

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.

| <u>Words</u> | <u>Kind</u> | <u>Meaning</u> |
|-----------------------|--------------------|---|
| Proceedings | | Events, activities, business, affairs |
| Un-impeded | | Imminent, at hand, approaching, forth coming |
| Concerns | | Worries, disturbance, anxiety, apprehension |
| Augurs | | Portend, prognosticate |
| Trial | | Court case, lawsuit, litigation, proceedings |
| Conviction | | Declaration of gift, judgement, opinion, belief |
| Call for necessary | | Require, need, necessitate, demand, make |
| Espionage | | Spying, surveillance, reconnaissance, infiltration |
| Purport | | Profess, pretend, claim, appear |
| Coercion | | Force, compulsion, constraint, duress, oppression |
| Dragging | | Hauling, pulling, heaving, trailing, towing |
| Hurdles | | Obstacle, difficulty, problem, barrier, snag |
| Rhetoric | | Oratory, eloquence, expression, diction |
| Consistently | | Invariably, in every occasion |
| Shelling | | Bombard, attack, pound, blitz, strafe |
| Allegation | | Claim, assertion, declaration, statement, proclamation |
| Deploy | | Position, station, instal, locate, situate |
| Cluster munitions | | Air dropped, explosive weapon |
| Infiltration | | Spying, surveillance, reconnaissance |
| Ratchet up | | Increase something over a period of time |
| Ham handed | | Clumsy, bung ling, incompetent, amateurish |
| Threat | | Warning, ultimatum, intimidating remarks |
| Verdict | | Judgement, adjudication, resolution, decree |

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.

| <u>Words</u> | <u>Kind</u> | <u>Meaning</u> |
|---------------------|-------------|---|
| Interpreter | | Translator, transcriber, decipherer |
| Perennial | | Everlasting, perpetual, eternal, enduring |
| Pendency | | Slope, inclination |
| Amend | | Revise, alter, change, adapt, modify |
| Paucity | | Scarcity, meagre, dearth |
| Moot | | Debatable, arguable, disputable, contentious |
| Mundane | | Humdrum, dull, boring, tedious, monotonous, prosaic, pedestrian |
| Optimal | | Best, most, optimum |
| Impinge | | Affect, have an effect on, influence |
| Litigant | | Litigator, opponent, contender, plaintiff |
| Ostensibly | | Apparently, seeming, outwardly, allegedly |
| Liquidate | | Close down, wind up, dissolve, disband |
| Burgeon mushroom | | Grow rapidly, expand shoot up, proliferate, |
| Docket | | Document, coupon, counterfoil, pending cases |
| Adherence | | Attachment, commitment |
| Apex | | Tip, peak, summit, pinnacle, crest, vertex |
| Appellate | | Reverse decision |