Tale of two sections

It's time 295A and 153A of the IPC are revisited, to end vexatious criminal prosecution

The Supreme Court has intervened to spare cricketer Mahendra Singh Dhoni the ordeal of facing a criminal trial for allegedly insulting the Hindu religion by being featured in the likeness of a deity on the cover of a business magazine. The court quashed a criminal complaint filed against him in Anantapur in Andhra Pradesh under Section 295A of the Indian Penal Code, a provision that makes "deliberate and malicious acts intended to outrage religious feelings" a punishable offence. The court said there was no deliberate intent on the part of the cricketer or the magazine to hurt religious sentiments. It drew upon the interpretation given to Section 295A by a Constitution Bench as early as in 1957 that it only "punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class". It is a matter of satisfaction that the highest court intervenes from time to time to stymie attempts by those claiming that their religious sentiments are offended by some act or remark of celebrities and dragging them to courts in different parts of the country. Judicial relief does come in the end, but the bitter truth is that the process is the punishment; it is time our lower courts stop taking reflexive cognisance of trivial or vexatious cases filed on the basis that the religious, caste or cultural sensitivities of some group have

In essence, Section 295A is a thinly disguised blasphemy law - the only difference being that it is 'secular' insofar as it applies to all religions or all forms of religious insult. A close cousin of this provision is another much misused section of the IPC – 153A. Intended to punish those who promote enmity between different groups on grounds of religion, race, place of birth, residence and language, and doing acts prejudicial to the maintenance of harmony, this section has been employed to harass writers and artists and cast a chill on free expression. The problem with insult laws, irrespective of the form they assume, is that they are inherently subjective. There is no guessing what causes insult/offence/hurt to people, leaving it open for such provisions to be blatantly misused. In this respect, Section 295A and 153A resemble our controversial contempt of court law - there is no saying what will scandalise a judge and therefore no saying when and for what contempt may be invoked. The two IPC provisions encourage the creation of what novelist Monica Ali described as a "marketplace of outrage" - an economy that feeds on anger and hostility. They need to be read down, their scope narrowed in a way that moral vigilantes and those who affect an emotional victimhood can no longer exploit the law to serve their narrow chauvinistic ends.

At war with itself

Afghanistan and its allies need a coherent, gritty plan to roll back Taliban advances

he attack on a military base in Afghanistan on Friday, in which at least 140 people, mostly unarmed soldiers, died, speaks volumes about the state of security in the war-ravaged country. It was the deadliest attack by the Afghan Taliban since they were ousted from power in 2001. The 209th Army Corps base in Balkh province that was targeted is the army's northern headquarters, responsible for security in nine of Afghanistan's 34 provinces. By running over such a fortified structure, the Taliban are effectively challenging the professionalism, resolve and resources of the entire force. Over the last few years, the Taliban had lost two of their topmost leaders. Besides, there were reports of factionalism and infighting within the group after the death of Mullah Omar. Yet, the Taliban made steady and substantial gains in the civil war over the last couple of years, since most American troops withdrew from Afghanistan as part of the drawdown plan. Now the group controls or has influence in more than half the country. In recent years it had carried out multiple attacks on government buildings, including the Parliament building, sending a clear message to the government and its international backers that there is no place in Afghanistan that lies outside the Taliban's range.

Each time such an attack takes place, the Afghan government issues a statement on terror and vows to continue fighting. But despite these assurances, there is no real progress visible on the ground. Last year alone, more than 6,700 members of the Afghan security forces were killed, the highest since 2001. High casualties destroy the morale of the troops and erode the public's faith in the country's institutions, which already have a reputation of being highly corrupt. Kabul's erratic and sometimes incoherent responses to the Taliban threat also expose its lack of conviction. Its overall security approach, as the latest attacks suggest, is in a shambles. The armed forces are not able to stall the Taliban's advances. Its political reforms and attempts to reach out to the rural populace get nowhere as the Taliban are expanding their hold in the countryside. Even the attempts to reach a negotiated settlement were counterproductive, given the lack of cooperation from Pakistan and the Taliban's refusal to make any meaningful compromise. But why would the Taliban compromise at a time when they think they're making gains in the war? In order to forge a long-term political solution, the Afghan government first needs to alter the balance of power on the ground; and for that it needs international support. The U.S. would do well to help the Afghan security forces craft a credible, sustainable military strategy and provide them more resources and training to take on the Taliban. Theatrics such as dropping the biggest non-nuclear bomb in the mountainous regions of Afghanistan may make headlines, but, as last week's attack suggests, they hardly deter the militants.

Towards complete justice at last

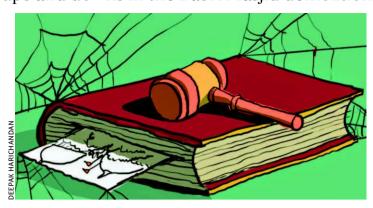
A brief history of the ups and downs in the Babri Masjid demolition case



standards, 25 years should be a long enough period to find closure for crimes which affect the social and political life of a country. But it has taken this length of time for the real beginning: the trial of political leaders for conspiracy to commit what is conveniently described as "political crimes". If ever there was a case where the invocation of the powers of the Supreme Court to do 'complete justice" under Article 142 of the Constitution existed, it was the Babri Masjid demolition case. As Justice R.F. Nariman recognises in his judgment, the underlying basis of the Article is the Latin maxim fiat justitia ruat caelum (let justice be done though the heavens fall). The court's unhesitating resort to Article 142 mitigates to some extent the consequences of the failures of the Uttar Pradesh government and the Central Bureau of Investigation (CBI), and the judiciary's own tardy processes. Each of these deserves some attention.

Procedural flaw

The charge of criminal conspiracy against L.K. Advani, M.M. Joshi and six others failed to fructify only because of the view of the Lucknow Bench of the Allahabad High Court in its judgment of February 12, 2001 that the insertion of the separate FIR 198 of 1992 against these eight individuals in the original notification of the State government



directing the cases to be tried by a special court at Lucknow was procedurally flawed. And that procedural flaw, which the High Court itself held was curable, was that there had been no consultation with the High Court.

On June 16, 2001, the CBI requested the State government to cure the defect. The request remained pending with the State government for a year-and-a-quarter and was rejected on September 28, 2002. This period spanned the chief ministership of Rajnath Singh, a short spell of President's rule under the National Democratic Alliance (NDA) government and finally the chief ministership of Ms. Mayawati, whose Bahujan Samaj Party government depended on the outside support of the Bharatiya Janata Party (BJP). This rejection was not challenged by the CBI during the tenure of the NDA government at the Centre till

May 2004 or even subsequently. The Supreme Court in its judgment of April 19, 2017 highlights the failure of the CBI to challenge the refusal of the State government to rectify the procedural flaw by consulting the High Court. The directions now given by the Supreme Court, namely transferring the case against Mr. Advani and seven others from Rae Bareli to Lucknow and the framing of charges of criminal conspiracy by the Court of Lucknow, are only to remedy, in the court's own words: "what was expected by the Allahabad High Court to have been done shortly after its judgment dated 12th February 2001".

To the top court

The route by which the present case reached the Supreme Court needs to be mentioned. Skipping the unnecessary details, the special court at Lucknow by an order dated May 4, 2001 dropped proceedings against 21 persons, including the Advani batch of eight, taking the view that there were two sets of accused, namely the innumerable kar sevaks who actually demolished the masjid and the limited number of others who were the instigators. The special court chose to drop the proceedings against these 21 persons so that the case against the kar sevaks could go on. The revision filed by the CBI against this order of the special court remained pending before the Allahabad High Court for a good

nine years before it was dismissed by a judgment on May 22, 2010. It is this judgment which was challenged by the CBI in the Supreme Court after a long delay. Considerable time of the Supreme Court was spent on examining the question of delay.

The case picked up pace in the Supreme Court only after March 6 this year when it came before a bench of Justices P.C. Ghose and Nariman. The oral observations of the Court on that day gave a sufficient clue to its mind and the case was finally heard and judgment delivered with remarkable promptitude in a month and a half. But it is necessary to remember again that in this round of litigation starting from May 4, 2001 the case has remained pending for a good 16 years in the superior courts.

Judicial reactions

It is also worth looking at the varying judicial reactions in the Supreme Court in the same case over a span of four years. Last week's judgment had no hesitation in recording that the case with which it was concerned pertained to crimes affecting the secular fabric of the Constitution. But in 2013 the reaction of a bench headed by Justice H.L. Dattu, later Chief Justice of India and now Chairperson of the National Human Rights Commission, was different. At that time the much respected senior counsel, P.P. Rao, was appearing for the CBI. He is not known for courtroom dramatics or the use of hyperbole. In support of his plea for early hearing he referred to the incident as a crime and described it as a matter of national importance. He had not described any individual as a criminal. According to newspaper reports, he was sharply

pulled up. While reminding the CBI of its own delays in the matter, the bench reportedly said, "Do not say it is a national crime or matter of national importance. We are yet to decide it. Unless we or the trial court decide this way or that way you cannot make such statement."

A distinction between roles There was another related pro-

ceeding which the Supreme Court did not and was not required to notice in the present case. It is still worth mentioning. On September 19, 2003, the special court at Rae Bareli discharged Mr. Advani, then the Deputy Prime Minister, in the case relating to the making of inflammatory speeches on December 6, 1992. It drew a distinction between the role of Mr. Advani and the seven others, including Mr. Joshi. Newspaper reports indicate that while Mr. Joshi promptly tendered his resignation from the Union Cabinet, he made it clear that there was no logic in the distinction made by the Court between Mr. Advani and the others, including him. If this judgment had stood, there would have been no case against Mr. Advani in the Rae Bareli court which the Supreme Court could have transerred to Lucknow last week and to which the charge of conspiracy could have been added. This judgment of the Rae Bareli court discharging Mr. Advani was however set aside by a Single Judge of the Lucknow Bench of the Allahabad High Court on July 6, 2005. That is why Mr Advani Mr Joshi and six others are in the same boat again.

Raiu Ramachandran is a Senior Advocate, Supreme Court of India

Racism and the reality in Japan

Keeping in mind the 2020 Olympics, Japan is beginning to address deep-rooted discrimination



PALLAVI AIYAR

n central Tokyo's bustling neighbourhoods, it's common to find signs outside establishments, from barber shops to taverns, stating: "Foreigners Welcome". That these are necessary only highlights how there are places in Japan guest houses, massage parlours, restaurants - where foreigners are unwelcome.

Justifications for barring entry to foreigners range from worries about communicating with non-Iapanese speakers (although many foreigners do speak Japanese), to the notion that foreigners don't know how to behave in Japanese settings (such as taking off their shoes and speaking softly). Some claim that the real aim of these restrictions is to keep large groups of loud-mouthed Chinese tourists from "spoiling" the atmosphere. Other foreigners are merely collateral damage.

Results of survey A new survey carried out by Japan's

Justice Ministry reveals that nearly a

third of foreign residents in Japan say they have experienced derogatory remarks because of their racial background, while about 40% have suffered housing discrimination. Of the 18,500 foreigners surveyed, 4,252 responded, the majority identified as Chinese and Korean. Over 40% had lived in Japan for more than a decade.

One in four job seekers said they were denied employment because of being foreign, and one in five believed they were paid less than their Japanese counterparts for similar work. Putting paid to the notion that such discrimination is related to language, 95% of foreigners whose job applications were rejected, and over 90% of those whose housing applications were denied, were able to speak Japanese "conversationally, professionally or fluently".

Because racism is thought of as discrimination by white people against those of colour, non-white countries such as Japan have been loathe to admit that it is a problem that they too must grapple with. It is only recently with Tokyo gearing up to host the Olympic Games in 2020, and a related, governmental-push to increase tourism to 40 million visitors by then (up from 24 million last year), that fledgling steps are now being taken to acknowledge redress racially-based



discrimination.

In Japan, racism tends to take two forms. There is virulent hate speech by far right groups aimed at draws on deep-rooted historical animus. There is also more casual racism towards other foreigners. which springs from unchallenged stereotypes. One of many examples of this latter strain: a train conductor in Osaka last year made a public announcement to Japanese passengers apologising for any "discomfort" due to the "number of foreign passengers on board".

Linked to a uniqueness

At their core, both kinds of racism are rooted in a false narrative of Japanese uniqueness and racial purity. In 1889, the Meiji constitution established a state based on the no-

national flag by an Indian

citizen in India are two

different issues. I doubt

whether the columnist's

father, a freedom fighter,

would have accepted his

contention. Freedom of

speech is not absolute.

Today's government can't

be equated with the British

Empire of yesteryears. The

personal opinions as public

ventilate whatever they feel.

grievances one might have

government, one has to

show one's respect to the

national flag and national

anthem, which are symbols

Fighting noise pollution

of the pride of this nation.

problem with most of our

columnists is that they

present their coloured

opinion as they have a

forum to publish and

Irrespective of the

with the present

R. RADHAKRISHNAN,

tion that the Emperor was a direct descendant of the "original" Yamato clan, and that all Japanese were organically related to the emperor, giving birth to the idea of a single, homogeneous, racial identity. Today, many scholars believe that the Japanese are in fact a mixture of Korean-like "Yayoi" people who immigrated to the archipelago around 400 BC and an indigenous population who walked over land bridges that connected the Japanese islands to the continent during low sea levels of ice ages some 12,000 years

The average Japanese, however, remains unaware of academic research into demographic origins. Even the Ainu – a people in northern Hokkaido who are markedly distinct from the majority of Japanese – were recognised as a minority group with a "distinct language, religion and culture" only in 2008.

Regional animosity

Racial discrimination Koreans and Chinese in Japan has a long history. After the 1923 Great Kantō earthquake, incensed by rumours that "Koreans are poisoning the wells" and "Koreans will attack us," Japanese vigilantes murdered thousands of Koreans and hundreds of Chinese. Even today these ethnic groups are subject to similar "panic" rumours made more pernicious by social media. In 2014, for mudslides in the Hiroshima Prefecture led to false allegations of burglaries of evacuated homes by zainichi, as ethnic Koreans in Japan are called.

Moreover, the racism survey results were announced against a political backdrop where Japan's Prime Minister, Shinzo Abe, is facing censure over purported ties to a nationalist kindergarten accused of denigrating Chinese and Korean people.

Given its ageing population and shrinking demographics, Japan needs immigration despite popular notions that robots can address the need for foreign labour. That the government is finally taking cognisance is reflected in a series of recent moves taken by Japan to curb ra-

Last year the Justice Ministry carried out it's first ever video analysis of anti-Korean demonstrations. The Ministry confirmed that 1,152 hate speech rallies were held from April 2012 to September 2015. Subsequently, a law was enacted to eradicate the kind of hate speech that is often used in these demonstrations

Necessary moves, but not yet sufficient.

Pallavi Aiyar has reported from China, Europe and Indonesia. She is currently

$LETTERS\ TO\ THE\ EDITOR\quad \textit{Letters emailed to letters@thehindu.co.} in \ \textit{must carry the full postal address and the full name or the name with initials.}$

Protesting farmers

The report, "Protesting T.N. farmers drink urine" (April 23), is disheartening. Being a civilised society, we have to hang our heads in shame. Their agitation had been on for over 30 days and they tried almost everything to draw our attention to their plight. That there was no response for so long from the authorities concerned is unacceptable MUDGAL VENKATESH,

Thermocol experiment It is strange that a Minister in Tamil Nadu, while floating a peculiar idea, forgot simple physics when he wanted to beat the sun: his failure to factor in another natural force, wind ("After thermocol fiasco, Minister plans plastic balls experiment", April 23). Why others did not bring it to his notice that the Tamil Nadu Pollution Control Board has classified thermocol as a hazardous waste is stranger still. It is shocking that the Minister ignored the fact that he was attempting to contain evaporation in Vaigai dam. This is not a tank or a well that can be covered. Did he spare a

thought for the public money squandered? Can he or his party compensate for this loss?

G. VENKATAKUPPUSWAMY,

■ The Minister's move to now try and use plastic shade balls is bizarre to say the least. Did he seek the guidance of a scientific institution on the pros and cons of an unknown experiment? We should not use the argument of such methods being used in advanced countries when we hardly know anything about their impact here before extensive testing. If we go ahead with the plan without taking into account our tropical conditions. there is the danger of even the available water getting polluted. One only wishes that the government had taken up desilting on a war footing earlier to increase reservoir storage levels, and which could have averted a precarious water situation now.

■ The experiment is a disaster and an example of

'non-application of mind'

V. Subramanian,

by those at the highest level. These strange experiments may only end up harming the river's ecology and in turn affecting people. It is time Tamil Nadu revives the directive on rainwater harvesting. ANMOL GULECHA,

Free speech I admire and respect the sacrifice Ruchir Joshi's parents made for the freedom of India ('Column width' page - "Of edicts then and now", April 23). But I disagree with the columnist in using the example of his father's struggle for freedom to justify insult to national symbols. He further says that the right to free speech allows him to express an absence of pride in his country. Well, if there is an absence of respect in me towards fellow citizens does that allow me to be abusive or

disrespectful towards them?

■ Not respecting the Union

Iack in India and not being

ready to respect the Indian

Absolutely not. KRINENDRA PROJJWAL, taken offence and

A celebrity has kicked off yet another round in the battle against loudspeakers. It is a pity that those in the business of religion have countered him by bringing up the point of 'hurting religious sentiments'. There is nothing religious about

loudspeakers or air horns for that matter. It is against the edicts of the Supreme Court and in defiance of the Constitution. Loudspeakers bristling from places of worship have taken pride of place atop scaffoldings and towers and only create disturbance, ill health and animosity. Noise pollution serves no practical purpose other than blast people into submission, creating heart, lung and mental problems. It should be put down with a firm hand once and for all. M.E. AVARI, Kodaikanal, Tamil Nadu

No free-tripping The selfless act of 52-year-

old social activist Angad Thakur, who fights ticketless train travel, should be an eye-opener to our so-called public

representatives who go the other extreme – of waiving all dues when their party comes to power. While Mr. Thakur fights for the nation, our parties fight for the sake of power at the cost of the nation ("Gandhigiri keeps a train running", April 23). K. MANASA SAANVI,

Umpiring at the IPL There is absolutely no doubt

that this year, the IPL has so far witnessed some of the worst instances of umpiring, especially by local umpires. To avoid acrimony, it would be ideal if the BCCI introduces the DRS system even in IPL tournaments. N.V. KRISHNAN.

MORE LETTERS ONLINE:

CORRECTIONS & CLARIFICATIONS: A sentence in the Editorial, "At the crossroads" (April 22, 2017), read: "But the outcome is anything but uncertain, given that a substantial chunk of voters remains undecided and that the kind of anti-establishment anger that helped Mr. Trump and Britain's pro-Brexit camp remains strong in France as well.' It should have been: But the outcome is anything but certain

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