witnessing a turnaround. The court, during the Media One telecast ban hearing, orally observed that the government should claim "specific privilege" in an affidavit and explain the "extenuating circumstances" to keep documents secret from the other party.

The court said the burden would lie on the government to prove that even sharing redacted copies of the records would prove detrimental to national security and public order. The court has made it clear that sealed covers could be used only in a "small exception" of cases.

So far, a tiny clutch of judgments hold that the principles of natural justice and the fundamental right to know cannot be taken away by the state in an "implied fashion or in a casual and cavalier manner".

The most recent one was in the S.P. Velumani case verdict of May 2022 in which the Supreme Court criticised the Madras High Court's decision to permit a report to remain "shrouded in sealed cover" when the State had not even claimed any specific privilege. Similarly, the court admonished the Bihar government for attempting to give information in sealed cover in the Muzaffarpur shelter case.

The Pegasus case judgment saw the court underscore that the "Union of India must necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security concerns… The state cannot get a free pass every time the spectre of 'national security' is raised. National security cannot be the bugbear that the judiciary shies away from".

HOW IS INDIA ADDRESSING SICKLE CELL ANAEMIA?

What has the Finance Minister announced with respect to eliminating sickle cell disease? Is the genetic blood disorder more common in tribal communities? Is there a cure?

The story so far:

Sickle cell anaemia (SCA), a genetic blood disorder, found mention in the Budget this year. Finance Minister Nirmala Sitharaman said that the government will work in "mission mode" to eliminate the condition by 2047. India is the second-worst affected country in terms of predicted births with SCA — i.e. chances of being born with the condition.

What is sickle cell anaemia?

Haemoglobin which is tasked with carrying oxygen to all parts of the body, has four protein subunits — two alpha and two beta. In some people, mutations in the gene that creates the beta subunits impact the shape of the blood cell and distorts it to look like a sickle. A round red blood cell can move easily through blood vessels because of its shape but sickle red blood cells end up slowing, and even blocking, the blood flow. Moreover, sickle cells die early, resulting in a shortage of red blood cells that deprive the body of oxygen. These obstructions and shortages may cause chronic anaemia, pain, fatigue, acute chest syndrome, stroke, and a host of other serious health complications. Without treatment, quality of life is compromised and severe cases can become fatal in the initial years of life.

Does SCA only affect some?

Research and screening programmes have found that the prevalence of haemoglobinopathies — disorders of the blood — is more common among tribal populations than non-tribal communities in India. Research has shown that SCA is prevalent in communities residing in areas where malaria is endemic. Around the middle 1940s, doctors found that those with sickle red blood cells were more likely to survive malaria. Those with the trait in some African countries were found to be potentially resistant to lethal forms of malaria and had a survival advantage. The sickle cell trait thus gave an evolutionary advantage, offering immunity to some people during malaria epidemics. In India, States and UTs with tribal populations contribute a significant malaria case load. Additionally, the documented prevalence of SCA is higher in communities that practice endogamy, as the chances of having two parents with sickle cell trait is higher.

Can it be treated?

Sickle cell anaemia is a genetic disorder, making complete "elimination" a challenge that requires major scientific breakthrough. The only cure comes in the form of gene therapy and stem cell transplants — both costly and still in developmental stages. Blood transfusion, wherein red blood cells are removed from donated blood and given to a patient, is also a trusted treatment in the absence of permanent cures. But challenges include a scarcity of donors, fears around safe supply of blood, risk of infection etc.

What has India done so far?

The Indian Council of Medical Research and the National Rural Health Mission in different States are undertaking outreach programmes for better management and control of the disease. The Ministry of Tribal Affairs launched a portal wherein people can register themselves if they have the disease or the trait, in order to collate all information related to SCA among tribal groups. In the Budget, the Union Health Minister said the government plans to distribute "special cards" across tribal areas to people below the age of 40. "The cards will be divided into different categories based on the screening results.." The mission will receive funding under the National Health Mission. However, Dr. Deepa Bhatt, a researcher at J.S.S. Medical College, Mysuru, is skeptical about the impact. "The card system will help you to know the status of the patient, but at the same time, my biggest worry is if it will stigmatise the individual."