Aung San Suu Kyi at ICJ

Nobel peace laureate will defend genocide

FROM A BYSTANDER

Mahmood Hasan

THE Myanmar military and the civilian government of Aung San Suu Kyi are literally between a rock and a hard place. Two cases of violation of the Genocide Convention filed against Myanmar have shaken its leaders.

The first lawsuit was filed by The Gambia on November 11, 2019 on behalf of the OIC at the International Court of Justice (ICJ), the principal judicial organ of the United Nations. The Gambia alleged that Myanmar had violated the Convention on the Prevention and Punishment of the Crime of Genocide through "acts adopted, taken and condoned by the Government of Myanmar against the members of the Rohingya group." This will bring the first judicial scrutiny to Myanmar's campaign of murder, rape, arson and other atrocities against Rohingya Muslims. The first public hearing will be held at The Hague, in Netherlands, from December 10-12, 2019. Actually, with this case, the 57 members of the OIC are accusing Myanmar of gross crimes against the Rohingyas.

During the three-day hearing, The Gambia may ask the 15-member panel of judges of ICJ to impose "provisional measures" to protect the Rohingyas before the case can be heard in full. The request for a provisional injunction is the legal equivalent of seeking a restraining order against a country.

The second lawsuit was filed by Rohingya and Latin American human rights groups in Argentina on November 13, 2019 under the principle of "universal jurisdiction", a legal concept enshrined in many countries' laws. Suu Kyi has been named in that case, which demands that top military and civilian leaders of Myanmar be sanctioned over the "existential threat" faced by the Rohingya community. Following the case, the International Criminal Court (ICC) on November 14 approved a full investigation into Myanmar's alleged crimes against the Rohingyas. Though Myanmar does not recognise ICC, as it is not a signatory to the Rome Statute, the Court's ruling will have serious implications for the country. In the case of ICJ, both The Gambia and Myanmar are signatories to the ICJ and the Genocide Convention. As only a state can file a case against another state at the ICJ, any ruling of ICJ will be binding on Myanmar. This is what made the leaders of Myanmar jittery.

State Counsellor of Myanmar Aung San Suu Kyi PHOTO: **REUTERS/CHALINEE THIRASUPA**

Interestingly, State Counsellor (or Prime Minister) Aung San Suu Kyi, who is also the foreign minister, has taken it upon herself to lead the Myanmar delegation for the first public hearing on December 10 to "defend the national interest". It is indeed rare that a sitting head of state is appearing before the ICJ to defend its government's misdeeds. Why did Suu Kyi decide to go to The Hague? There may be two reasons.

First, Myanmar goes for parliamentary elections in late 2020. Suu Kyi is popular among her supporters and by leading the Myanmar team at The Hague, she will further strengthen the chances of the National League for Democracy (NLD) party, which she heads, at the election. Rallies in Myanmar supporting Suu Kyi's decision substantiate this point.

Second, Suu Kyi wants to amend the 2008 constitution, which was drawn up by the generals, and reduce the powers of the military. Her role in handling the case will probably help in pushing the military generals a little bit away from the centre of state power. The military has welcomed her decision and has offered to help her in every possible way. The generals know that the case is actually against them and they have no expertise to defend themselves.

But some experts think that Suu Kyi's going to The Hague is a bad idea. Why should she stake her position to defend the crimes committed by the military? Her international reputation has been tarnished substantially for not doing anything about the atrocities committed by the military against the Rohingyas. By leading the Myanmar team to The Hague, Suu Kyi is now openly admitting that she is a party to the decisions and the military's genocidal actions against the Rohingyas. Strangely, after suffering incarceration for 15 years at the hands of the military and even after having strained relations with Army Chief Min Aung Hlaing, she has proved that she is a virulent defender of the military. She is also as racist as the Myanmar generals are, as far as the Rohingya community is concerned.

The moot question is, can Suu Kyi really prevail at the ICJ and prove that no crime was committed by her military? Canada, Nigeria, Turkey, France and Bangladesh have asserted that Myanmar committed a genocide against the Rohingyas. Nonetheless, Suu Kyi has not budged from her position, and continues to justify the persecution of Rohingyas while branding them as terrorists.

Suu Kyi has appointed a number of "prominent international lawyers" to challenge The Gambia's complaint. It is not clear what her strategy to "defend the national interest" actually will be. Suu Kyi and her battery of lawyers will have to contend with the extensively documented campaign of mass murder, gang rape and mutilation targeted at Rohingya civilians. These evidences have been recorded in the 444-page report issued in September 2018 by the United Nations Fact-Finding Mission. The report concluded that there was evidence of atrocities by Myanmar security forces against the Rohingya community, warranting criminal prosecution for crimes against the humanity, war crimes, and genocide.

The report named top military officials as targets for investigation and prosecution as well as civilian authorities who "have spread false narratives, denied any wrongdoing of the security forces, blocked independent investigations… and overseen the destruction of evidence". Apart from this report and many others compiled by other organisations, there are vivid satellite images of Rohingya villages being burnt systematically and people running to safety, which will make it hard for the Myanmar team to deny any wrongdoing. It will be hard for Suu Kyi to wash off the accusations at The Hague.

Bangladesh is closely watching the ongoing legal developments. Bangladesh's foreign secretary is leading a delegation composed of members of civil society and stakeholders. It would be interesting to see the arguments placed by Suu Kyi at the Peace Palace at The Hague.

Mahmood Hasan is a former ambassador and secretary of Bangladesh government.

BJP's Citizenship Bill and Identity Politics

Pallab Bhattacharya

THE Bharatiya Janata Party-led government's contentious Citizenship (Amendment) Bill, 2019 is here again amid indications that it may pass muster in parliament this time. Seeking to give Indian citizenship to illegal immigrants belonging to six religious minority groups—Hindus, Christians, Jains, Buddhists, Sikhs and Parsis—from Bangladesh, Pakistan and Afghanistan, the bill was placed in the Lok Sabha on December 9 for its stamp of approval, possibly during the ongoing winter session.

The new bill seeks to amend the Citizenship Act, 1955 to allow Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from India's three neighbouring countries—one in the east and two in the west—to apply for Indian citizenship, and says that these communities would be granted citizenship on the ground of having faced "religious persecution" in their respective countries or if they migrated to India "fearing" such persecution.

The bill, aimed at pushing upfront the ideological agenda of the BJP, will work in combination with the controversial National Register of Citizens (NRC) that Home Minister Amit Shah has vowed to conduct by the next national elections due in 2024 (and expel all illegal immigrants by that timeline). But it is not the same bill which was introduced for the first time three years ago, and then referred to a joint parliamentary committee. The committee had submitted its report and the bill was tabled again in the Lok Sabha in January this year but could not secure the consent of the Rajya Sabha, where the government lacked majority.

Almost a year down the line, the CAB, 2019 contains key changes although the essence remains the same: one, giving citizenship on the basis of religion, and two, setting the timeline for entry into India at December 31, 2014. The changes are: the new bill keeps vast swathes of the North Eastern states, where the proposed law has met with strong resistance and seen street protests and shutdowns for the last two years, out of its ambit. The government has made the tweaks in the latest version of the bill to hard-sell it in the north-eastern region.

The latest avatar of the bill has a provision in Section 2(1)(b) that deals with the definition of "illegal migrant" under the Citizenship Act, 1955 which states: "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause C of sub-section (2) of Section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purpose of this Act."

The new bill stipulates that the new law would not apply to tribal areas of Assam, Meghalaya, Arunachal Pradesh, Tripura and Mizoram which are included in the Sixth Schedule of the Indian Constitution and covered by the Inner Line Permit regime regulating the entry of people there from other parts of India. It also gives Manipur complete or partial exemption. The decision to keep North Eastern states out of the purview of the bill is the result of the feedback that emerged from meetings that Home Minister Amit Shah had with politicians, influential students' outfits and civil society groups from the region between November 29 and December 3. The government, understandably, did not want to antagonise these states given their strategic locations sharing borders with China, Myanmar, Bangladesh and Bhutan and the resultant security implications. The North East of India has been a key focus area of development initiatives of Prime Minister Narendra Modi's government over the last five years. The BJP's ideological mentor, Rashtriya Swayamsevak Sangh (RSS), is also quite active in the region making inroads with social initiatives like setting up schools and health centres for various ethnic groups.

Activists from the All Assam Students Union (AASU) burn effigies depicting India's Home Minister Amit Shah, Prime Minister Narendra Modi and Chief Minister of Assam Sarbananda Sonowal during a protest against the Citizenship Amendment Bill, in Guwahati, India, on December 4, 2019. PHOTO: **REUTERS/ANUWAR HAZARIKA**

One year is a long time in the shifting sands of Indian politics. In its earlier form, the bill had faced strong opposition from the Congress, the Trinamool Congress, and even BJP ally (in Bihar) Janata Dal (United), which had staged a walk-out in the Lok Sabha in 2016. Even a party like Biju Janata Dal, which is neither a part of the BJP-led National Democratic Alliance nor of the Congress-headed United Progressive Alliance, had given a dissent note for the bill in 2016 when the NDA—lacking majority in the Rajya Sabha—was forced to refer the proposed legislation to the JPC. Several opposition parties had at that time come up with dissent notes for the legislation. Fast forward to December 4, 2019, much of that resistance to the CAB seems to be cracking, and there are indications that many parties which were earlier critical of the bill could shift from their position.

For instance, on December 4 this year, the day the cabinet passed the CAB, a senior leader of the Janata Dal (United), which had rushed its team of leaders to the North Eastern region earlier this year to meet the civil society representatives and held out the promise of voting against the bill, said the party's stance has changed following discussions with some like-minded parties from the northeast which too have decided to support the bill. The BJD had, in its dissent note earlier, said that the bill contravened the 1985 Assam Accord which considered those coming to India after March 25, 1971 as intruders. It is quite possible that the party's reservations would go away with the new bill exempting large parts of the northeast region being excluded from its ambit. Two other BJP allies, Shiromani Akali Dal and Lok Janshakti Party, are also likely to back the bill.

Andhra Pradesh's ruling YSR Congress Party leader Vijayasai Reddy was quoted by *The Indian Express* as saying, on December 4, that "there is nothing wrong with helping those who are persecuted in the neighbouring countries. It's protective discrimination." Asked about the discrimination on the basis of religion, Reddy said, "This is about persecuted minorities which we can't oppose." His party, too, is formally neither with the Congress nor the BJP-led coalitions. The BJP's estranged Hindutva ally Shiv Sena may have aligned with the Congress and the Nationalist Congress Party to form the government in Maharashtra, but it appears supportive of the CAB. "We have always supported the concept. On this bill, we will see the provisions and take a decision. But on the issues linked to national security and nationalism, we will take a positive stand," Shiv Sena's Vinayak Raut said.

The CAB's passage in the Lok Sabha is certain due to the comfortable majority the BJP has on its own there, and its fate in the Rajya Sabha hinges on how much support the party can mobilise from several regional parties which are not part of the NDA or the UPA.

The numbers game in the Rajya Sabha today is also not what it was three years ago. The BJP may not have a majority on its own in the House as of now, but it has in the six months shown its political management acumen to get the arithmetic right and ensure pushing through the contentious abrogation of Article 370, which gave special status to Jammu and Kashmir, and pushing through the bills on criminalising instant triple *talaq* and tightening a tough anti-terror law. Will the CAB be another success for the Modi government?

Pallab Bhattacharya is a special correspondent for *The Daily Star*. He writes from New Delhi, India.

ON THIS DAY IN HISTORY

December 10, 1768

Encyclopædia Britannica first published

The first part of the first edition of the Encyclopædia Britannica, the oldest continuously published and revised work in the English language, was published and advertised for sale in Edinburgh on this day in 1768.

CROSSWORD BY THOMAS JOSEPH

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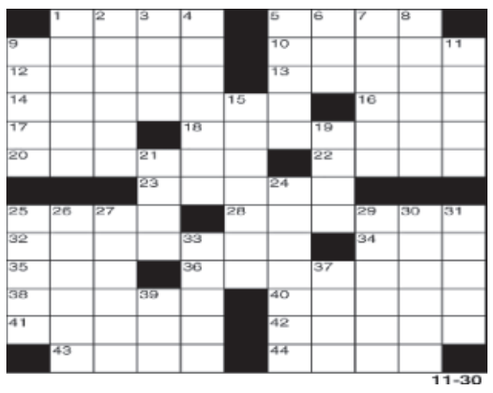

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YESTERDAY'S **ANSWERS**

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