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Concerns with SC's delay in verdicts

What is the issue?

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SC has failed to deliver timely and clear judgement in the case filed by CBI director AlokVerma.

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What was the tussle in CBI all about?

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- In October 2017, the CBI Director handed over a confidential note to the Central Vigilance Commission (CVC) during a panel meeting over the promotion of Asthana to the post of Special Director.
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- The note alleged corruption on Asthana’s part with regard to the Sterling Biotech case of August that year.
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- The CVC panel unanimously cleared Asthana’s promotion, disregarding Verma’s submissions stating the allegations were not verifiable.
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- In June this year, the Director targeted Asthana again, by probing him for alleged corruption.
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- Asthana hit back by writing to the Cabinet Secretary in August that Verma was interfering in his probes and had tried to stall a raid on Lalu Prasad in the IRCTC case and he also alleged corruption on Verma’s part.
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- Less than two months later, Verma got an FIR registered against Asthana as an accused in a case of corruption.
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What was the actions taken on AlokVerma by CVC?

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- The CVC noted that the atmosphere within the agency become corrupted due to the feud and hence intervened.
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- It has recommended the government to remove the CBI director on allegations of bribery and undue interference in corruption cases.
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- It also charged Mr. Verma with not making available the records and files sought by the CVC and said he is “non co-operative” and had “created wilful obstruction” in the CVC’s functioning.
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- Thus the government decided to send Verma on leave in the “interest of equality, fair play and principles of natural justice”.
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- The government said that action was taken against Verma based on the CVC’s decision to conduct an inquiry against him.
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What is SC decision on AlokVerma case?

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- Following the CVC order CBI director AlokVerma approached SC to intervene in the CVC’s actions against him.
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- Supreme Court was confronted with a straightforward legal question: whether the decision taken by CVC and the Central government to divest CBI Director AlokVerma of his powers and functions was legally valid.
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- Under the case SC interpreted three legal instruments:
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1. Delhi Special Police Establishment (DSPE) Act (that brought the CBI into existence),
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2. CVC Act,
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3. Supreme Court’s own prior judgment in VineetNarain.
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- DSPE Act made it clear that the CBI Director had a guaranteed, two-year tenure, and could not be transferred without the consent of a high-powered committee consisting of the Prime Minister, the Leader of the Opposition, and the Chief Justice of India.
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- This interpretation of the Act was also strengthened by the Supreme Court’s exhortation, in VineetNarain , that the Director must be protected from political influence.
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- Supreme Court also found it clear that the CVC and the Central government had acted outside their jurisdiction in divesting Mr. Verma.
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- The court then went on to 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.
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- In the meantime, Mr. Verma was restrained from taking “any major policy decisions”.
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What are the concerns with SC’s judgement?

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- **Judicial Evasion -** The court avoids deciding a thorny and time-sensitive question, but its very refusal to decide is, effectively, a decision in favor of the government, because it is the government that benefits from the status quo being maintained.
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- As a matter of law SC’s decision was strange,Mr. Verma’s challenge, to recall, was that his divestment was procedurally flawed.
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- The Supreme Court’s limited remit was to decide that question, It was not for the court to then direct the committee to consider the case against Mr. Verma.
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- Still less was it for the court, after holding that Mr. Verma's divestment was invalid in law, to place fetters on his powers as the Director, thus presumptively placing him under a cloud of suspicion.
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- It is not appropriate, however, for a Constitutional Court that is tasked with providing clear answers to the legal questions before it.
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- 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, lead to an amendment to the Aadhaar Act that attempts to circumvent the judgment by letting in private parties through the backdoor.
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- This isonce 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.
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What is the way forward?

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- During the Constituent Assembly debates, there was a proposal that all cases involving fundamental rights be decided within a month.
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- The fear was that the more time the court took, the more the government would benefit from the status quo.
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- Recent events have confirmed this fear, in high stakes cases, time-sensitive cases the court must ensure two things: that the judgment is timely, and that the judgment is clear.
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- The AlokVerma case demonstrates how, when the court fails to do so, it abdicates its role and allows the government to get away with abuse of law.
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Source: The Hindu

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