



## Ayodhya again

The Supreme Court breathes new life into the Babri Masjid demolition trials

A nearly moribund prosecution has been given a new lease of life by the Supreme Court. By ordering a joint trial into two cases arising out of the Babri Masjid demolition in December 1992, and demanding that the trial court in Lucknow hear the matter on a day-to-day basis, the court has reinforced the importance of reaching a speedy judicial resolution in a matter that has already been horribly delayed. It was a mere technicality that resulted in the case relating to the actual act of demolition by numberless kar sevaks being tried in a special court in Lucknow and another relating to BJP political leaders being tried in Rae Bareilly on the charge of inciting ill-will and hatred. The Uttar Pradesh government's failure to cure a technical defect in an earlier notification, and the failure of the CBI to challenge it at the relevant time, led to the situation of separate proceedings continuing for years. It is regrettable that a case relating to the promotion of communal disharmony, one that had a bearing on riots and reprisals in the following months, was mired in judicial stagnation and administrative apathy for a quarter century. The court order reinfuses life into this necessary prosecution and reinforces faith in the rule of law.

The Supreme Court has revived the charge of criminal conspiracy against senior BJP leaders L.K. Advani, Murli Manohar Joshi, Uma Bharti and others, a small but significant change in the nature of the prosecution in a case that relates to the speeches they made, which allegedly incited the kar sevaks to pull down the mosque. In political terms, this is an embarrassment for the BJP. It has always maintained that the Ayodhya case against its leaders was essentially political in nature, but this charge now has a hollow ring with the Supreme Court itself reviving the conspiracy charge and fast-tracking the trial. As for Mr. Advani, this draws a curtain on his long political career; if it is true that he nursed ambitions about becoming the country's next President, this almost certainly puts an end to that dream. But more than Mr. Advani and Mr. Joshi, Prime Minister Narendra Modi may have cause to worry about how to deal with the continuance of Ms. Bharti as a Union Minister. Given that the party had demanded the resignation of charge-sheeted ministers in the previous government, it will now face the uncomfortable predicament of one of its own facing a criminal trial. There is also the question about the propriety of allowing Rajasthan Governor Kalyan Singh, the man who was the U.P. Chief Minister on that fateful day in December 1992, to remain in the Raj Bhavan. While it is true that he enjoys constitutional immunity because of his gubernatorial office, he will be subject to the law the moment he demits office. There is no legal compulsion for either of them to quit, but the issue for a government that waxes eloquent about probity in public life is to ask if there is a moral case for their continuance.

## Red, blue, ordinary

Curbs on beacons is a fine start — but for an assault on VIP culture, more must be done

In a most welcome move, the Union Cabinet has decided to disallow the use of the red beacon on vehicles on India's roads. Starting May 1, only vehicles on emergency services, such as ambulances, fire trucks and police cars, will be permitted the use of a beacon — from now, a blue-coloured one. So-called dignitaries will no longer have the privilege of announcing their exalted status on the road by sporting beacons on their passenger vehicles. For this, the Central Motor Vehicles Rules of 1989 are to be amended, so that the Central and State governments lose the power to nominate categories of persons for the red-beacon distinction. As a symbol of an assault on India's over-reaching VIP culture, this is a good beginning. The flashing red beacon has become so closely associated with unchecked official power that in popular culture it is often all that is depicted to establish a character's place in the hierarchy. In fact, it is seen to be such a symbol of arrival in the country's power structure that at a workshop for first-time MPs in 2009, one of the main demands made was that cars with red beacons be allotted to them. Such demands have also made its very denial a low-hanging fruit for regimes seeking to establish their street cred as men and women of the people. For instance, over the last three years, governments in Delhi, Uttar Pradesh and Punjab, each of a different political hue, have limited the use of the red beacon.

But to meaningfully begin to dismantle India's VIP culture, doing away with status symbols such as red beacons is not enough. For one, this accessory is just one category among privileges that maintain a colonial-era overhang on the country's democracy, by publicly enforcing a subject-ruler separation. From pat-downs avoided at the security gate at an airport to a freer passage at the toll gate on a highway, there are numerous ways in which the culture of entitlement is asserted. Such visible reminders of a feudal separation apart, the power of official proximity is experienced by citizens most intimately while accessing government services — from getting a bed at a state hospital, or a seat for one's child in school, to cutting the waiting time for, say, a passport or an Aadhaar identity proof. To be, or to know, 'somebody' is far too often perceived as a requisite to getting one's rightful due in a political economy of shortages, sloth and rent-seeking. To refresh Indian democracy, the state needs to stop protecting MPs such as Ravindra Gaikwad who coast along on "don't you know who I am" bullying. But yet more importantly, it must also reform procedures and the work culture to provide a level playing field to citizens to get what is theirs by right.

# The king of trying times

While extradition isn't a certainty, there is nothing to suggest that India will fail to bring Vijay Mallya to justice



R.K. RAGHAVAN

Vijay Mallya's arrest by the London Metropolitan Police and the grant of conditional bail to him by a Westminster magistrate are significant events. They are likely to go into the annals of Indian criminal justice history as evidence of the government's determination to pursue a wanted swindler of public money. The cynicism marking discussions on the subject is unjustified.

### CBI to the fore

An undeniable fact is that a lot of hard work had been done by both the Central Bureau of Investigation (CBI) and the External Affairs Ministry before taking up the matter with the U.K. government. Also, under English law, an arrest is an act that carries high accountability. No public official can resort to it frivolously or irresponsibly. This is why I do not agree with those who contemptuously dismiss Mr. Mallya's detention — however short it might be — as nothing beyond symbolic. The arrest is greatly encouraging, because it sanctifies the material collected by the CBI against him. The decision to direct the Scotland Yard (also referred to as the Metropolitan Police) to arrest Mr. Mallya is presumed to have been taken at the level of the Secretary of State.

Laughable is a criticism that the CBI did not do anything to prevent the grant of bail. This was a routine judicial decision that aimed mainly at ensuring that the defendant did not elude the proceedings that were to follow by fleeing the U.K. The prosecution did not have any role in this. To accuse the CBI or



DEEPAK HARICHANDAN

the Indian government of not being serious in the regard is to make a mockery of the highest order.

While assessing the prospects of extradition, one must begin by remembering that the papers sent by India had been rigorously scrutinised by the U.K. government up to the level of their Secretary of State and then transferred to the competent court in Westminster with appropriate recommendation. This itself was success of a sort and an unbiased acknowledgement that there was indeed prima facie material against Mr. Mallya.

The battle now moves on to the magistrate who will examine on May 17 all the material placed before him. Any flippant request by an applicant country is bound to fail. From what I can gauge, this is certainly not a capricious demand for Mr. Mallya's blood.

### All eyes on U.K. judiciary

The debate on the subject has unfortunately become politicised. This is sad because the focus has mischievously been shifted to the probability of the accused being made to stand trial in an Indian court, rather than his inescapable criminality. No one in the government or the CBI has taken the position that extradition is a certainty.

Their stand is that the best of evidence has been handed over to the U.K. government that has now been passed on to the competent magistrate. If the CBI ultimately fails, it is not that it did not try, but possibly because the investigation did not measure up to the exacting expectations of the U.K. judiciary.

I must mention here the case of Samir Patel, an accused in the Khambolaj case which was one of the nine Gujarat riots cases handed over by the Supreme Court-appointed Special Investigation Team (SIT) led by me from 2008. Mr. Patel escaped from Gujarat after jumping bail more than 10 years ago and lived in the U.K. illegally and without a valid passport. The SIT was able to locate him through a Red Corner notice issued by the Interpol and moved the U.K. government for his extradition. He was recently extradited to India and is now facing trial. Although Mr. Patel did not contest his extradition, there is here an example of how India succeeded in extraditing an offender in the very recent past.

The proceedings before the U.K. magistrate will basically take the form of arguments by lawyers on both sides. There is normally no examination of witnesses who could speak to facts marshalled by

the CBI. The greatest strength to the prosecution flows from the fact that almost all the prosecution evidence is in the form of documents. It is possible that the magistrate may demand some more documents to fill any lacunae that come to his notice. This could at best delay progress at the court and nothing more.

### Odds stacked against Mallya

On the face of it, there is nothing to suggest that we will fail to get Mr. Mallya extradited. This optimism flows from the fact that the evidence cited against him is essentially documentary. There are also no eyewitnesses to be subverted, a phenomenon that painfully afflicts our criminal justice system.

What kind of defence is Mr. Mallya likely to put up? The speculation is that he will first refer to an alleged political witch-hunt against him citing some statements made by those against him in the political firmament. He may also say that he will not get justice in Indian courts because of the enormous media hype that has been generated against him is likely to prejudice the mind of any judge who sits in a trial court. This plea is not likely to succeed because, except in a small number of nations, excessive media attention is the order of the day. A judicial officer is anyway expected to remain unswayed by extraneous factors and concentrate solely on the credibility of the evidence presented before him. The likely plea of harassment by the Indian authorities while facing trial in India will similarly be discounted by the magistrate. At best, the latter might demand an assurance from India that Mr. Mallya will be treated fairly and in accordance with universally accepted human rights standards, and that the offences with which he is charged will not, if proved, lead to a death sentence. It is highly likely that this stipulation may already have been

complied with in the application for extradition.

A crucial determinant will be the satisfaction of the criterion of 'dual criminality', namely, that the facts arrayed against Mr. Mallya amount to a crime recognised by the English criminal statutes as well. Germane here is the fact that Mr. Mallya is being accused not merely of a failure to repay loans sanctioned to companies chaired by him. If that alone is cited, he could get away under the cover of an unexpected dip in his commercial fortunes. There are the additional charges of cheating and money laundering in respect of the loan received by him from the IDBI. It is the CBI's emphasis not merely of two categories of criminal misconduct — recognised by criminal statutes of constitutional government the world over — that is likely to tip the scale in favour of extradition. The existence of a Mutual Legal Assistance treaty is the sine qua non for lending assistance, and this is fortunately well in place between India and the U.K.

Given his flamboyant nature, Mr. Mallya is likely to use every trick of the trade. He has formidable money power that will fetch him a battery of high-profile lawyers. This is why India needs to match his might with a team of counsel that not only has legal acumen but also perseverance. I am told they will be required to assist the Crown Prosecutor who will be arguing the case for extradition.

Trying times are therefore ahead for Mr. Mallya. And definitely interesting times for all of us who will be closely watching the Westminster proceedings. What is important is that the outcome will send a message or two to those who would like to borrow from banks, but have neither the intention nor the capacity to repay.

R.K. Raghavan is a former CBI Director

# Trading away our digital rights

India must first secure its digital sovereignty before it can begin global trade talks



PARMINDER JEET SINGH

Global trade treaties are no longer just about reducing tariff. They represent a whole new global legal system supplanting national policy space and sovereignty, in the interest of global big business. With the digital phenomenon restructuring most social sectors, it is little surprise that global trade negotiations are now eyeing the digital area in an attempt to pre-emptively colonise it.

### Who owns big data

Big data is the key resource in the digital space. It is freely collected or mined from developing countries, and converted, or manufactured, into digital intelligence in developed countries, mostly the U.S. This digital intelligence forms a kind of "social brain" that begins to control different sectors and extract monopoly rents.

Uber's chief asset, for instance, is not a network of cars and drivers. It



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is digital intelligence about commuting, public transport, roads, traffic, city events, personal behavioural characteristics of commuters and drivers, and so on.

To judge how the digital society is shaping, just extrapolate this situation to every sector; not only the regular commercial ones but also key social areas of education, health, agriculture, and, indeed, governance.

It is important to frame who owns data and digital intelligence, and how their value should be socially distributed. Most key data required for policymaking is increasingly with global data companies. Would the society or government then buy data and intelligence even for crucial public purposes from these digital companies, when the

data actually come from our various social and personal interactions over digital platforms? Does the ownership of the platform give corporations economic ownership of all the data so produced? Is ownership of data of sensitive sectors to be treated differently? These are key political economy questions that must be sorted out first.

### Accessing the network

Fronting for the global big business, developed countries make three key demands at digital trade talks. The first is a free and unhindered access to the "network" running throughout our society to mine social and personal data from every nook and corner. This includes full access to local networks, right to set up networks, no custom duties on digital goods, no requirement of local presence, no local technology use or technology standards commitments, and no source code transparency for digital applications that run through our social and personal spaces. Basically, India must give up its right to regulate digital technologies and networks within its territory.

Such regulation is required to ensure an equal playing field, open standards, privacy and security-re-

lated protections, promoting local technology content and other positive discriminations, like for open-source software which is Indian policy for public sector use, and for economic and social protections. We are being asked to give up our technology or digital sovereignty even before we have been able to identify and institute our digital rights, policies, laws and regulation.

The second demand in trade discussions is of ensuring completely free flow of data across borders, with no requirement of local storing, even for sensitive sectors like governance, banking, health, etc. Free global flow of data is a significant expression of self-declared ownership by global digital corporations over the social and personal data that they collect from everywhere, including India. The third key demand is the exclusion from future regulation of all services other than those already committed to a negative list, which will of course include e-versions of every sector.

India has been resisting global digital trade negotiations. But attempts will be made to flatter its self-image of an IT or digital superpower to seek concessions. India's global

IT business relationships are largely B2B where the principal party is abroad, and owns the involved data.

India has much native technical and entrepreneurial capabilities in the digital area, and to match them, a huge domestic market. Conditions are extremely good for developing strong domestic digital industry. But for this, India must stave off pressure for entering into binding global commitments that would forever kill any such prospects, apart from disabling Indian policymakers from appropriately regulating the digitisation of various sectors.

The WTO ministerial in Argentina in December 2017 will be a key battleground for whether WTO should start negotiating digital trade issues. These issues also figure in the Regional Comprehensive Economic Partnership talks among ASEAN-plus countries (including India). India must resist any digital trade negotiations at this time. It has little to gain from them, and much to lose. It must first build its digital sovereignty — and digital rights — before it can begin negotiating a part of it in global trade talks.

Parminder Jeet Singh works with the Bengaluru-based NGO, IT for Change.

## 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.

### Babri case revived

The remark by Union Minister Uma Bharti that she is "proud" to have participated in the Ram Janmabhoomi movement. Kalyan Singh, also in his eighties, is a Governor and so is immune from prosecution. The court solemnly claims that it has "the power, nay, the duty to do complete justice in a case when found necessary." And the court has given a generous period of two years to complete the proceedings! Isn't the court flogging a dead horse?

C.V. VENUGOPALAN, Palakkad

V. SUBRAMANIAN, Chennai

"Let justice be done though the heavens fall" is lofty rhetoric. The Babri case has been delayed for more than 20 years. L.K. Advani is nearly 90 years old and Murli Manohar Joshi is in his

eighties. Uma Bharti has said she is "proud" to have been associated with the Ram Janmabhoomi movement. Kalyan Singh, also in his eighties, is a Governor and so is immune from prosecution. The court solemnly claims that it has "the power, nay, the duty to do complete justice in a case when found necessary." And the court has given a generous period of two years to complete the proceedings! Isn't the court flogging a dead horse?

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K.A. SOLAMAN, Alappuzha, Kerala

Offensive appurtenances of power, like official cars flaunting the red beacon light, are symbols of political inequality that vitiate the democratic ethos of the Constitution. The elites seem to utilise the pompous display of power and privilege to remind citizens that, notwithstanding what the law affirms about equality, some are more important than others. By doing away with this privilege, Prime Minister Narendra Modi has struck a massive blow for egalitarianism. The term 'VIP' is an anachronism; an inappropriate coinage that has surprisingly survived more than six decades of Independence. We must banish this terminology. Historically, language has been one of the tools employed by aristocrats to

perpetuate their hegemony over society. It is unfortunate that our political rulers and bureaucrats appropriated a feudal legacy to exhibit an imperial mindset. When the ruling classes refuse to imbibe and embody the concept of political equality as a way of life, there seems to be no alternative other than forcing them to be humble before the public.

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While Mr. Modi has done well by addressing the issue of VIP culture, there are still people like Shiv Sena MP Ravindra Gaikwad who act as though they are special, even violently asserting that attitude despite nationwide condemnation for the same. There are perhaps many Gaikwads in India. It is to be seen how the Prime Minister deals with them. We also need to do away with special privileges accorded to VIPs in trains,

airplanes and other places.

V.S. GANESHAN, Bengaluru

Working till we drop

Critics of the government's proposal say the proposal will do nothing to tackle *karoshi*, or death from overwork ("Japan's 100-hour overtime cap sparks anger", April 20). It is a universally accepted fact that long hours of work with few or no breaks are counterproductive. While Japan's work culture is often seen as an example in many

countries, it is true that poor management of time is often the reason why people take more time to complete work. For instance, in India, several hours are wasted on unproductive meetings and phone calls. Reports state that Mr. Modi works 16-18 hours a day and U.P. Chief Minister Yogi Adityanath wants his officers to work 18-20 hours a day. Will this not lead to *karoshi* too?

N. NAGARAJAN, Secunderabad

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CORRECTIONS & CLARIFICATIONS: >>>A front page report, "PHFI loses FCRA licence for lobbying" (April 20, 2017), erroneously said that the Public Health Foundation of India's FCRA licence, which enabled it to receive foreign funds, was renewed in August 2017. It should have been August 2016.

>>>Errors in "The Black List" (Page 1 graphic, April 19, 2017): The extradition requests in Vijay Mallya and Tiger Hanif cases are pending as mentioned in the graphic. However, the requests in the cases of Ravi Shankaran, Iqbal Mirchi, Nadeem Saifee and Raymond Varley had been rejected.

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, Kasturba 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