



Bring in the experts

Jayalithaa's death does not deserve to be clouded by murky conspiracy theories

The philosopher Karl Popper argued that conspiracy theories are often premised on the notion that events are manipulated by sinister groups, shaped by a distrust of the notion of randomness and a yearning to explain phenomena in terms of an underlying or intentional order. From the birth of history, the death of famous people has provided a breeding ground for conspiracy theories. Clearly, the unfortunate and untimely passing away of Jayalithaa has become a playing ground for such 'theorists'. Astonishingly, more than a year after she died, two Tamil Nadu Ministers have called for a probe into her death by a special investigation team. Meanwhile, the Commission of Inquiry headed by Justice (retired) A. Arumughaswamy, constituted in September 2017 to probe her illness and death, is well into a third extension of its tenure. If it sometimes appears as if the Commission is shooting blindfolded in a dark room with blanks, that is because it is unclear if its principal focus is the issue of the "circumstances and situation leading to her hospitalisation", "subsequent treatment" and "unfortunate demise" or a larger conspiracy into her death. Both issues could be related, in theory. But if the main task is to determine whether the former Chief Minister received adequate medical attention before she was admitted in hospital and during her 75-day stay there, then this can only be settled by independent medical experts.

The corporate hospital she was treated in has filed a petition before the Commission seeking the constitution of a medical board comprising experts in a range of specialities to examine the case records and the interventions made by its doctors. This is an eminently sensible suggestion, given the complex and debilitating matrix of conditions that Jayalithaa suffered from. Only a complete understanding of her overall medical condition can result in a fair conclusion about the treatment she got. The importance of doing this is all the greater, given reports of critical errors in the recording of depositions of doctors before the Commission. One of them has gone as far as to say his application to correct errors has failed. The conspiracy angle has been given a new and perplexing lease of life with the Commission's counsel accusing the hospital and the State's Health Secretary of "conspiracy" and "collusion" in providing "inappropriate treatment". It would be improper to suggest that the Arumughaswamy panel is conducting the probe in anything but a fair manner, but it is essential that it also gives the impression that it is doing just that. After all, there is no getting away from the fact that the setting up of an inquiry commission had a clear political motive – it was a condition that needed to be satisfied to unite the warring AIADMK factions. Chasing elusive conspiracies will not enhance the Commission's image; taking the help of competent experts will.

Removing fear

The private member's Bill aimed at protecting literary freedom from threats is welcome

Literary freedom is taken for granted in democracies, but forces that threaten or undermine it are always at work. Each age has to fight the battle afresh. In recent times, several attempts to get books withdrawn, pulped or sanitised of offending content have achieved full or partial success in India. Wendy Doniger's *The Hindus: An Alternative History* was withdrawn from circulation, and A.K. Ramanujan's essay 'Three Hundred Ramayanas' was dropped from a Delhi University syllabus. Tamil writer Perumal Murugan's *Madhorubagan* was withdrawn by the author under mob pressure but resurrected by a Madras High Court verdict. Public order, national unity and social or religious harmony are the principles commonly invoked against the practice of literary freedom. Threats to free expression, especially artistic freedom, in our times mainly come from those claiming to espouse the interests of a particular religion or social group. It is in this context that Shashi Tharoor, Congress MP and writer, has introduced a private member's Bill in the Lok Sabha seeking to protect freedom of literature. Its objective – that "authors must be guaranteed the freedom to express their work without fear of punitive action by the State or by sections of society" – commends itself to any society that upholds liberal values. It seeks the omission of three IPC sections, including 295A, in effect a non-denominational blasphemy law, as it targets deliberate or malicious acts to outrage religious feelings.

Section 295A is a grossly misused section, often invoked in trivial ways to hound individuals, harass writers and curtail free expression. It deserves to be scrapped. Sections that relate to the sale of obscene books and uttering words that hurt religious feelings are also sought to be omitted. However, it is unclear why Section 153A, which punishes those who promote enmity between groups on grounds of religion, race or language, and Section 153B, which criminalises words and imputations prejudicial to national integration, do not draw Mr. Tharoor's attention. In the process of proscribing a book, he proposes a tweak in the form of a 15-day prohibition. Thereafter, the onus should be on the State government to approach the High Court to seek a permanent ban. It favours the scrapping of the provision in the Customs Act to ban the import of books, but makes a public order exception. It wants to limit the bar on obscenity in the Information Technology Act to child pornography. Private Bills rarely become law, but they are useful in highlighting gaps in the body of law. Seen in this light, Mr. Tharoor's initiative is most welcome as a step towards removing or diluting penal provisions that inhibit literary freedom.

The CBI and the rules of political combat

Elite consensus may often degenerate into a ganging up of the powerful, but its absence results in chaos



D. SHYAM BABU

The year 2018 witnessed the emergence of two inter-related threats to India's federal polity. But the political class remains oblivious to the potential of these threats, if not tackled in time, to inflict system-wide damage.

The first threat is that the national investigative and regulatory agencies, such as the Central Bureau of Investigation (CBI), are increasingly seen to be unmoored of the well-established bureaucratic professionalism and neutrality. The State-level agencies may be far worse, but that is a different matter. The political impact of this sentiment, whether it is true or false, is the refusal of some State governments to permit the CBI to conduct its operations in their States.

Strong signals

Giving credence to the doubts about the CBI's integrity, the families of Govind Pansare and Gauri Lankesh, who were killed in 2015 and in 2017, respectively, have determined to oppose a combined CBI investigation into their killings as well as that of Narendra Dabholkar and M.M. Kalburgi.

Gone are the days when people would demand a CBI probe into any crime or scam involving influential persons. One may dismiss the State governments' blocking the CBI probes within their jurisdictions as politically motivated, but one cannot ignore civil soci-

ety's lack of confidence in the agency's competence and neutrality.

The second threat to our political system is the increasing tendency, especially among the two national parties, to not only implicate each other's leaders in litigation but relish the spectre of the other having to spend time in courts or in jail. Our political space is turning into the moral universe of Buck Grangerford in Mark Twain's *Huckleberry Finn* wherein one is only certain of the other being one's mortal enemy but one's not sure of what's the feud about, or who started it or when. This moral relativism is corrosive and dangerous.

Though the kind of institutional collapse for which the CBI has become the poster-boy, and the political adversity turning into personal enmity are not new but they, like a disease, have entered a critical phase.

Centre-State implications

In November, the governments of Andhra Pradesh and West Bengal withdrew 'general consent' to the CBI to register fresh cases under its purview. One implication of the decision is that the CBI will have to obtain the State's consent case by case; this will give a State government the opportunity to both ensure that the CBI is not acting at the behest of the ruling party at the Centre, or insert its own politics into investigations. The agency may technically go ahead with cases it already registered in these States, but that logic holds only on paper. Without a State government's active cooperation, the CBI or any Central agency cannot carry out its operations in that State.

This is a truly tragic moment for the CBI, which has had its roots as an anti-corruption wing of the



R.V. MOORTHY

British Indian government known as the Delhi Special Police Establishment, a lacklustre name till 1963, when it became the CBI. That from such humble origins it rose to national eminence was a tribute to its competence and professionalism.

As mentioned, in the past some States occasionally blocked the CBI probe in specific cases but what is new, as exemplified by the decisions of Andhra Pradesh and West Bengal governments, is that hereafter a State's refusal to allow the CBI probe in its territory is likely to be based not so much on the merits of a case but on political equations between that State and the ruling party at the Centre.

It is not the CBI alone that will be caught in the cross hairs of Centre-State feuds in future. Other agencies such as the Enforcement Directorate, the National Investigation Agency (NIA), etc. may find it hard to smoothly carry out their operations in States that are not politically aligned with the ruling party at the Centre.

There was a time in the 1980s when a special income tax team sought to conduct search and seizure operations against persons close to the ruling party in Jammu and Kashmir without informing the local police for obvious rea-

sons, the team faced unpleasant backlash.

Under the Constitution, the State governments have exclusive jurisdiction in matters related to law and order. The Centre can claim its jurisdiction over its departments located in States, such as railway property, and on matters like terrorism, sedition, counterfeit currency, etc. Even in these cases the Central agencies cannot discharge their duties without active cooperation from the State government concerned.

Consider this, for example: unlike the CBI act (the Delhi Special Police Establishment Act) which mandates States' consent, the NIA Act does not place such a restraint on the NIA. However, the NIA would be no more effective than the CBI when a State refuses to cooperate, whether that refusal is *de jure* or *de facto*.

Dialogue required

Our federal system, insofar as it is concerned with the national investigative and regulatory agencies, worked well due to two reasons. One, as long as a single party remained in power at the Centre and in most States, the issue of political interference did not arise. Two, these agencies' reputation for professionalism and impartiality also ensured their success.

It is clear now that no single party will be so dominant at the national as well as State levels into the foreseeable future, and regretfully these agencies are not in pink of their health. But herein lies an opportunity.

The absence of a single-party dominant polity means that India will witness a revolving-door politics where the ruling party and the Opposition will exchange places fairly regularly. And their propen-

sity to lock up each other will abate.

The present context also highlights the urgent need to define and delineate 'federal crimes' as recommended by the Malimath Committee in 2003. The exercise should not be about compiling a list of crimes and prefacing each crime with the 'federal' adjective. Instead, the task should be to bring in States as partners in solving a national problem: how best to calibrate different tiers of government and bring about political consensus so as to ensure India's constitutional scheme delivers on its promise.

A first step in this direction has to be the willingness of political parties, especially the Bharatiya Janata Party (BJP) and the Congress, to recognise the danger they pose to each other as well as to the entire polity. And then arrive at a *modus vivendi* which must contain the need for the elected executive to refrain from 'monitoring' investigations; a provision for more effective judicial oversight at all stages of criminal investigations; and the resolve to ensure bureaucratic neutrality.

Restoring credibility

The task of restoring the credibility of investigative agencies cannot be rocket science. Moreover, it is now in the self-interest of all political parties. As the nation approaches the national elections in a few months, the time is ripe for ideas to strengthen our federalism. Ideas for reforms will spring up and fructify only if elite consensus creates a conducive environment.

D. Shyam Babu is Senior Fellow, Centre for Policy Research, New Delhi. The views expressed are personal

India's options and the Pashtun factor

In fashioning its Afghan policy, India has to take into account a resurgent Taliban



MOHAMMED AYOOB

It's rightly being pointed out that India has to be prepared for the potential consequences of the withdrawal of U.S. troops from Afghanistan. While New Delhi is weighing its options it must take into account that for all its antipathy toward the Afghan Taliban, the latter does represent, in a distorted form, a facet of Pashtun nationalism. What has given added potency to the Taliban's appeal is this: its ability to couch in religious terminology traditional Pashtun aspirations for dominance in Afghanistan as well as the aversion of Pashtun tribes to foreign interference in their land.

Invasion shifts power

It is the combination of ultra-orthodox Islam, a product of Saudi involvement in the so-called Afghan "jihad", with Pashtunwali, the traditional Pashtun social code, and opposition to foreign presence that provides strength to the Taliban. Most Pashtuns, who comprise over 40% of the population of Afghanistan, believe that they are the rightful rulers of the country. They base this on the history of the past 300 years when Pashtun dynasties ruled Afghanis-

tan almost throughout. While the Persian-speaking Tajiks, who form around a quarter of the population, are more urban and educated than the Pashtun tribes and staffed a substantial portion of the Afghan bureaucracy, the ruling dynasties were invariably Pashtun.

This situation changed with the American invasion in 2001 aided by the largely Tajik Northern Alliance that shifted the locus of power out of Pashtun hands. The emergence of the Pashtun Taliban from Kandahar in 1994 was in reaction partly to the fear of Tajik domination and partly to the mayhem and anarchy caused by the "mujahideen" factions fighting each other for control of the country. With Pakistan's military help the predominantly Pashtun Taliban imposed a degree of order and ruled approximately three-quarters of Afghanistan from 1996 to 2001.

Pashtun resentment against foreign intervention, which drove their opposition to the Soviet invasion and now fuels antipathy towards American military presence, also has a long history going back to their resistance to British intrusion during the 19th century. It was augmented by British success in dividing the Pashtun lands in eastern and southeastern Afghanistan and drawing the Durand Line that attached a large portion to British India, now Pakistan. This drastically reduced Pashtun demographic superiority in Afghanistan. Opposition to the Du-

rand Line was the principal reason why Afghanistan voted against Pakistan's admission to the UN in 1947.

Traditionally, Pashtun nationalism in Afghanistan was based on ethnicity and tribal loyalties and not connected to religion, which explains their hostility toward predominantly Muslim Pakistan during the first three decades of its existence. The Soviet invasion of Afghanistan in December 1979 fundamentally changed the nature of Pashtun nationalism. It led to American and Saudi support for the Afghan insurgency, with Pakistan acting as the conduit for American arms and Saudi financial support to the tribes fighting the Soviets and their proxy government in Kabul. It also led to the import of Saudi-Wahhabi ideology through madrassas set up with Saudi funding on the Pakistan-Afghanistan border. These madrassas produced the first generation of the Taliban.

Pakistan and the Pashtuns

Simultaneously, the Soviet invasion altered the nature of Pakistan's relationship with Pashtun nationalism, turning it from hostility to support. This process culminated with the installation of the Taliban regime in Kabul in 1996 with Pakistan's military aid. It provided Pakistan with strategic depth in the event of a future conflict with India. Equally important, Pakistan's support to this religiously inspired manifestation of Pashtun



FILE PHOTO/AP

nationalism largely solved the problem of Pashtun irredentism within Pakistan.

Although polls show that the majority of Afghans do not support the Taliban, the divided and infirm nature of the nominally ruling dispensation and its corruption and inefficiency have helped the Taliban gain renewed support among parts of the Pashtun population. Added to this is the vicarious satisfaction that many Pashtuns feel at the Taliban's defiance of the Kabul government, making it a viable force in Afghanistan.

The resurgent Taliban is driven not so much by Islam as the quest for Pashtun dignity and revenge. While it is not in a position to rule over the entire country, and certainly not the urban areas, it does control large swathes of the rural areas in the predominantly Pashtun provinces of eastern and southeastern Afghanistan. In other words, it is in a position to make the country ungovernable and indefinitely continue the civil war especially because of its control of the drug trade that finances its ac-

tivities. The withdrawal of American forces will provide it greater opportunity to expand its area of operation.

Indian policy

It is important that New Delhi takes this factor into account while fashioning its policy toward Afghanistan in anticipation of American withdrawal. India's refusal to publicly criticise, let alone denounce, the Soviet invasion of 1979, while understandable in that particular geopolitical context and a consequence of India's gratitude for Soviet support during the Bangladesh war, ended up doing India great harm in the eyes of its traditional friends in Afghanistan, the Pashtuns. It also provided Pakistan greater scope to curry favour with Afghanistan's largest and traditionally dominant ethnic group.

It will take a great deal of creative thinking and imaginative re-fashioning of New Delhi's policy towards Afghanistan for India to recover lost ground *vis-à-vis* the Pashtuns. Depending on the U.S., itself on the verge of cutting its losses in Afghanistan, or on other powers such as Russia and Iran to protect Indian interests in that country will be foolhardy and counter-productive.

Mohammed Ayoub is University Distinguished Professor Emeritus of International Relations, Michigan State University and Non-Resident Senior Fellow, Center for Global Policy, Washington DC

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, in Parliament

The debate in Parliament on the Rafale fighter aircraft deal was with fireworks but did not clarify any doubt. Union Defence Minister Nirmala Sitharaman may have had the upper hand and come up with punchlines – such as that if the Bofors issue brought down the Congress party, Rafale, on the other hand, will help Prime Minister Narendra Modi come to power again – but there is no logic here. How can a deal with many questions over it help the government? Rhetoric apart, the government has not answered a key issue – of the selection of a private and novice Indian company as offset partner. The Narendra Modi government has to prove that it did not favour anyone unduly. The government cannot hide

behind the excuse that the choice of selecting the partner is that of the seller's.

*Dr. D.V.G. SANKARARAO,
Nellimarla, Andhra Pradesh*

■ Ms. Sitharaman's long-winded speech has not cleared the air. Her invocation of "national security" and "hostile environment" was fine as a prelude to her defence of the dubious deal. But their connection to the alleged corruption in the Rafale deal was left unexplained. She left a raft of questions unanswered – on the number of aircraft, the cost, the choice of the private Indian firm and the lack of a sovereign guarantee. Her contention that defence procurement was at its weakest under the UPA regime was not quite relevant to the issue at hand.

Only a few will believe that the Indian private company was made the Indian offset partner by Dassault Aviation without being prodded to do so by the Indian government. Only a few will accept that debt and inexperience could help such a firm qualify. Referring to the AgustaWestland deal, Ms. Sitharaman held that the HAL would give only helicopters and "not anything else", oblivious to the fact that the same logic applies to the deal in question too. Instead of defending his shady deal, the Prime Minister must be upfront about all that he knows and clear the air.

*G. DAVID MILTON,
Maruthancode, Tamil Nadu*

■ Ms. Sitharaman appears to have a sense of humour. She knows fully well that it is

neither AgustaWestland nor Rafale which is going to bring the BJP or the Congress back to power. It is the non-performance of the NDA at the Centre which is going to play a vital role in the general election. Voters are not fools. Ms. Sitharaman must remember the long list of significant promises the BJP made when it swept to power in 2014. Her statement in Parliament could haunt the BJP in the forthcoming general election.

*MOHAN ARIMBOOR,
Thrissur, Kerala*

On the Mallya trail

The move to declare Vijay Mallya a fugitive economic offender should lead to concrete action against other such alleged economic offenders (Page 1, "In a first, Mallya declared a 'fugitive economic offender'," January 6). It is also hoped that the

government will make public the names of all major bank defaulters and initiate strict recovery proceedings, including legal action where applicable.

*A. MOHAN,
Chennai*

Blood safety

The case of a pregnant woman in Tamil Nadu testing positive for HIV as a result of a blood transfusion raises many questions on the efficacy of the medical care being offered in the State (Tamil Nadu, "Tainted blood", January 6). In India, there is much reliance placed on laboratory assistants especially in pathology laboratories operated by private firms. Readings too differ drastically from one clinic to the other even if tests are taken within a span of a few days. There is rampant commercialisation

observed, with many such laboratories offering heavily discounted package deals for a series of health/blood tests. How far tests conducted at such throwaway prices are reliable, no one knows. The Medical Council of India should frame proper guidelines so that there is no margin for error.

*V. SUBRAMANIAN,
Chennai*

No to plastics

The Chennai Corporation should reinforce the anti-plastic use drive by collecting unused plastics from the public at its zonal offices and hand out jute or cotton cloth bags for every kilogram of plastic material handed over. This is the time to popularise eco-friendly products.

*S. PADMANABHAN,
Chennai*

*MORE LETTERS ONLINE:
www.hindu.com/opinion/letters/*