Bad call

The BJP's impatience to return to power in Karnataka might send it down a slippery slope

Failure to win ought to hurt less than outright loss, but try telling that to B.S. Yeddyurappa. Unable to reconcile himself to the failure to wrest Karnataka from the grip of the Congress in last year's Assembly election, the BJP strongman is adopting desperate measures to get another shot at becoming Chief Minister. The H.D. Kumaraswamy government has now announced the appointment of a Special Investigation Team (SIT) to go into the veracity of an audio clip in which someone is heard offering money and ministership to win the support of a Janata Dal (Secular) MLA. Mr. Yeddyurappa has admitted it is his voice in the clip, but claims that it has been edited and doctored. Another BJP leader, Shivanagouda Nayak, was allegedly recorded as having said that the Speaker of the House, K.R. Ramesh Kumar, had been "booked" for ₹50 crore to rule favourably on dissident legislators of the ruling coalition. Unsurprisingly, the BJP is opposing the constitution of the SIT; instead it has called for a judicial inquiry or a probe by a House panel. But since the statements made in the audio recordings allude to transactions that are criminal in nature, law enforcement agencies are better-equipped to uncover the truth. In 2018, the BJP finished as the single largest party, but a post-poll coalition of the Congress and the JD(S) denied Mr. Yeddyurappa the chance to form the government. After being forced to step down in 2011 as Chief Minister in the wake of corruption charges, Mr. Yeddyurappa may have seen the 2018 Assembly election as his chance at political redemption. The prospect of sitting out another five years in the Opposition may have prompted the use of such underhand methods to return to power.

The release of the audio clips shines a light on the Congress and the BJP herding their MLAs into resorts some weeks ago. Accusations that the BJP was trying to buy up dissidents in the Congress have now gained credence. Seven Congress MLAs and one JD(S) MLA stayed away from the Assembly proceedings, raising the suspicion that the BJP was actively wooing dissidents in both the parties to bring down the government. But BJP leaders are now the victims of their own design, as points of contact have recorded conversations offering money and giving assurances for switching sides. The JD(S)-Congress government is by no means a cohesive unit, but the BJP's covert attempts to engineer defections have certainly backfired. The wiser course for the BJP would have been to politically capitalise on the internal contradictions of the coalition government rather than resort to covert means to destabilise it. Desperate measures are aimed at immediate rewards, but these invariably result in long-term damage. The Congress outsmarted the BJP by cobbling together an opportunistic alliance with the JD(S). The BJP will be better served by time and patience, not money power and corruption.

Well oiled

It is easy to see why the Saudi Crown Prince has chosen to include India in his Asia tour

Saudi Crown Prince Mohammed bin Salman visits India next week at a time when both countries are seeking to deepen bilateral cooperation. For MBS, as he is widely known, the visit to India, Pakistan, China, Malaysia and Indonesia is an opportunity to re-assert Saudi Arabia's role as a major foreign policy player in Asia amid growing criticism over the Yemen war and the brutal assassination of journalist Jamal Khashoggi in Istanbul. For the government of Prime Minister Narendra Modi, the visit, with general elections approaching, is an opportunity to cap its pursuit of stronger ties with West Asian nations on a high note. High-level visits between India and Saudi Arabia have become the new normal since King Abdullah came to India in 2006, the first Saudi monarch to do so in five decades. Four years later, Prime Minister Manmohan Singh travelled to Riyadh. Mr. Modi visited Riyadh in 2016; last year, he met MBS in Argentina on the sidelines of the G-20 summit at a time when the Crown Prince had already come under sharp criticism in many Western countries. A number of factors have influenced the turnaround in ties between the two countries, which had been underwhelming during the Cold War. When India's economy started growing at a faster clip post-liberalisation, its dependence on energy-rich nations grew. And Saudi Arabia was a stable, trusted supplier of oil. Post-9/11, the two have expanded the scope of their partnership to economic issues and fighting terrorism.

MBS is expected to announce Saudi investments in both India and Pakistan. Saudi Arabia, which has traditionally exercised great influence over Pakistan, had recently offered a $6 billion loan to Islamabad to stabilise the economy. In India, Saudi Arabia and the UAE have acquired a 50% stake in a refinery complex in Maharashtra. The project remains stalled amid protests against land acquisition, but it shows Saudi Arabia's interest to make long-term investments in India's energy sector. Another subject that that will come up in bilateral talks is Iran. MBS has made containment of Iran his top foreign policy priority, and has U.S. support in this pursuit. India is certain to come under U.S. pressure to cut oil imports from Iran: it has so far walked the tightrope between Saudi Arabia and Iran. Even as its ties with the Kingdom improved over the past decade, India deepened its engagement with Iran, be it on oil trade or the Chabahar port. This is driven by the conviction that while Saudi Arabia is vital for India's energy security, Iran is a gateway to Central Asia. New Delhi is sure to continue this balancing act even as it seeks to strengthen the Saudi pillar of India's West Asia policy.

Dealing with the thought police

It is vitally important that the courts remain free of the discourse on 'urban Naxals' and 'anti-nationals'

GAUTAM BHATIA

On February 5, an Additional Sessions Judge in Punjab sentenced three young men to life in prison. Arwinder Singh, Surjit Singh and Ranjit Singh were convicted under a little-known provision of the Indian Penal Code concerning "waging war against the government of India".

In what heinous manner had the three men waged war against the government, which justified a sentence of life imprisonment? A perusal of the 64-page-long judgment reveals the following. They did not commit any physical violence, and nobody was harmed in any way. They were not caught in possession of weapons. They were not overheard planning any specific terrorist attack, nor were they on their way to commit one when they were apprehended. What did happen was that the men were caught with literature supporting the cause of Khalistan, a few posters that did the same, and some Facebook posts (whose content we do not know) on the subject.

With this being the sum total of what passed for "evidence" in the case, it is clear that the verdict of the Additional Sessions Judge is unsustainable, and will be reversed. It is important, however, for the higher courts to recognise not only that the judgment is fatally flawed but also that it represents a dangerous moment for the judiciary: this is not the first occasion in recent times when a court has abandoned constitutional values in favour of a crude nationalistic rhetoric that belongs more to the demagogue's pulpit rather than to the courtroom. And in that context, the judgment of the Additional Sessions Judge marks the beginnings of a trend that, if left unchecked, can swiftly erode our most cherished liberties.

Of speech and association

The first –and most glaring – aspect of the judgment is its apparent disregard for the Constitution. At the heart of the Constitution's fundamental rights chapter is Article 19, which guarantees, among other things, the freedom of speech and association. Of course, the state may impose "reasonable restrictions" upon these fundamental freedoms, in the interests of, for example, the security of the state.

In a series of careful decisions over five decades, the Supreme Court has articulated the precise circumstances under which a restriction on the freedom of speech or association is "reasonable". After the famous 2015 judgment in *Shreya Singhal*, in which Section 66A of the Information Technology Act was struck down, the position of law has been clear: speech can be punished only if it amounts to direct incitement to violence. Everything short of that, including "advocacy" of any kind, is protected by the Constitution.

Not only is this consistent with the Supreme Court's jurisprudence, it also harks back to a venerable Indian tradition of civil liberties. In the early 1920s, Mahatma Gandhi famously wrote that the "freedom of association is truly respected when assemblies of people can discuss even revolutionary projects", and noted that the state's right to intervene was limited to situations involving actual outbreak of revolution. The logic is simple: in a pluralist democracy, no one set of ideas can set itself up as the universal truth, and enforce its position through

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coercion. Consequently, as the American judge, Louis Brandeis, memorably observed, "If there be time to expose through discussion the falsehood and fallacies... the remedy to be applied is more speech, not enforced silence." The Indian Supreme Court's "incitement to violence" standard responds to this basic insight about civil liberties in a democracy.

Nor is the test diluted just because the issue at stake may involve national security. In three judgments in 2011 – Raneef, Indra Das, and Arup Bhuyan – the Supreme Court made it very clear that the incitement test applied squarely to the provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Unlawful Activities (Prevention) Act (UAPA), India's signature anti-terrorist legislation. In particular, the court cautioned that vaguely-worded provisions of these statutes would have to be read narrowly and precisely, and in accordance with the Constitution. So, for example, "membership" of a banned organisation – a punishable offence both under the TADA and the UAPA – was to be understood as being limited to "active membership", i.e. incitement to violence. In particular, in Raneef, mere possession of revolutionary literature was categorically held to be insufficient to sustain a conviction, something that was blithely ignored by the Additional Sessions Judge in his judgment of February 5.

In fact, not only did the Additional Sessions Judge ignore Gandhi, Supreme Court precedent on free speech and association and Supreme Court precedent on the interpretation of anti-terror legislation, he also – staggeringly – managed to ignore categorical precedent on the issue of pro-Khalistani speech! In Balwant Singh v. State of Punjab (1995), the Supreme Court had set aside the sedition convictions of two men who had raised pro-Khalistan slogans outside a cinema hall in Punjab, in the immediate aftermath of Indira Gandhi's assassination. Even a situation like that was deemed insufficient to meet the high "incitement" threshold, while here the Additional Sessions Judge managed to hold that Facebook posts amounted to "direct incitement".

Judicial objectivity

There is, however, a further point to consider. In the last few years, a discourse has arisen that seeks to paint a set of oppositional ideas as beyond the pale, and those who hold those ideas as being unworthy of civilised treatment. Two phrases have come to dominate this discourse: "urban Naxal" and "anti-national".

Neither "urban Naxal" nor "anti-national" is a term defined by law. These terms have nothing to do with incitement to violence or creating public disorder. But they are also boundlessly manipulable, and exploited by their users to vilify and demonise political opponents without ever making clear what exactly is the crime (if any) that has been committed. Their very elasticity makes them ideal weapons for shoot-and-scoot attacks, and for coded dog-whistles.

It is one thing for these terms to be thrown around in a political dogfight. It is quite another when they begin to percolate into law-enforcement and legal discourse, where precision is crucial, because personal liberty is at stake. Indeed, it is vitally important that the courts, above all, remain free of this discourse, because it is the courts that are tasked with protecting the rights of precisely those individuals who are demonised and vilified by the ruling majority of the day.

While the Additional Sessions Judge does not use either of these specific terms, his entire judgment, however, is of a piece with this governing philosophy, where conjecture, association, and innuendo take the place of rational analysis. In that context, his judgment is reminiscent of the Delhi High Court judgment that granted bail to Kanhaiya Kumar, while embarking upon a bizarre disquisition involving cancer and gangrene, and the police press-conference in the ongoing Bhima Koregaon case which did use the "urban Naxal" term.

Case for care

There is little doubt that the life sentence of Arwinder Singh, Surjit Singh and Ranjit Singh cannot stand the test of law. However, when an appeals court considers the issue, it should take the opportunity to reiterate a hoary truth: a democracy does not jail people simply for reading books, painting posters, or posting on Facebook. And in adjudicating cases involving the life and personal liberties of citizens, courts must take special care to ensure that the temptation to get carried away and forget what the Constitution commands is held firmly in check. That reminder may come when the three men have already lost some years of their lives to prison – but it could not come soon enough.

Gautam Bhatia is a Delhi-based lawyer

Every drop matters

The regulatory framework must be reformed to ensure access to safe and sufficient blood

KEVIN JAMES & SHREYA SHRIVASTAVA

Already supply of safe blood in sufficient quantities is a vital component of modern health care. In 2015-16, India was 1.1 million units short of its blood requirements. Here too, there were considerable regional disparities, with 81 districts in the country not having a blood bank at all. In 2016, a hospital in Chhattisgarh turned away a woman in dire need of blood as it was unavailable. She died on the way to the nearest blood bank which was several hours away. Yet, in April 2017, it was reported that blood banks in India had in the last five years discarded a total of 2.8 million units of expired, unused blood (more than 6 lakh litres).

Vigil after collection

To prevent transfusion-transmitted infections (TTIs), collected blood needs to be safe as well. Due to practical constraints, tests are only conducted post-collection. Thus blood donor selection relies on donors filling in health questionnaires truthfully. The collected blood is tested for certain TTIs such as HIV and if the blood tests positive, it has to be discarded. However, these tests are not foolproof as there is a window period after a person first becomes infected with a virus during which the infection may not be detectable. This makes it crucial to minimise the risk in the first instance of collection. Collecting healthy blood will also result in less blood being discarded later.

Blood that is donated voluntarily and without remuneration is considered to be the safest. Unfortunately, professional donors (who accept remuneration) and replacement donation (which is not voluntary) are both common in India. In the case of professional donors there is a higher chance of there being TTIs in their blood, as these donors may not provide full disclosure.

In the case of replacement donation, relatives of patients in need of blood are asked by hospitals to arrange for the same expeditiously. This blood is not used for the patient herself, but is intended as a replacement for the blood that is actually used. In this way, hospitals shift the burden of maintaining their blood bank stock to the patient and her family. Here again, there could be a higher chance of TTI's because replacement donors, being under pressure, may be less truthful about diseases.

The regulatory framework which governs the blood transfu-

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sion infrastructure in India is scattered across different laws, policies, guidelines and authorities. Blood is considered to be a 'drug' under the Drugs & Cosmetics Act, 1940. Therefore, just like any other manufacturer or storer of drugs, blood banks need to be licensed by the Drug Controller-General of India (DCGI). For this, they need to meet a series of requirements with respect to the collection, storage, processing and distribution of blood, as specified under the Drugs & Cosmetics Rules, 1945. Blood banks are inspected by drug inspectors who are expected to check not only the premises and equipment but also various quality and medical aspects such as processing and testing facilities. Their findings lead to the issuance, suspension or cancellation of a licence.

In 1996, the Supreme Court directed the government to establish the National Blood Transfusion Council (NBTC) and State Blood Transfusion Councils (SBTCs). The NBTC functions as the apex policy-formulating and expert body for blood transfusion services and includes representation from blood banks. However, it lacks statutory backing (unlike the DCGI), and as such, the standards and requirements recommended by it are only in the form of guidelines.

This gives rise to a peculiar situation – the expert blood transfusion body can only issue non-binding guidelines, whereas the general pharmaceutical regulator has the power to license blood banks. This regulatory dissonance exacerbates the serious issues on the ground and results in poor coordination and monitoring.

Towards a solution

The present scenario under the DCGI is far from desirable, especially given how regulating blood involves distinct considerations when compared to most commercial drugs. It is especially incongruous given the existence of expert bodies such as the NBTC and National AIDS Control Organisation (NACO), which are more naturally suited for this role. The DCGI does not include any experts in the field of blood transfusion, and drug inspectors do not undergo any special training for inspecting blood banks.

In order to ensure the involvement of technical experts who can complement the DCGI, the rules should be amended to involve the NBTC and SBTCs in the licensing process. Given the wide range of responsibilities the DCGI has to handle, its licensing role with respect to blood banks can even be delegated to the NBTC under the rules. This would go a long way towards ensuring that the regulatory scheme is up to date and accommodates medical and technological advances.

Despite a 2017 amendment to the rules which enabled transfer of blood between blood banks, the overall system is still not sufficiently integrated. A collaborative regulator can, more effectively, take the lead in facilitating coordination, planning and management. This may reduce the regional disparities in blood supply as well as ensure that the quality of blood does not vary between private, corporate, international, hospital-based, non-governmental organisations and government blood banks.

The aim of the National Blood Policy formulated by the government back in 2002 was to "ensure easily accessible and adequate supply of safe and quality blood". To achieve this goal, India should look to reforming its regulatory approach at the earliest.

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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.

Rafale deal

The Hindu has to be commended for providing greater details in the Rafale deal. Though the article may not be a reader's delight in terms of understanding it in depth, it would serve greatly those readers who deal with such subjects (Page 1, 'Exclusive', Rafale deal not on 'better terms' than UPA-era offer", February 13). One has to see whether the series of reports can affect the government. At the same time, one wonders whether they will be able to help the main Opposition party, given its track record in defence deals.

ARUN KUMAR MAHADEVAN,
Chennai

■ The CAG report on the Rafale deal was tabled on the last working day of Parliament probably to avoid an elaborate discussion on the subject. The Opposition has already expressed its reservations, including the point that the CAG should have recused himself. For the government, the CAG report gives a boost to its claim of everything being hunky dory. However, it certainly does not help in putting an end to the political tussle over the deal.

K.R. JAYAPRAKASH RAO,
Mysuru

■ The 'parallel negotiations' by the Prime Minister's Office, the "waiver of anti-corruption clauses" from the terms of the deal and "secret meetings" of the businessman in question now lead to the point: it would be ingenuous to suppose that the selection of the businessman as the offset partner was not a quid pro quo for the "major and unprecedented concessions" made to the French. The government has not been able to convincingly counter the Congress's accusation that the Prime Minister acted as, what the Congress calls, the businessman's 'middleman'. The only line it has to defend itself is to call the Congress president a 'lobbyist' for defence firms. Even if the Supreme Court and the CAG have found nothing seriously wrong with the deal, the government should agree to a JPC probe in order not to lose the perception battle.

G. DAVID MILTON,
Maruthancode, Tamil Nadu

■ The series shed much light on the murky happenings at the political level. After reading the file notings, one wishes to applaud the uprighteousness of various Defence Ministry officials for recording their views without fear or favour. It is evident that a muddying of the deal's waters began at the political level.

R. NAGARAJAN,
Chennai

■ With claims and more counter-claims, the deal is becoming confusing for the layman. The daily's investigations do counter certain claims made by the government. However, it is time the government agrees to a probe into the full deal.

D.B.N. MURTHY,
Bengaluru

■ It is stated that three out of seven members of the Indian Negotiating Team gave dissent notes. Even in the Supreme Court, in a 3- or 5-judge Bench, they go by the majority judgment, even when there is a dissenting judgment. So, in the case of the Rafale deal, is there anything wrong if they went by the majority opinion?

U.N. BHAT,
Bengaluru

A performer

Legendary Indian cricketer Gundappa Viswanath, who turned 70 recently, was a connoisseur's delight. He raised the standard of his batting when others failed. He added colour to the Indian batting with his repertoire of shots around the wicket ('Sport' page, "Viswanath - the hero and role model - is now 70", February 13).
The Karnataka star gets instant recall for his trademark square cut that would often whizz past the gully and point regions, leaving the fielders in awe and admiration. Among Vishy's many great knocks, his 97 not out against the West Indies at Chepauk in 1975 can be counted as evidence of his power in a crisis situation. It was a masterclass knock scored against the fury of Andy Roberts. The innings was best described by Sunil Gavaskar in his book, *Idols*: "His 97 not out is the finest Test match innings I was privileged to see."

R. SIVAKUMAR,
Chennai

■ G.R. Viswanath was the Keats of cricket; so poetic his batting was. He was the 'trademark-holder' of the square cut and late cut. His 97 not out at Chepauk in the 1975 Test against the West Indies stood apart. The original 'Little Master' cannot be cloned.

K. PRADEEP,
Chennai

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