



Politics and propriety

The framing of charges against Uma Bharti makes her continuance as Minister untenable

With the Supreme Court invoking its extraordinary powers under Article 142 of the Constitution – to pass decrees and orders to ensure complete justice – in the case relating to the demolition of the Babri Masjid, and reviving the criminal conspiracy charges against senior BJP leaders L.K. Advani, Murli Manohar Joshi, Uma Bharti and Vinay Katyar, the CBI Special Court in Lucknow could not but have framed charges against them. Over the last 24 years, poor investigation and weak prosecution combined with inordinate judicial delays ensured they did not have to stand trial for making provocative speeches that allegedly incited kar sevaks to demolish the masjid. With the Supreme Court ordering this case to be clubbed with the one involving the actual demolition by unnamed kar sevaks, and directing day-to-day trials, there is hope that the years of delay are over. India has a poor record in finding speedy judicial resolution in instances of mob violence and communal riots; in that sense, the Babri Masjid cases are perhaps unexceptional. But given the historical importance of the case, and the impact of the demolition on communal harmony, it is vital to see them through to the end.

Both Mr. Advani and Mr. Joshi are in the twilight of their political careers, wielding little power or influence in the BJP. Ms. Bharti is, however, a Union Minister, and the Narendra Modi government cannot pretend that the development has no bearing on her continuance in the Council of Ministers. The BJP has tended to underplay the significance of the case on the ground that it is 'political' in nature. But this simply does not wash as the revival of criminal conspiracy charges against them was done at the instance of the Supreme Court. In opposition, the BJP had been quick to demand the resignation of ministers for much less than being chargesheeted. The argument that the standards of propriety that apply in corruption cases are different from those that apply in a criminal case of this nature is absurd. Even by the lax standards of today's political morality, it is important to draw the line somewhere – and framing of charges is a good stage given that it is a formal document drawn up by a court of law. Rather than defend Ms. Uma Bharti, the Modi government would do well to consider the example set by none other than Mr. Advani himself, who resigned as a Member of Parliament in 1996 after he was implicated in the Jain hawala case, in which the court later held that there was no material to frame charges against him. For a government that makes much of standing for probity in public life, the application of different standards to one of its own is bound to damage its image. Ms. Bharti's guilt or innocence is for the courts to establish. Political propriety demands that she be shown the door.

Uncertain times

The major terror strike in Kabul underlines a rapidly deteriorating security situation

Afghanistan is no stranger to terror attacks. Even so, the repeated strikes in the most fortified areas with mounting casualties demonstrate a steadily deteriorating security situation. In April, the Taliban had targeted an army base in Mazar-e-Sharif, killing over 100 soldiers. Now, at least 90 people, mostly civilians, have been massacred in a suspected truck bomb blast in Kabul. The Wazir Akbar Khan area where the blast occurred is one of the most secured places in the city, given its proximity to the presidential palace and embassies, including India's. Still, a terrorist managed to drive in with a vehicle full of explosives and detonate it. It is not immediately clear who is behind the attack. The Taliban have denied any role, saying they don't kill civilians. Afghanistan's jihadist landscape has been diversified. There are multiple Taliban splinter groups that do not accept the current leadership of the insurgency. And then there is the Islamic State, which operates from eastern Afghanistan and had targeted civilians in the recent past. Amid all this, the Afghan government is struggling to win a modicum of public confidence that it can turn things around. Since most American troops withdrew from Afghanistan in 2014, terror attacks have been on the rise. Last year was particularly bloody, with over 11,500 people having been killed or injured even as the Afghan government's writ shrunk to just over half of the country's 407 districts.

The problem has political, diplomatic and security dimensions. Politically, the government is seen to be corrupt, incompetent, and unable to get its act together. Vice-President Abdul Rashid Dostum, who faces allegations of sexual abuse, has fled the country. President Ashraf Ghani and Chief Executive Abdullah Abdullah are reportedly not on the same page on key issues. Corruption is pervasive across government departments, and Mr. Ghani is yet to begin delivering on his promise to streamline governance. The diplomatic challenge before Mr. Ghani is to cut off the Taliban's supplies from abroad. It is an open secret that Pakistan is supporting the insurgency. There were reports recently that Iran and Russia may also be arming them for geopolitical reasons. Unless the Taliban are cut off from their external backers, Kabul's writ will remain circumscribed. The security challenge, perhaps the most important one, is that the Afghan army, after years of relentless war, is demoralised. Though Afghanistan has a 170,000-strong army, the main combat operations are overseen by a small U.S.-trained contingent. They are stretched on the battlefield, given the challenges from different militant groups. The question is, what is Mr. Ghani's government doing in the face of these challenges? Do its international backers, including the U.S., have any plan to stabilise Afghanistan, and if so, what priority do they accord it? As things stand, the country is at risk of sliding back to the chaos of the 1990s.

Cow slaughter and the Constitution

The government's new set of rules on cattle sale is unlikely to withstand judicial scrutiny



GAUTAM BHATIA

Over the last few days, the Central government's new Prevention of Cruelty to Animals (Regulation of Livestock Market) Rules have run into strong headwinds. These rules, which effectively prohibit the sale of cows and buffaloes for slaughter at animal markets, and are therefore perceived as imposing an indirect beef ban, have been the subject of protests in Kerala and Tamil Nadu, and have drawn strong condemnation from West Bengal Chief Minister Mamata Banerjee. With the Madras High Court on Tuesday staying the rules for four weeks, the battle has swiftly moved to the court as well. And with this, apart from the political turmoil, legal and constitutional fault lines have also been reopened, causing much uncertainty about what the outcome will be.

In the Constituent Assembly

This dispute has a history, which goes back to the founding of the Republic. During the framing of the Constitution, the subject of cow slaughter was one of the most fraught and contentious topics of debate. Seth Govind Das, a member of the Constituent Assembly, framed it as a "civilisational [problem] from the time of Lord Krishna", and called for the prohibition of cow slaughter to be made part of the Constitution's chapter on fundamental rights, on a par with the prohibition of untouchability. In this, he was supported by other members of the Constituent Assembly, such as Shibban Lal Saxena, Thakur Das Bhargava, Ramnarayan Singh, Ram Sahai, Raghu Viru, R.V. Dhulekar and Chaudhari Ranbir Singh. Proponents of a cow slaughter ban advanced a mix of



KAMAL NARANG

cultural and economic arguments, invoking the "sentiments of thirty crores of population" on the one hand, and the indispensability of cattle in an agrarian economy on the other.

There was one small, snag, however: fundamental rights were meant to inhere in human beings, not animals. After much debate, the Constitution's Drafting Committee agreed upon a compromise: prohibition of cow slaughter would find a place in the Constitution, but not as an enforceable fundamental right. It would be included as a "Directive Principle of State Policy", which was meant to guide the state in policymaking, but could not be enforced in any court. Furthermore, in its final form, this Directive Principle (Article 48 of the Constitution) carefully excluded the question of religious sentiments. Nor did it require the state to ban cow slaughter outright. Instead, under the heading "Organisation of Agriculture and Animal Husbandry", Article 48 says the state shall "organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

Members of the Constituent Assembly found these incremental compromises both unprincipled

and unsatisfactory. Shibban Lal Saxena objected to such "back door" tactics, and asked why the Drafting Committee was "ashamed of providing for [the prohibition of cow slaughter] frankly and boldly in so many plain words".

Z.H. Lari, one of the Muslim representatives in the Assembly, stated that his community would not stand in the way of the majority's desire, but nonetheless asked that the majority "express itself clearly and definitely", so that Muslims could know exactly what the position was on cow slaughter. However, clear and definite expression on the issue of cow slaughter was one thing that the Assembly was unwilling to commit to. Article 48, a provision that was grafted out of a compromise that left nobody satisfied, came into being with the rest of the Constitution, on January 26, 1950.

In the Supreme Court

The fundamental disingenuousness that underlay Article 48 was to be repeated, many times over, in constitutional litigation before the Supreme Court. Right from 1958, the Supreme Court was asked to adjudicate upon the constitutional validity of cattle slaughter bans passed by various States. Petitioners before the court argued that a prohibition of cow slaughter violated their rights to trade and business, and also their right to free-

dom of religion. The Supreme Court rejected these arguments and upheld the laws, but it did so by focussing its reasoning entirely on – apparent – economic considerations. Detailed analyses of agricultural output and milch yields give these judgments a strained, almost unreal quality. Much like the Drafting Committee, it was as if the court was unwilling to admit – and to uphold – the possibility of non-economic considerations behind such laws, as though this would shatter the thin facade of secularism to which the Constitution remained (ostensibly) committed.

A possible answer

The disingenuousness that marked the Constituent Assembly debates, that was written into final text of Article 48, and that has been inscribed into 50 years of the Supreme Court's jurisprudence, has found its latest avatar in the present rules. This time, the Central government has invoked a Supreme Court order on cattle smuggling across the Nepal border, as well as a 1960 law, the Prevention of Cruelty to Animals Act, as its justification.

However, the Supreme Court's order makes no mention of cattle slaughter, and a reading of the Act demonstrates clearly that it does not contemplate prohibiting animal slaughter per se. Not only does it specifically exempt slaughter of animals for food, it also provides for advice on the design of slaughterhouses, so that "unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible."

Now, under our legal and constitutional system, an executive notification cannot even go beyond the specific terms and ambit of the parent law from which it derives its authority. The government's new rules, however, go even further: by prohibiting the sale of cattle for slaughter at animal markets, they contravene the Prevention of Cruelty to Animals Act by specifically forbidding what that Act per-

mits. There is a strong argument, therefore, that the rules are invalid.

Furthermore, if indeed the purpose of the rules was to prevent cruelty to animals, then why is their scope limited only to cattle – and to camels? It is true that the government is always at liberty, for reasons of administrative convenience or otherwise, to choose and categorise the subjects to whom its actions will apply; but while under-inclusiveness is not generally a ground for a court to invalidate executive action, in the present case, there seems no rational basis for limiting the reach of an anti-cruelty regulation to only some animals. At the very least, in law, this casts serious doubts about the government's motivation and justification for its rules.

One might wonder why the Central government chose to take such a momentous step armed with such a flimsy defence. The only possible answer seems to be that had it gone with the traditional, economic justification for an (effective) ban on cow slaughter, it would have run up against an insurmountable constitutional difficulty: under our constitutional scheme, "agriculture" and "the preservation of stock" fall within the exclusive legislative competence of the States. This is the reason why, historically, different cow slaughter laws have been passed by different States. It is to get around this that the Central government has invoked the Prevention of Cruelty to Animals Act, a subject on which both the Centre and States can make laws.

What this has resulted in is a badly drafted set of rules, which is unlikely to withstand judicial scrutiny. It is also, however, an opportunity for citizens – and courts – to think once again whether the prescription of food choices is consistent with a Constitution that promises economic and social liberty to all.

Gautam Bhatia is a Delhi-based lawyer

This time for Africa

Sustained India-Japan cooperation in Africa can match China's substantial outreach



RAJIV BHATIA

India-Africa engagement is getting stronger with the active involvement of political and business leaders of both sides. This was reflected in deliberations at the annual meeting of the African Development Bank (AfDB) recently. The AfDB's decision to hold its meeting here in Gandhinagar, Gujarat, demonstrated its confidence in recent achievements and future prospects of the Indian economy. It also confirmed Africa's growing interest in connecting more extensively with India Inc. AfDB president Akinwumi Adesina called India "a developing beacon for the rest of the world", adding that the time was right for India and Africa to forge "winning partnerships".

This conference came against the backdrop of the historic third India-Africa Forum Summit in October 2015 when all 54 African nations had sent their representatives, 41 of them at the level of head of state or government. African governments have also been appreciative of Indian leaders' unprecedented readiness to visit Africa. In the past two years, the Presid-

ent, the Vice President and the Prime Minister have visited 16 African countries in the east, west, north and south. "After assuming office in 2014, I have made Africa a top priority for India's foreign and economic policy," Mr. Modi said at the AfDB meet.

A growth corridor

What attracted the attention of media, diplomatic and strategic communities was the release by Mr. Modi of a vision document on the "Asia Africa Growth Corridor (AAGC)". This study was jointly produced by three research institutions of India and Japan – Research and Information System for Developing Countries (RIS), New Delhi; the Economic Research Institute for ASEAN and East Asia (ERIA), Jakarta, and the Institute of Developing Economies Japan External Trade Organisation (IDE-JETRO), Japan – in consultation with other Asian and African think tanks. It envisages closer engagement between India and Africa for "sustainable and innovative development", and will be anchored to three pillars: development and co-operation projects; quality infrastructure and institutional connectivity; enhancing capacities and skills; and people-to-people partnership. The AAGC will accord priority to development projects in health and pharmaceuticals, agriculture and agro-processing, dis-



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aster management, and skill enhancement. It will have special focus on the following geographies: Africa, India and South Asia, Southeast Asia, East Asia and Oceania. This study indicates a preference for turning the 21st century into an Asian-African century, and not just an Asian century.

The idea of a growth corridor linking Asia and Africa stemmed from discussions between Japanese Prime Minister Shinzo Abe and Mr. Modi in November 2016, in light of talks between the two governments in earlier years. Convinced of the rising importance of the Indo-Pacific region as "the key driver for prosperity of the world", the two leaders decided "to seek synergy" between India's Act East Policy and Japan's "Expanded Partnership for Quality Infrastructure". This synergy would be reflected in better regional integration, improved connectivity and

industrial networks. The strategy encompasses India-Japan collaboration for accelerating development in Africa together with other like-minded countries such as the United States, Germany, France and probably the United Arab Emirates and Singapore.

Differences in approach

The very mention of the AAGC excited many observers. A few in the media asked experts whether this would be India's answer to China's One Belt One Road. The honest answer is in the negative as the approaches of India and China towards Africa are essentially different. China concentrates on infrastructure and cheque-book diplomacy, whereas India promotes a broader spectrum of co-operation projects and programmes focussed on the development of Africa's human resources. China goes solo, while India is desirous of working with other willing nations to assist Africa as per the latter's priorities. Besides, while committed to a voluntary partnership with Africa, India is not "prescriptive", as Union Finance Minister Arun Jaitley explained. This enlightened approach offers "limitless possibilities" for India-Africa cooperation.

Nevertheless, it should be reckoned that India and Japan do not have the luxury of time in view of China's rapidly expanding foot-

print in Africa. An urgent need exists for them to increase the scope of their development projects, create synergy among themselves, engage proactively with other willing partners, and thus turn the concept of the AAGC into a viable reality.

The authors of the vision document plan to produce within a year "an AAGC Vision Study" based on a geographical simulation model which will estimate the economic impact of various trade and transportation facilitation measures. The three institutions will then recommend the way forward to deepening the Asia-Africa partnership.

If New Delhi and Tokyo are anxious to make a difference, the most important task for them is to immediately initiate a few joint pilot projects involving the companies of India, Japan and a few African countries such as Kenya, Ethiopia and Mozambique in identified areas such as health care, agriculture and blue economy. Unless results become visible in the short term, questions may arise about the credibility of their joint approach. China's substantial success needs to be matched by sustained India-Japan cooperation in Africa.

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LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Food security

There is global consensus on the need to address the issue of food security, especially in the developing economies that are striving hard to improve their socioeconomic parameters and ensuring better welfare of their citizens. It's the critical responsibility of the state to provide its citizens with a sufficient quantity of food, and of globally acceptable standards. India, with its burgeoning population, faces the problem of meeting ever-rising consumption needs of its people. At the same time, it has to ensure that there is no overexploitation of limited resources. This balance between nurture and nature is in the backdrop of growing pressure on available food resources. A way out is to shift to sustainable production methods, effect behavioural changes among

people and make them realise the need to revisit the relationship between man and the environment. The integration of technological and innovative advancements in this area can help curb the serious issue of food wastage. The problem of food security is a burning one and entails an existential crisis for millions (Editorial page, "Thought for food", May 31).

ATIN SHARMA, Jammu

India achieved self-sufficiency in food production thanks to the Green Revolution. But despite this, it has the one of the largest percentages of malnourishment and growth stunting. Surplus foodgrain rotting in godowns across India while the underprivileged are deprived of sufficient food intake are two sides of the

story. The matter is even worse in the case of fruits and vegetables. The problem lies in the lack of forward linkages. It is strange that this issue hasn't caught the attention of our mainstream political parties and the media. It's quite ironic that the recent government order regulating the sale of meat on the grounds of animal welfare will end up depriving the poor of their "only source of protein". It appears to be a blatant attempt at culturally homogenising India. Politicians must stop cherry-picking issues with political potential and instead show more interest in the general welfare of the country.

ARJUN K.V., Hertfordshire, U.K.

Left's standing

For the Left, a party with a modicum of presence in

India and also one which shows little promise of growth in the near future, the claim that it, the Left – read CPI(M) – is the principal enemy of the Bharatiya Janata Party in the country is far-fetched ("The Wednesday interview: Pinarayi Vijayan" – "For the BJP, the Left is its principal enemy", May 30). Kerala Chief Minister Pinarayi Vijayan has painted a rosy picture of several policies and programmes of the LDF government, with some of them showing positive signs. But the Achilles heel of the CPI(M) in Kerala is its 'party-first' over 'people-first' approach.

AYYASSERI RAVEENDRANATH, Aranmula, Kerala

Harvesting the rains

India has braved one of the worst droughts of the recent past without too many calamitous consequences.

Now that there are forecasts of a fairly good monsoon, the time has come to educate individuals and communities about the utmost importance of rainwater harvesting programmes. It should be a part of every State government's mission and vision. Every civic body across India should be responsible for ensuring near total sewage treatment and ensuring that rivers and freshwater sources in and

around their limits are not polluted by wastewater. People across India have undergone severe hardships and this must be taken as an opportunity to ingrain in them forgotten water conservation techniques. Being assured of rain should not make us forget the hardship of previous months (Editorial – "Monsoon's here", May 31).

A. THIRUGANASAMBANTHAM, Coimbatore

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CORRECTIONS & CLARIFICATIONS:

In the report "Babri case: Advani, Joshi, Bharti charged with criminal conspiracy", the date of the Babri Masjid demolition was wrongly mentioned as December 9, 1992. It is December 6, 1992.

In the "From The Hindu Archives" column (May 31, 2017, early editions), the date of publication corresponding to the "Fifty years ago" entry – "Sino-Pakistan line-up against India" – was erroneously given as May 31, 2017. It should have been May 31, 1967.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturji Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com

Pride in prejudice

In this increasingly angry age, prejudice has become a matter of public entertainment



SUNDAR SARUKKAI

There was a time in our country when prejudice was not allowed to blatantly declare itself. There was a time when there was something that was shameful about publicly stating one's prejudices. But in this increasingly angry age, prejudice has become a matter of public entertainment. Repeatedly, we hear statements about caste, religion, the poor and the marginalised, in public domains and in public conversations as if they are matters of fact and not fictions of prejudice.

We hear far more strident voices against reservation, against allowing communities to eat what they want, against norms of behaviour of women. Such voices are getting normalised and have become part of our public gossip.

One would have thought that with so many well-meaning and deeply committed individuals and groups who have consistently fought against social prejudice of various kinds, we would have found ways to counter prejudice. Instead, we seem to be moving in the other direction. Definitely, the growth of vocal hate groups, supported by political parties, is a reason but we also have to honestly acknowledge that a plethora of social causes participate in this legitimisation of prejudice.

We have not been able to change these prejudices because, most often, these prejudices against colour, religion, caste and gender manifest not always directly but through various other means.

The white obsession

Look at our TV and print media. Our world news is largely about white societies. It is ironic that CNN and BBC in India have so many programmes about Africa, West Asia, etc. Why don't our TV channels show more of Africa? Or more of other Asian countries? By repeatedly having a bias towards the white West, our news makers exemplify a principle of prejudice. The way the TV presenters look also supports the many prejudices about colour, class or gender.

The prejudices inherent in our media are compounded by those inherent in our education system. Our



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syllabus is dominated by the intellectual products of the white West. Prejudice in this sense has entered into our core ideas of education far more deeply than anything else and explains why these prejudices are so powerful and not easy to get rid of. Right from school, the examples of great minds are largely white and male. The list of writers, scientists, artists and others is filled with these white males (and where Indians are found, they would be largely upper-caste males). The books that children mostly read are still dominated by a white world. Forget about the lack of great African, Persian, Chinese or Japanese literatures – we don't even read enough of other Indian language writing.

The prejudice against non-whites goes so deep in these educational practices that it is very difficult even for students who go on to advanced degrees like the Master's or PhD to deal with non-white intellectual traditions. I have found that it is most difficult to get students to take other intellectual traditions, including the Indian, seriously enough for their research work. The default mode is to search for a British, French, German or American scholar's writing in the

student's field of work, whether he understands these writers or not. It is ironic that the theoretical ideas that we use to make sense of our social experiences have had to come from great white males outside the country and not from the writings of Asians and Africans. To do the latter needs more work as there are no sources that are ready-made for use. We are not even making serious attempts to do this and this is a reflection of prejudice.

Some Indian philanthropists endow Chairs and donate money to education in bastions of white intellectual power, while at the same time bemoaning the lack of quality in Indian universities. When they do this, it is a double whammy since it sustains the privilege of the white West while at the same time contributing to the degeneration of Indian institutions.

Prejudice continues to be manifested and sustained through the privilege given to English speakers and writers in India. Much of this bias has translated into a sharp rural-urban divide with the urban legitimising itself by a prejudicial view towards the rural 'other'. Some view English as a form of social mobility and a way out

of historical oppression but the way in which this language stands as a symbol of power and knowledge makes it a classic trope of racism. As a consequence, our intellectual citadels cannot respect local language scholars and are more easily willing to accept mediocre English-speaking academicians.

We must remember that there are always good reasons to be a racist, colourist, communalist, casteist or misogynist. A decision not to give into these prejudices is not a judgment of reason and rationality alone; it is also an ethical judgement which depends on how we allocate value to anything. Ironically, reason and rationality have always played a central role in promoting prejudices against colour, caste, religion, sexuality, gender and other cultures.

In fact, one of the most dangerous inheritances we have had as part of these prejudicial ideologies is the belief that rationality and reason are unique products of the modern West. It is sad that we blindly buy into this story without first pausing to recognise that some of the most influential philosophers in Europe who promoted particular models of rationality held racist and misogynist views. The fact that our academic system is exclusively monopolised by the works of such men should at least make us think about the nature of our education system.

Prejudice is not manifested only when major events like the racist attacks on Africans or the attack on beef-eaters occur. Prejudice 'happens' continuously because of the established social structures, including the caste structure, which create and maintain the conditions for prejudice to flourish in India.

We can be politically correct and condemn these actions, but if we continue the same old practices of education, language domination, not engaging with the texts and traditions of a diverse India and Asia ranging from the Upanishadic to the Buddhist, Jain and the Islamic, as well as the contributions of a subaltern India that has actually created the world that we inhabit, and continue to ignore our cultural cousins in Africa, West Asia, South Asia and Southeast Asia, then we may as well accept the fact that our society will continue to be built on prejudices for a long time to come.

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In good faith?

Good administration involves recognising the distinction between errors, maladministration and graft



MUKUL SANWAL

Three Indian Administrative Service (IAS) officers, including former coal secretary H.C. Gupta, who dealt with allocation of coal mines have been sentenced to a two-year term on the grounds of causing pecuniary advantage to others. The conviction is under the Indian Penal Code (IPC) for criminal conspiracy and cheating and under the Prevention of Corruption Act (PCA), 1988.

The Comptroller and Auditor General (CAG) had termed the coal allocations inefficient, not corrupt. A parliamentary committee report on Coal and Steel had termed the allocations unauthorised. The Supreme Court had cancelled the allocation of 214 coal blocks. The Central Vigilance Commission (CVC) had directed the Central Bureau of Investigation (CBI) to probe the matter and the investigative agency could not find even a whiff of quid pro quo in the decisions these IAS officers took. Yet, they have been sentenced to spend time in jail.

Four facts are relevant here. First, the CBI was asked to probe alleged irregularities in decisions taken by a high-level committee, a forum to resolve inter-State and inter-institution technical and political issues. Second, since the papers went missing, the events were reconstructed by the agency. Third, after filing a closure report, it argued that only three IAS officers be charged, exonerating those above, the ultimate decision-makers, and those below them, responsible for the safe custody of the documents. Fourth, the agency asked for the maximum punishment of a seven-year term even though the officers had obtained no advantage. The law as it stands enables decisions taken through mediation and consensus to be reviewed by an investigating agency ill-equipped to do so.

Incomplete facts

Further, the Special CBI Court concluded that the secretary made dishonest misrepresentation to then Prime Minister Dr. Manmohan Singh, who was also the Coal Minister. This conclusion is based on a reasonable suspicion about a set of circumstances and state of events. The reasoning depends on incomplete facts placed before the court with the plausibility of those facts in question.

The same judge, Bharat Parashar, had in 2015 taken cognisance of offences under Sections 120-B (criminal conspiracy) read with Section 420 (cheating) and Section 409 (criminal breach of trust) by public servants of the IPC and under Sections 13(1)(c) and 13(1)(d)(iii) of the Prevention of Corruption Act against

Gupta's predecessor, P.C. Parakh, and Dr. Singh. Section 13(1)(c) of PCA relates to a public servant dishonestly misappropriating property entrusted to him or allowing any other person to do so. Section 13(1)(d)(iii) relates to a public servant obtaining any pecuniary advantage for any person without any public interest.

Senior counsel Kapil Sibal, representing Dr. Singh in the case, had contended before the Supreme Court that allocation of a coal block was an administrative act without any criminal intent. Mr. Sibal argued: "There has to be a meeting of minds to do a criminal act... Where is the criminal conspiracy? Is it an offence to grant coal mines to a private sector company?" He said a decision may be "right or wrong" but it cannot be said to be an illegal act. The bench stayed the proceedings of the CBI Court.

Section 13(1)(d) of the existing PCA covers indirect forms of corruption, including abuse of official position by a public servant. An amendment Bill approved by parliamentary committees has replaced this section with a clearer definition of 'criminal misconduct by a public servant': fraudulent misappropriation of property under one's control, and intentional, illicit enrichment and possession of disproportionate assets. The Law Commission has also pointed out that there must be an "undue advantage" that results from "improper performance of public function or activity" of a public servant to be punishable. The amendment is in line with international standards reflected in the UN Convention against Corruption.

All these decisions, modifications and guidance reflect a judicial, legislative and executive consensus that distinguishes between maladministration and administrative corruption, raising the question of relief that should now be provided to these three officers. The Government of India must step in to help argue their case and perhaps the Attorney-General should personally appear on their behalf.

Procedural errors could lead to mistakes in exercising discretion and are routinely appealed against. Systemic failures that lead to serious consequences would be regarded as maladministration. Both might be described as negligent, but are not criminal conduct. The First Administrative Reforms Commission, chaired by Morarji Desai had recommended, as early as 1966, that the proposed Lokpal investigate complaints of two distinct kinds: consequences of maladministration and favouritism or accrual of personal benefit or gain to the Minister or to the secretary. Good public administration does not just happen, and an essential element involves recognising the distinction between honest mistakes, maladministration and corruption, which is a feature in countries like the U.K. and Australia.

Mukul Sanwal is a former IAS officer and UN diplomat

SINGLE FILE

Vying for political space

The protests in West Bengal have come as a shot in the arm for the Opposition

SHIV SAHAY SINGH



Rallies and political agitations are not new to West Bengal but two back-to-back protests by Opposition parties have come as a shot in the arm for them. After the 2016 Assembly elections – when the Left Front and the Congress joined forces to take on the Trinamool Congress and failed miserably – the space for the Opposition has been severely constricted.

On May 22, thousands of Left Front supporters led by senior leaders of the Communist Party of India (Marxist) descended on the streets to March to Nabanna (State secretariat); three days later, on May 25, supporters of the Bharatiya Janata Party (BJP) tried to lay siege to Lalbazar, the State police headquarters. On both occasions, protesters turned violent and tried to break the police cordon. After failing to make any significant mark in either the Assembly and the Lok Sabha bypolls or the recently concluded civic polls, the Opposition parties wanted to assert that they could still mobilise a large number of people.

West Bengal Chief Minister Mamata Banerjee described the rallies as acts of "hooliganism" and said that they constituted a fight for the second and third positions. She also questioned the "politics" behind these protests.

In reality, the aims of the rallies were not clearly spelt out. While for the Left Front it was an 18-point charter of demands, the BJP said that it rallied to protest against false cases being lodged against its party leaders, and to demand immediate arrest of Imam Noor-ur-Rehman Barkati. The Trinamool Congress (TMC) leadership's claims that the rallies indicated a kind of "competitive hooliganism" cannot be completely set aside. The BJP tried to grab more attention by attacking public property. Arrested BJP leaders refused bail, choosing to spend the night in police custody.

However, what may be of concern for the ruling TMC is that both the Left and the Right were able to channel the anger of the masses. This assumes significance as many TMC MPs and Ministers are being probed by Central agencies over allegations of corruption.

West Bengal's electorate overlooked allegations of corruption against TMC leaders in the 2016 Assembly polls and placed their faith in Ms. Banerjee. However, in a fast-changing political scenario and given the sharp rise of right-wing forces, the TMC cannot take the people's support for granted and dismiss the show of strength by the Opposition as just a fight for "second or third position".

Days later Ms. Banerjee asked the police to take strong action against those causing communal disharmony. She also said her government would not tolerate cattle smuggling to Bangladesh. This came just a day after she came down heavily on the Centre's notification on sale of cattle in animal markets.

Ms. Banerjee's statements constitute a fine balancing act – while trying to hold on to her minority vote share, she is trying to not lose the support of the majority.



CONCEPTUAL Debt monetisation

ECONOMICS

A term that refers to the purchase of government bonds by the central bank to finance the spending needs of the government. Since the central bank creates fresh money to purchase these bonds in the open market, debt monetisation leads to an increase in total money supply. This, in turn, can lead to higher prices in the economy, which the central bank can counter by selling the bonds that it owns out in the open market. Such bond sales help in sucking excess money out of the economy, thus helping in the control of rising prices.

MORE ON THE WEB

New cattle slaughter rules and their aftermath
<http://bit.ly/CattleSlaughterRules>

FAQ

Liquidation made easier

The bankruptcy code could improve the business climate

T.C.A. SHARAD RAGHAVAN

What is the Insolvency and Bankruptcy Code? Passed in 2016, the code was formulated to make the process of shutting down and exiting a business easier and less time-consuming. Apart from helping companies, it was also expected to improve India's rankings in the World Bank's ease of doing business index. India currently ranks 130th overall – out of 189 countries – and 136th on the parameter of 'resolving insolvency', with the World Bank saying it takes four years to resolve a bankruptcy case. The code aims to bring this down to within a year.

What does the Insolvency Code seek to do? When a firm defaults on its debt, its control will shift to a committee of creditors. They will have 180 days to evaluate proposals from various interested parties on how to either resuscitate the company or enable liquidation.

The code has provisions

for the creation of 'insolvency professionals' who would handle the commercial aspects of the resolution process. Insolvency professional agencies will train and regulate these professionals.

The Debt Recovery Tribunal (for individuals and unlimited partnership firms) and National Company Law Tribunal (for companies and limited liability entities) are to act as adjudicating authorities.

Finally, the code lays down the procedure for the creation of an Insolvency and Bankruptcy Board of India, which will be the overall regulator.

What is the progress so far? According to experts, while the government has completed the tasks it had to carry out towards the implementation of the code, the private sector is yet to participate. So, the Insolvency and Bankruptcy Board of India has been created, but the progress in creating insolv-

ency professional agencies, and in recruiting insolvency professionals, has been minimal so far.

What are the reasons for the delay? While there is no real consensus on why the private sector is not acting swiftly, experts feel that one reason could be that the entire matter of insolvency is inextricably tied to the non-performing assets (NPA) issue.

Many companies may be plagued by the non-payment of dues. Only after their assets are rationalised, through the NPA-linked initiatives taken by the Reserve Bank of India, can they be wound up.

The RBI will look at them on a case-by-case basis, which means that the entire process will take time.

The overall consensus is that – excluding some solitary cases – there won't be much progress on the implementation of the code even by the end of this year.

FROM The Hindu. ARCHIVES

FIFTY YEARS AGO JUNE 1, 1967

Panel to study working of licensing system

Mr. Fakhruddin Ali Ahmed, Minister for Industrial Development, announced in the Rajya Sabha to-day [May 31, NEW DELHI] that an expert committee would be set up soon to go into the working of the industrial licensing system with a view to finding out if large industrial houses received undue advantage over others. In reply to a question he clarified that the committee would also investigate to what extent licences were denied to others in giving preference to Birlas and whether the grant of licences was consistent with the policy of import substitution. The Minister who was replying to the debate on the Hazari Committee report also announced that a Bill would be introduced in the current session of Parliament to give effect to the recommendations of the Monopoly Commission as accepted by the Government.

A HUNDRED YEARS AGO JUNE 1, 1917

Nadar Mahajana Sabah.

The third Nadar Conference under the auspices of the Nadar Mahajana Sabah resumed its sitting yesterday under the presidency of Mr. V. Ponnusami Nadar, when essays were read and addresses were delivered by representatives of this community on compulsory elementary education, higher education, female education, technical education, starting of a newspaper to serve the interests of Nadars, the constitution of the Nadar Mahajana Sabah, the collecting of an endowment fund, the controlling of the Mahamai funds and physical culture.

The Conference met again this morning and it was presided over by the Hon'ble Dewan Bahadur Justice T. Sadasiva Aiyar. The gathering to-day was particularly large; almost all the leading Nadars of these places were present.

DATA POINT

Terror peaks in Afghanistan

Since 2001, when the U.S. initiated the "war on terror", the number of incidents in Afghanistan as a proportion of overall incidents worldwide has been steadily increasing, reaching a peak of 17% in 2012. Prior to 2001, the number was less than 1%

