



Judicial evasion and the status quo

Posted at: 10/01/2019

In high stakes cases, the Supreme Court must ensure that judgments are timely and clear

- On October 26, 2018, a three-judge Bench of the Supreme Court, headed by the Chief Justice of India, was confronted with a straightforward legal question: whether the decision taken by the Central Vigilance Commission (CVC) and the Central government to divest Central Bureau of Investigation (CBI) Director Alok Verma of his powers and functions was legally valid.
- The question was a straightforward one, because it required the court to interpret three legal instruments: the Delhi Special Police Establishment (DSPE) Act (that brought the CBI into existence), the CVC Act, and the Supreme Court's own prior judgment in Vineet Narain.
- As the Supreme Court itself acknowledged, what was at stake was a "pure question of law".
- Yet this pure question of law took six hearings and more than two-and-a-half months to resolve, and yielded an unclear decision where the court agreed with the principal legal contentions of Mr. Verma, but passed a judgment whose ambit left everyone scratching their heads.

Judicial evasion

- The Alok Verma Case — or "CBI vs CBI", as it has come to be popularly known — reveals some of the pathologies that have plagued the Supreme Court's conduct in recent high-profile cases.
- It should be clear from the record that there were two parallel proceedings taking place in the Supreme Court.
- The first was Mr. Verma's original challenge to the process of his divestment — that came up before the court in October, and was heard in December.
- The second — which occupied the court through the month of November, and through the now familiar, depressing cycle of "sealed covers" — was the substance of the allegations against Mr. Verma, that

- the CVC and the government were claiming justified his divestment.
- However, if Mr. Verma was correct in his claim — and the Supreme Court finally held that he was — then the substance of the allegations against him was irrelevant to his legal challenge against his removal.
 - This is not the first time that an important, time-sensitive case has been dragged on in a manner that materially affects the situation of the parties.
 - In the Aadhaar challenge, for example, the case was finally heard six years after it was filed, effectively allowing the government to present a *fait accompli* to the court.
 - This is “judicial evasion”: the court avoids deciding a thorny and time-sensitive question, but its very refusal to decide is, effectively, a decision in favour of the government, because it is the government that benefits from the status quo being maintained.

Strange fetters

- In the Alok Verma case, the Supreme Court finally returned a clear finding that the CVC and the Central government had acted outside their jurisdiction in divesting Mr. Verma.
- However, the court then went on to also hold that the correct authority — the high-powered committee — would have to consider the allegations against him, and decide on the case within a week.
- In the meantime, Mr. Verma was restrained from taking “any major policy decisions”.
- None of these is a legal term, and the lack of clarity only raises the spectre of fresh litigation, thus further hamstringing Mr. Verma for the remainder of his tenure.
- This, once again, is familiar: in the Supreme Court’s Aadhaar judgment, although private parties were banned from accessing the Aadhaar database, the ambiguity in the court’s holding meant that different parties interpreted the judgment differently — leading to an amendment to the Aadhaar Act that attempts to circumvent the judgment by letting in private parties through the backdoor.
- This is, once again, a reminder that — much like judicial evasion — ambiguity is not neutral: it primarily benefits the party that has the power to exploit it, and that party is invariably the government.

Setting deadlines

- During the Constituent Assembly debates, there was a proposal that all

cases involving fundamental rights be decided within a month.

- The fear was that the more time the court took, the more the government would benefit from the status quo.
- In high stakes cases, time-sensitive cases, the court must ensure two things: that the judgment is timely, and that the judgment is clear.
- The Alok Verma case demonstrates how, when the court fails to do so, it abdicates its role as the sentinel on the qui vive, and allows the government to get away with abuse of law.

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