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Ayodhya case - no scope for mutual settlement

Rajindar Sachar

The suggestion of the Chief Justice of India to even act as a mediator in pending Babri Masjid demolition case, showed his concern but was a little odd considering that it has come at the instance of an inter meddler, and without parties involved being before the Court — that is why it caused amongst the parties a certain concern. In my view Babri Masjid demolition case is not a matter for compromise. This case raises the deep constitutional concern regarding our Constitution which clearly says that India is a secular republic.

I was in Geneva attending U.N. Sub Human Rights Commission meeting when I was told the horrible news that came on T.V. that Babri Masjid had been demolished and saw the gory spectacle of B.J.P. hoodlums climbing the Masjid and breaking it down. B.J.P. UP Chief Minister Kalyan Singh's assurance to the Supreme Court that he will take full steps to prevent it was belied. The Supreme Court by a majority just accepted his apology instead of sending him to jail for contempt of

Court. But this was nothing compared to the ominous conspiracy of Congress Prime Minister Narasima Rao, who suddenly became inaccessible to senior journalists, his Home Secretary and even his colleagues.

I am also ashamed to admit the unworthy role of complicity of the judiciary which in spite of the injunction having given since 1949 against the public not to enter the area did not proceed against the violators — even the higher judiciary did not intervene — rather turned a blind eye. This was the time when the magnitude of danger should have been appreciated by all parties but was not.

The battle for secularism should have been joined with a singular determination of nipping the cancer of communalism. But then nothing was done.

I then made a public statement that; "Immediately the Government should have announced December 6, as a 'National Repentance Day' when people will fast and pray for

unity and welfare of all the communities". But the non-BJP parties analyzed the situation as merely one of law and order and thus acquiesced in this dastardly Act. Whatever the past history, all the parties let the matter go to Allahabad High court to give a decision. High Court has given a decision with which both parties are aggrieved. B.J.P. is still insisting that it would build a temple at the site where Masjid undoubtedly stood for over 500 years.

Muslims cannot obviously agree to a shameful compromise on sanctity of Masjid. The matter is already before the Supreme Court — it cannot run away from giving a decision which may not make everyone happy. But then it is their constitutional duty and it has no other alternative.

I cannot foretell the Supreme Court decision. But if past precedents are to prevail, then the case in favour of Muslims is invincible. I say this on the precedence of Shahidganj Masjid case (Lahore now in Pakistan) decided by the Privy Council in 1940. The Supreme Court need not decide on merits whether Babri Masjid had been in existence where Ram Temple had existed or not because that is of no consequence as it is not relevant to the decision of case. This is because even if was, there is no denying that Babri Masjid has been in existence since 500 years.

Now it is obvious to the meanest intelligence that it is impossible to prove that the birthplace of Lord Ram was under the masjid — it may be a matter of faith, genuine or contrived or otherwise, but that is no proof, nor can it ever be put

forward as a legal ground to take away the land from the mosque.

If the finding is that the masjid was not built on a Ram Birthday place, then the Muslims get the land back and will be free to use it in any way, including the building of the mosque.

Alternatively even if it is held that there was a temple on the land of Babri Masjid, even with this finding the suit by the VHP/RSS has to be dismissed. Admittedly, Babri Masjid has been in existence for over 500 years till it was demolished by goons of the VHP/RSS in 1992. Legally speaking, even then the Sangh Parivar would have no right even if a temple had been demolished to build Babri Masjid. I say this in view of the precedent of the case of Masjid Shahid Ganj in Lahore decided by the Privy Council in 1940. In that case there was admittedly a mosque existing since 1722 AD. But by 1762, the building came under Sikh rule and was used as a gurdwara. It was only in 1935 that a suit was filed claiming the building was a mosque and should be returned to the Muslims. The Privy Council, while observing that "their Lordship have every sympathy with a religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation

Act accept the contentions that such a building cannot be possessed adversely", went on to hold "The property now in question having been possessed by Sikhs adversely to the waqf and to all interests there under for more than 12 years, the right of the mutawali (caretaker) to possession for the purposes of the waqf came to

an end under the Limitation Act". On the same parity of reasoning even if a temple existed prior to the building of the masjid 500 years ago, the suit by the Hindu outfits like Nirmal Akhara VHP/B.J.P. etc. has to fail.

There is another reason why in such a situation, the suit will fail because in common law, even a rightful heir, if he kills his ancestor, forfeits his right of inheritance. In the masjid case too there was a "murder most foul" and hence the murderer cannot be allowed to take the benefit of his own dastardly deeds, whatever the factual position may be.

Of course it is the privilege of the Chief Justice of India to constitute the bench. May however one respectfully submit that it may be more reassuring if a bench of seven judges or nine judges was to hear the appeal.

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A RSS takeover

Kuldip Nayar

It looks as if the RSS has openly come out to appoint its nominees at different places of governance. If one were to look around in the country, the BJP, a political wing of the RSS, has already taken over most of the country. The presidential election is only a few months away. Yet again, the names tossed around for the top position are from the RSS parivar.

Today, there are as many as nine chief ministers of the BJP or, for that matter, the RSS pracharaks. They are: Manoharlal Khattar of Haryana, Trivendra Singh Rawat of Uttarakhand, Biren Singh of Manipur, Devendra Fadnavis of Maharashtra, Shivraj Singh Chouhan of Madhya Pradesh, Raman Singh of Chhattisgarh, Manohar Parrikar of Goa, Raghubar Das of Jharkand and the latest to join the list of RSS pariva is Adityanath Yogi of Uttar Pradesh, the most populous state in India with 80 Lok Sabha seats.

Above all, the country's Prime Minister Narendra Modi is an ardent RSS pracharak. He came into limelight after instigating riots in Gujarat where he was at the helm of affairs. When he became Prime Minister in 2014, he saw to it that the committed people from the RSS would occupy important positions of governance, both at the centre and in the states.

When he began the stint at the Centre, he did not give the impression of toeing the line of the RSS but as the days went by, he gradually showed his true colours. He brought in Amit Shah, his Man Friday, and foisted him

as president of the party. But it must be said to his credit that the BJP swept through to power in the country with 72 Lok Sabha seats from UP alone. Shah was instrumental in helping the BJP and its allies win 325 Vidhan Sabha seats out of 403 in the state.

The sweep in UP has helped the BJP gain a sizeable number in the Rajaya Sabha and with the party's two-thirds majority in the Lok Sabha, the presidential election looks a mere formality. Indeed, this gives the kind of confidence to both BJP and the RSS that whoever they put up as their candidate, there will be hardly any opposition. Even if there is a slight resistance from some of the non-BJP parties, it will only in name.

The names that are doing the rounds include L.K. Advani and Jaswant Sinha, former Finance Minister. Advani is a heavier name since he founded the BJP when the Janata Party was breaking up in 1980 soon after Indira Gandhi returned to power. She punished the BJP members with vengeance. Sinha, a former bureaucrat, has vast experience. Both seem to be dear to the public. There are also sympathizers within the party who favour their candidature because they have been sidelined since the advent of Modi.

However, the ultimate choice of the presidential candidate will depend on the Prime Minister. He is keeping the cards close to his chest and allowing the party to debate on different names. Modi will definitely want a person who will be at his

command. The two names that have emerged do not seem to fit into the scheme of things which Modi has in mind.

Finance Minister Arun Jaitley is too young and the Prime Minister needs him in the Cabinet and, among other things, he is very effective speaker in both the houses. Home Minister Rajnath Singh wanted to be the chief minister of UP. But now that Yogi is well entrenched as the state chief minister, Rajnath Singh might be looking at this coveted position. Lok Sabha Speaker Sumitra Mahajan, who has conducted the house in an orderly way, is also being spoken about as an appropriate candidate.

The ideal choice would be a candidate who is apolitical, popular and experienced. Pranab Mukherjee was selected as President because he was the hatchet man of Congress president Sonia Gandhi. The other reason for his elevation was that he was seen as an obstacle to Rahul Gandhi becoming the Prime Minister. However, Mukherjee was not above controversy either. As a head of state he should not have published his memoirs while in office.

Political parties were reluctant to criticise him because he is the constitutional head, as much theirs as that of those who elected him. Pranab Mukherjee has violated the demand of office by publishing his memoirs when he is still the President of India. Even Giani Zail Singh, former President, was without

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Why is the independence of the judiciary indispensable ?

Prabhakar Sinha

From 1950 to 1993*, the power to appoint judges of the Supreme Court and High Courts and also the power to transfer the judges of the High Courts were vested in the President ie, the Union Government. Till 1973, there was no interference by the Union Government, and it acted on the recommendation of the Chief Justice of India given after consultation with other functionaries mentioned in the Constitution. But in 1973, Indira Gandhi superseded three senior judges and appointed the fourth person (Justice AN Ray) as the Chief Justice of India. Why did she do it? In a case (Keshavanand Bharati), the three senior judges had rejected her government's contention that Parliament had absolute and unfettered power to amend the constitution. Earlier, the Supreme Court had held (in Golaknath, 1967) that Parliament could not amend the Fundamental Rights to infringe them. She had the Constitution amended to remove the ground on which the apex court had given the verdict*. The government in Keshavanand had claimed that Parliament could even make India a Monarchy (it was said in answer of a query). This contention was rejected by the judgment in which seven judges rejected the contention of the government while the other six upheld it. The court held that Parliament could amend any part of the Constitution including the Fundamental Rights but could not violate its basic features. It also said that what the basic structure was could not be enumerated and would be decided by court when the issue was raised in a case. The judgment thus rightly gave the power

to Parliament to amend the Constitution but retained the right to stop its destructive power. Secularism, independence of the judiciary, democracy, etc are some of the basis features of the Constitution.

The judgment was given by a 13-member bench (7:6) by a majority of one. Indira Gandhi immediately retaliated by superseding three senior judges who had rejected her government's contention and appointed the 4th person in seniority as the Chief Justice of India. The judges were naturally scared.

During the Emergency, she transferred judges of the High Courts for giving judgments against the government, especially, those who quashed the detention orders under MISA. The judiciary was completely intimidated and surrendered to her.

In a case (ADM, Jabalpur vs Shivakant Shukla), the Supreme Court upheld the Indira government's contention that when the right to life and personal liberty was suspended during the Emergency the government could detain or torture a person and the courts could not interfere. One could even be killed by a policeman, but no action could be taken. So, the SC held that *we were without the right to life and personal liberty (art.21) because those rights had been suspended during the Emergency.*

A five-member bench gave the judgment - four judges upheld the government contention with one

judge H. R. Khanna giving a dissenting judgment. Indira Gandhi punished him by superseding him and making someone junior to him as the Chief Justice of India.

The judges are public servants and would serve under any condition prescribed by law. Their independence from the government is necessary for the citizens, who have to fight the mighty State and not the judges who are appointed to do a job. If the judges are obliged to the Executive for their appointment, they would side with the government and not the people. They would never dare give a judgment against powerful politicians. All the politicians are united in making the judiciary subservient by taking away or having a decisive say in the appointment of judges so that they may pack the judiciary with pliant judges and have the judgment they want. Modi government has managed to get the power to reject a name recommended by the Collegium in the name of the national security. Now, no aspirant for appointment to the High Court or Supreme Court would like to antagonise the government of the day. They would lobby and be obliged to the politicians helping them in securing the appointment.

There are shortcomings in the present system and reform is sorely needed, but they must be measures which do not erode the judiciary's independence. The independence is needed for us, the poor citizens oppressed by the mighty government, rather than the judges.

* In 1993, the Supreme Court vested the power of appointments in a Collegium of judges.

Experiencing Indian elections

D. K. Giri

A perceptive political commentator once remarked “Indian politics is electionised, not democratised”. His cryptic comment characterises Indian politics in two ways. One, the positive, is that Indian democracy holds free, fair - if we discount the murmurs about tampering of the electronic voting machines - and regular elections to all the three tiers of Government: Local Governments - the Municipalities and Panchayats; State Governments - Assemblies and the National Government - Parliament. The other, the negative aspect is that Indian elections have become a routine in democracy, without making any tangible or substantive impact on politics. What is more, the elections are bedevilled by the nature and profile of candidates, most of them have criminal antecedents; excessive use of black money, polarisation of voters on religion, caste, etc. which is unconstitutional. Yet, Indian politics is heavily punctuated by regular and recurring elections.

Having fought a Parliamentary election, and campaigned in quite a few, I have mixed feelings. One is reminded of the satire by the English Poet, Alexander Pope “The democracy is the madness of many, for the gain of the few”. But what is most surprising is the ignorance of many including the officials about the election process. Filing the nomination is such a complicated and confusing process. Someone commented and I agree with him, that “having one’s nomination approved in any election is election half-fought by the candidate”.

There is a universal demand for transparency in public duties and services. So is the case in India. But, if there is any department, that needs transparency, it is the Election Commission of India, its state offices, and Returning Officers. Because what I am going to narrate below will indicate how inaccessible and opaque the Election Commission is.

The Parliament election of 2014 was the beginning of my electoral participation. I went to the Returning Officer, District Magistrate, an IAS officer. Her office was like a market place with people swarming all over her office. The candidates and their supporters were trooping in and out. With some difficulty, I gained entry to enquire, but no one would give me the accurate information. I did not know then that there are so-called professionals, not the officials, who filled up the nomination forms, and gave authentic information. I do not use such touts around police stations, courts, transport authority offices, or election offices. I like to do it myself, as they overcharge and claim to have contacts inside such offices. That is partly a mistake I make. With all your knowledge of English and/or Hindi, you can go wrong at least on two counts. You may not have the right forms or you may not be able to understand what is written, and furthermore, there is more to what is written in the forms, and all the affidavits you have to give. Anyhow, I filled up the forms. I know some English, and the General Secretary of my party is good at Hindi, but no English at all. I thought, between two of us we

could manage. It took us time to get all the papers in place, so we managed to submit the forms only on the last day for nomination.

On the last day, the DM’s office was too crowded as Indians have the habit of doing things at the last moment. It was getting to 5 pm, the closing time. The DM decided to queue up the candidates with their forms displayed upto their chest for the officials to see that everyone in the queue had the forms. It reminded me clearly of a jail where prisoners are paraded for identification. I protested, “how can you do this to prospective members of Parliament, line them up as criminals waiting to be identified? You could fix a deadline for entry, and entertain those who were in”? But to no avail. The Returning Officers or the Election Officers are supposed to be quite authoritative and powerful. However, I submitted my forms. There seemed to be one mistake. We committed an oversight. In party nomination, there were two columns in the form ‘A’. The party nominates the candidate and in the second column, it withdraws the candidate. My General Secretary, not knowing English, in a bit of hurry, asked me to sign at both places. In deference to his seniority, again in a hurry, I signed them. When I realised it myself that we had done the mistake. I wanted to replace it with a new form as my General Secretary was present with me. They would not let me do it. I argued that one cannot withdraw a candidate before his nomination was accepted. I was told to put my views or grievances on

the day of scrutiny, which is video-recorded and open. As I was getting exasperated, a quiet gentleman sitting in DM's office said. I was right and the DM should listen to me. I found a bit later that the gentleman was the incumbent member of the Parliament, and interestingly, despite a battery of advocates accompanying him, one set of his nomination papers was rejected. And finally, on the day of scrutiny, both I and my General Secretary were there to plead that we withdraw the withdrawal. We gave a written application to support our case. The DM talked to two other senior IAS officers who were the observers. They suggested that the Returning officer should take a call on the issue. The Returning officer, sought to advise me if I would like to withdraw my candidature. This was not clearly her brief. I said a firm 'no' in indignation. Then she turned to one of the observers, who said, the party nomination form was a statutory document. The Returning Officer dishonoured the party nomination and I was declared an independent candidate, to the heavy dismay of my supporters.

The elections in the five states were announced - Uttar Pradesh, Uttarakhand, Manipur, Goa, and Punjab. We decided in our party to contest the elections in UP. We went to the Election Commission of India to get a common symbol for our candidates. The recognised parties have their permanent symbols. The unrecognised registered parties like ours had to follow a different procedure. That is if a party undertakes to contest 5 per cent of total seats (403 in case of UP), earlier it was 10 per cent, the party can be allotted a common symbol. If the party fails to honour the undertaking, the Election

Commission can punish the party. We put in the application, this time apparently a simple one. There was an affidavit to be attached, which was needed if the party contested in more than one state. That is what was written in the form, or we understood so much. When we put in the application, no one pointed out that our papers were not in order. We kept ringing them without any success. The stock reply was, if we got anyone on the phone, that all of them were too busy to take calls. Once, I had to really unfortunately shout at the principal secretary of the Chief Election Commissioner to elicit some news on our application. He did put me in touch with someone, but the person was of not any help. Finally, the parties waiting for common symbols had to do an impromptu sit-in strike to attract the attention of the officials. Some of them got the symbols. To our horror we were told that we had to do an affidavit; since that was not done, we were not to get the symbol. Our repeated pleas that the form was pretty unclear, and no one bothered to phone us or send an email to say we should do an affidavit. If the ECI could not communicate at all, why are the mobile phone and emails asked for in the forms? But, there was no impact.

As I write this, we are in the midst of filing nominations for Delhi Municipal elections. My experience reached the height of confusion, curiosity and consternation. As usual, the recognised parties could field candidates, nominate them. But, there is no clarity on whether registered parties can do so. Again we went to the ECI, at Ashoka Road, New Delhi.

As usual, there is no access to any official. There was only one

official at the mail desk whom one can talk to and get some information. He confidently said, we could put in an application for a common symbol, stating the names and wards for candidates with a copy to the State Election Commission who will allot as a symbol. This was a piece of informal information. The lady officially in-charge of the political parties told us on the phone that there was no provision for the unrecognised parties for a common symbol. I called a couple of Returning Officers who were listed on the Election Commission website to check on the common symbol. One of the two, very reassuringly said, they had received a circular that unrecognised parties can secure a symbol by applying to the state election during a stipulated time-period, and the time was over. I was not worried about the common symbol. but desperate and curious to know the rules. When I pointed out to the Returning officer endorsing the possibility of a common symbol, that Swaraj Abhiyan, a new registered party has filed a writ in the High Court for a common symbol, the Returning Officer feigned surprise that they should have gone to the court. There was no need. In the form, there is no column for registered parties. I asked the Returning Officer if an unregistered party can field any candidate without a common symbol. I was still waiting for an answer. In the meanwhile, High Court has dismissed the plea by Swaraj Abhiyan party. We may field our candidates as independents. What I narrated so far is about the level of knowledge of officials, and the system of sharing information with parties and candidates.

The other side is even funnier. The candidates wanting to contest elections give us jitters and jocular

tensions. In the last Assembly elections in Delhi, a lady was brought to us. She was keen to contest. I asked her if she knew the name of her Assembly. She did not. Why was she wanting to contest for the Assembly? What will she do? She said, she was promised by some of her friends that they will help her become an MLA, and she will then have a good life. In this Municipal election, the candidates coming forth have friends and supporters, but they do not know the name or number of their wards. They do not know the role of a councillor. Filing the nomination for them is getting a symbol which they can propagate for their votes. They are not aware of the MCD offices, the Voter Registration Centres, and the number of councillors.

What a state of affairs that exists in the largest democracy of the world! I knew that one will not know the complexities of the Indian politics on the ground, mainly the electoral process, until I muddled my feet in it. The experience is really telling comment on the praxis of Indian politics.

What we teach or read in the books is quite different from what happens on the ground. I am not talking about the distortions of institutions, corrupt or wrongful practices, but simply of procedures laid down in the rules and Acts, and supplying accurate information to the stakeholders. How appalling to learn that the officials sitting at the desk are ignorant and unhelpful. Why cannot Election Commission go on air, and to the media telling the correct procedure, step-by-step for filing nominations? Why is Election Commission so inaccessible? Why cannot they put up information desks at their offices to help out

information-seekers? These are the questions that any sound and healthy democracy should have. A citizen-friendly bureaucracy still eludes us,

(Continued from Page 3)

blemish. He installed Rajiv Gandhi as Prime Minister even before the Congress parliament party had elected him as leader.

Unfortunately, Rahul Gandhi has failed to make any impact while occupying the No. 2 position as vice-president of the Congress. Sonia Gandhi still has the tag of being an Italian. And, therefore, ruled out as effective support for any other candidate put up by opposition parties for the top position.

The communists are not taken seriously because of their dwindling strength in the country. They have gradually been losing ground even in those states where they held sway until some years ago. The regional parties except for the Nitish Kumar led alliance in Bihar and AIADMK in Tamil Nadu, hardly matter. All these

and the Election Commission of India is one big bureaucracy with a lot of perceived powers, but little transparency or efficiency.

leave the field wide open for the BJP or the candidate which RSS recommends, to make it to Rashtrapati Bhavan.

There is every reason to believe that the next President would be a person from the BJP-RSS stable. This would not really represent the real sentiment of the people. They would want a person who would translate their aspirations. Rulers of different political parties will have to sink their differences and cast their net wide so as to catch the prize fish. Unfortunately, there is none available in the political field at this moment.

The alternative can be an academician, a scientist, a jurist or someone else who has excelled in his field with the knowledge of political affairs. But that doesn't seem to happen.

Footprints of A Crusader (The Life Story of Mrunal Gore)

by

Rohini Gawankar

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Union Territory status for Ladakh

Chandra Bhal Tripathi

On March 24, 2017 Jamyang Tsering Namgyal posted on Facebook an old report dated August 8 by Syed Junaid Hashmi with the caption 'Modi Sarkar paving way for UT status to Ladakh - Division inevitable'. (<https://www.facebook.com/#>). Since I was connected with Ladakh for more than two decades I thought it fit to record my comments and reminiscences on this issue.

The article misrepresents the situation of Ladakh. It contains two incorrect statements. The first of these is: "...Ladakhis have already bid goodbye to J&K by adopting a logo of its own and running parallel Government in the shape of Ladakh Hill Development Council (LHDC)," Ladakh comprising two districts, the Buddhist majority Leh District and the Muslim majority Kargil District, is at present a part of J&K State. It has its MLAs in the State Legislative Assembly and it always had a representative in the State Cabinet since 1950s. After a long struggle by the Ladakh Buddhist Association for granting of UT status to Ladakh the Central and the State Governments passed the Ladakh Autonomous Hill Development Council Act, 1995 and after elections the Council came into existence in 1996 with Tupstan Chhewang as the Chief Executive Councillor with the status of a Cabinet Minister and four other Executive Councillors with the status of Deputy Minister. No doubt this Council has been vested with limited powers in the sphere

of development but it would be incorrect to say that it functions as a 'parallel government'. The use of the term 'parallel' implies an antagonistic relationship as, for instance, in the parallel governments set up in 1942 during the Quit India movement by Nana Patil in Satara (Maharashtra), by Ajoy Mukherji and Satish Chandra Samanta in Tamluk (Bengal - now West Bengal) and by Chittoo Pande in Balia (UP).

The second incorrect statement is: "... it remains a historical fact that regional division of J&K has for long remained one of the cherished goals of Rashtriya Swayamsewak Sangh (RSS), the ideological arm of Bharatiya Janata Party (BJP)." It is giving undue credit to the RSS which was not in the picture at all until 20 years ago. The saving grace is that without any reference to the RSS the writer admits: "J&K Government's utter neglect has resulted in Buddhist dominated Ladakh region seeking union territory status and separation from J&K. Legislators of Congress and BJP have been unanimously demanding UT status for Ladakh."

It is a well known fact that Ladakh was utterly neglected and discriminated against by the rulers in Srinagar. The Buddhist leaders from Ladakh like Lama Lobzang and P. Namgyal, T. Samphel, Thupstan Chhewang, Nawang Rigzin Jora and many others had been agitating against this discrimination and lack of development for decades.

Many of them faced police brutalities too. Convinced that they could not get a fair deal from the State Government they had been demanding a Union Territory status for nearly 50 years. To assuage the sentiments of Ladakhis Prime Minister Indira Gandhi visited Ladakh in early 1980s and made a public statement that "we have declared Ladakh a Scheduled Tribe Area". The lady did not know that there is nothing like a 'Scheduled Tribe Area' in our Constitution. There are Scheduled Tribes under Article 342 of the Constitution and there are Scheduled Areas under Schedule Fifth to the Constitution which were known as Partially Excluded Areas before the promulgation of the Constitution. A State may have Scheduled Tribes, even a Tribes Advisory Council (such as in West Bengal) but may not have Scheduled Areas. In the case of Ladakh at that time there were no Scheduled Tribes and so the question of having Scheduled Areas did not arise at all. To overcome the faux pas committed by the then PM, Lama Lobzang was requested to furnish a detailed proposal to include certain deserving communities of Ladakh in the list of the Scheduled Tribes. At that time I was working as Director for SC&ST at Bhubaneswar under the National Commission for SC&ST but I used to visit Delhi often for official work. At the instance of Lama Lobzang I prepared ethnographic notes on the different Buddhist communities of Leh District and the Muslim communities of Kargil District which deserved to be included in the ST

list. Based on those notes the Ministry of Welfare prepared a Cabinet note. It took a few years before the Parliament passed an Act to amend the ST list during the Prime Ministership of Rajiv Gandhi and the President promulgated the Constitution Order in 1989 declaring ten communities of J&K as Scheduled Tribes. Subsequently two more communities were added to this list.

It should be noted that the ST list of J&K includes not only the Buddhist communities of Ladakh but also Muslim communities of Baltis and Dardis of Ladakh (Kargil District) as well as semi-nomadic Muslim communities of Bakarwals and Gujjars of Kashmir valley and Jammu region who spend the summer in Kashmir valley and migrate to Jammu region during the winter. In fact, the demand of Bakarwals and Gujjars for inclusion in the ST list was quite old. Around 1965, while I was working at Chandigarh as AC (later designated as DC for SC&ST) and Asoka Mehta was Union Minister of Planning and Social Welfare, I was asked to conduct a survey of these two communities and submit my recommendation in response to their petition for being declared Scheduled Tribes.

I should record an interesting and important story. In the summer of 1978 I went to Srinagar and Ladakh with my family on LTC. At Srinagar we were hosted by D D Thakur, Deputy CM of J&K, who had been a good friend of mine since early 1950s at Lucknow University. One day he requested me to come to his office in the Secretariat at 10:30 am and did not disclose the purpose. When I reached his chamber I was amazed to find that he had invited

six Ministers including the Revenue Minister P L Handoo to listen to me about the Constitutional provisions relating to the ST and the Scheduled Areas. I told him that I was a minor fry in the bureaucracy and it would be presumptuous on my part to speak on the subject before high dignitaries. Thakur Saheb explained that there had been long pending demands from communities in the State for inclusion in the ST list but Sheikh Saheb (Sheikh Abdullah, the then CM of J&K) was strongly opposed to these demands because he thought that by doing so these areas would become Scheduled Areas which would mean interference by the Central Government in the affairs of the State Government. The reason for this misgiving was that the Governor of a State having Scheduled Areas is required to submit an Annual Administration Report on the Scheduled Areas to the President of India. Nowadays the Governors of the concerned States might be submitting their Annual Administration Reports on the Scheduled Areas to the Union Home Minister but I have personal knowledge that a Governor like Dr. Sampurnanand (Governor of Rajasthan around 1960) would correspond with the President on this matter and would not be guided by the CM regarding the contents of his Report. Anyway, at the instance of Thakur Saheb, to quote his words I had to 'educate' his Cabinet colleagues on these matters. (By the way, I am really surprised how ignorant many of our Central Ministers and MPs including SC/ST MPs are regarding the Constitutional provisions and Central Acts for SC&ST. For instance, almost all politicians including Ministers and MPs believe that the original Constitutional provision for reservation in services for SC&ST

was for 10 years only. They have to be told that the original period of reservation for 10 years was in respect of seats in Lok Sabha and State Vidhan Sabhas, i.e., political reservation under Article 334 of the Constitution. That Article is amended every 10 years just before the expiry of the period of political reservation in order to extend its validity for another 10 years. So far as reservation in services or educational institutions is concerned there were executive orders only and no period was laid down.) After the said informal meeting the Ministers might have explained to Sheikh Saheb that there was no question of Ladakh or any part of the State being declared a Scheduled Area as the princely State never had any Partially Excluded Area in the past and so the State Government should not deprive the disadvantaged people of the State from availing of the benefits available to the ST.

To continue the story of the Ladakhis' struggle for UT status under the leadership of the Ladakh Buddhist Association, as stated above, a via media was reached by the establishment of the Ladakh Autonomous Hill Development Council in 1996. Previously I had been drafting memoranda and petitions on behalf of the LBA at the instance of Lama Lobzang. When the setting up of the LAHDC was agreed in principle I was requested by him and two prominent leaders of the movement, Thupstan Chhewang and Shri Jora, to study the constitutions of other autonomous councils like that of Darjeeling (obviously there could be no comparison with the Autonomous District Councils under the Sixth Schedule to the Constitution) and draft a Constitution and Rules for the LAHDC. In consultation with the

Rajya Sabha must protect the spirit of the Indian constitution

leaders I prepared the first draft of its Constitution and we got it vetted by D D Thakur. It was submitted to the concerned authorities and after due deliberations the necessary legislation was passed, elections were held and Thupstan Chhewang became its first Chief Executive Councillor and Shri Jora an Executive Councillor. Both Shri Chhewang and Shri Jora were kind enough to thank Thakur Saeb and me and, as a token of appreciation, presented us beautiful Ladakhi carpets.

In June 2000 Prime Minister Atal Bihari Vajpeyi inaugurated the new office complex of LAHDC at Leh. He also inaugurated the Sindhu Darshan Festival with a lot of fanfare. Thupstan Chhewang was kind enough to invite three of us, two journalist friends and myself, to attend the function of the LAHDC at Leh. I am describing this to dispel the misconception that the RSS was very active in the area and had been prodding the Ladakhis to separate from J&K State.

That official function in 2000 was being compered by an RSS worker, Tarun Vijay. Union Home Minister L K Advani also addressed the gathering comprising a big chunk of Sindhis from various parts of the country. It is learnt that Advaniji and Tarun Vijay had visited Ladakh for the first time in 1996. Only after that visit Advaniji is reported to have been thrilled to learn from CM Dr. Farooq Abdullah and Lama Lobzang that the Indus flowed by Leh. He thought that the Indus flowed through Pakistan only! On both these counts I wrote in a political quarterly journal Border Affairs edited by Pushp Saraf who was
(Continued from Page 13)

Just a few days ago, citizens of this country watched in shock and horror as the Finance Bill, 2017 was passed in the midst of a walk out by the Opposition in Lok Sabha. In introducing the bill as a Money Bill, the Government has continued the abuse of process where vital debates on the controversial Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Bill, 2016 were avoided by tabling it as a 'Money Bill'. The massive 92-page document of the Finance Bill, 2017 includes 40 amendments to a number of Acts. These amendments have far reaching consequences for not only several significant laws but the very nature of Indian democracy and constitution.

Following this abuse of process and avoidance of scrutiny, more than 175 persons from across civil society have written to the Vice President of India. Signatories include Fali Nariman, Prabhat Patnaik, Aruna Roy, Zoya Hasan, Medha Patkar, Jayati Ghosh, Swami Agnivesh, Usha Ramanathan, Bezwada Wilson, TM Krishna, Nandita Das, etc.

The letter asks the Vice President to "allow extensive and uninterrupted discussions into every aspect of the Bill No. 12-C of 2017 in the Upper House and put all these on record and do everything else in your power to ensure that the practice of by-passing important Bills by illegitimately classifying them as Money Bills is immediately stopped."

As per this Bill, the Aadhaar card will be mandatory to file income-tax returns from July 1. The legislation also makes the unique ID compulsory to apply for a permanent account number (PAN). Speaking on the subversion of the parliamentary process in this manner, Aruna Roy of MKSS said, "In deliberate and shocking perversion of legislative procedures, the Finance Bill goes much beyond its limits to destroy basic democratic and fundamental rights."

The Finance Bill includes amendments to the Telecom Regulatory Authority of India Act, Companies Act, Employees Provident Fund Act, Information Technology Act, Smuggling and Foreign Exchange Act etc. It also allows funding of political parties to become even more opaque, increasing the potential for corruption.

Jagdeep Chhokar of the Association for Democratic Reforms stated that amending forty pieces of legislation through the Finance Bill, 2017, without application of mind of the Rajya Sabha, runs completely against the spirit of the Indian Constitution. Speaking on the proposed amendments related with political funding, he said, "Allowing electoral bonds on the donor's side and removing the name of the recipient brings in complete opacity in political funding. This must be critically examined."

Well-known Economist Jayati

Ghosh stated that “The Bill contains several provisions that will drastically increase “black money” and corruption. While the Government and the Speaker have ignored the concerns raised by the Opposition in the Lok Sabha, it has become a duty to speak out and raise concerns following the passage of a Bill that has in one fell swoop affected so many multiple rights that we normally take for granted.”

Some of the signatories have asked for an appointment to meet the Vice President and present the letter and their concerns in person. An online petition has also been put up to garner more support on this issue. Copies of the letter were sent to members of the Opposition and the Rajya Sabha from different parties with the hope that a resolution might be moved stating that this bill cannot and should not be considered a money bill.

The text of the letter to Chairperson of the Rajya Sabha, says:

As concerned citizens of India, we are appalled and dismayed at the Government’s use of Money Bills to push through important legislation that affects all citizens, without requiring approval by both houses of Parliament.

This undemocratic strategy has already been employed in the case of the Aadhaar Bill, even though it contains many provisions that go well beyond is-sues relating to taxation and money appropriations of the government, which will directly affect every citizen of the country in numerous ways. Despite the fact the millions of

citizens will be denied their rights because of this, the Bill makes access to many essential and other public services contingent on Aadhaar. It is already evident that making it compulsory in food distribution in some states has excluded many needy and deserving citizens without cause. The Bill allows for unprecedented surveillance of every citizen and massive invasion of privacy. These can be used by governments at different levels to target political opponents and dissidents, as well as others. Because it enables data sharing even by private companies, it renders all citizens vulnerable to identity theft, fraud, cyber-piracy, data breaches and other uses of their personal data with very serious security implications. Furthermore, the protections and cyber-security provisions in the Bill are inadequate and do not meet the standards prevalent in most countries. Despite all these concerns, the Bill will not even be debated in the Rajya Sabha and has not been subject to adequate public scrutiny.

The most recent and alarming case of passing important and far reaching laws in the guise of Money Bills is the inclusion in the Finance Bill of some very important features that actually have no place in such a Bill and deserve to be independently discussed and debated. The Bill contains several provision that will drastically increase “black money” and corruption. An important provision would enable political parties to receive unlimited and anonymous funding from corporate entities and from abroad, and will make electoral bonds anonymous. Since it is well

known that political funding is probably the most important source of corruption in the country making it more opaque flies in the face of claims to greater transparency and will make matters even worse than they are at present with terrible implications for electoral democracy in the future. It is also in complete contrast to the treatment meted out to NGOs and civil society groups fighting for people’s rights, who are not being allowed to receive legitimate funds on dubious grounds. The Finance Bill also gives sweeping powers without accountability to the Income Tax department, which can encourage extortion at all levels.

Such Bills, which have serious implications for democratic functioning and financial security of all citizens, require serious and extensive public discussion and debate at all levels, with knowledge of the full implications of all of their provisions. Therefore, they cannot and should not be passed as Money Bills. We, therefore, appeal to you to at the very least allow extensive and uninterrupted discussions into every aspect of the Bill No. 12-C of 2017 in the Upper House and put all these on record and do everything else in your power to ensure that the practice of by-passing important Bills by illegitimately classifying them as Money Bills is immediately stopped. We appeal to you to protect the rights and duties of the Upper House and the interests of all the people of India. These Bills and the relevant provisions that cannot be described as routine in any sense, must be subject to proper democratic scrutiny in both houses of Parliament.

What's really driving big push for Aadhaar?

Yogi Aggarwal

The most important result of the BJP's landslide victory in the elections to the Uttar Pradesh Assembly last month was not the installation of Hindutva diehard Adityanath Yogi as the chief minister. Within a few days of the stunning result, the finance minister introduced the Budget with 33 new unannounced clauses in various bills that immediately became law. This was done by passing them as "money" bills that does not require the Rajya Sabha's approval. This means that these amendments were passed without debate in a day.

The government "cleverly let MPs from major parties give their speeches before they dropped the amendment bomb" – tweeted Meghnad, a BJD MP. The important changes to Indian law included making it compulsory for all taxpayers to submit an Aadhaar identity card by July 2017, their PAN card being no longer enough, and in none of the donations by cheque to political parties need the identities of the donors be revealed.

These were startling changes to the law with far-reaching implications. The Supreme Court had made it clear in October 2015 that Aadhaar was voluntary and could not be made mandatory. The court had repeated this position in September last year and made the Narendra Modi government remove a condition making it compulsory for students to give their Aadhaar numbers for various scholarship schemes. By

allowing political parties to not disclose the names of large donors, the government was tightening the grip of big business over politics and giving a ready advantage to a ruling dispensation such as itself to corner most of the money.

The Modi government was taking advantage of its strong win in UP to take steps that weakened the democratic nature of our polity. Its appointment of Adityanath Yogi – with several criminal cases of murder, intimidation and rioting against him – showed its confidence in pursuing a divisive right-wing path. It further showed its confidence in forming governments in Goa and Manipur despite not having the required majority.

Finance minister Arun Jaitley made a fantastic claim that the permanent account number (PAN), which is essential for all tax returns, is not reliable since many people have multiple PAN, which are used to evade tax. As an example, he said, though there are over 240 million PANs in the country, less than a million are linked to Aadhaar cards. This is the first time the government has made such a claim without bothering to verify it. The numbers are unbelievable, around 250 PAN cards for every card linked to Aadhaar, indicating that by giving his PAN card is enough for the taxpayer without the need for an Aadhaar card.

Nevertheless, the government

maintained that an advantage of linking Aadhaar to PAN will "be a big source to gather banking transaction information, which can be an important indication of a person's income profile".

It is part of the government tightening its surveillance of citizens. Nandan Nilekani, the first chairman of the scheme, succeeded in creating the world's biggest surveillance engine, monitoring 1,200 million people, several times more than in any other country.

It ensures that any government will have complete access to all the data of the citizen and can use it to manipulate any one at will. Control of citizens is increasing by the day. Initially, people only had to get an Aadhaar card if they wanted subsidised LPG or kerosene, but the list expanded.

Now, proof of enrollment in Aadhaar is necessary for several vulnerable groups – including women rescued from trafficking, workers engaged in forced labour, schoolchildren between six and 14 years of age and people with disabilities – to continue to receive government benefits. Schoolchildren, for instance, will not be served mid-day meals from June if they are unable to present their Aadhaar credentials.

Now, since most people pay tax in one form or another, replacing the tried and tested PAN card with the superfluous Aadhaar will mean that surveillance will extend to

increasing parts of life. It's becoming reminiscent of Nazi Germany, when a similar system was used to identify and isolate Jews and other minorities.

Much has been made between Aadhaar and the US social security number. But the differences are greater than any similarities. Aadhaar uses fingerprints and eye biometrics to identify the person uniquely. The social security number originated in the years of the Great Depression, when it was used to track the earnings of workers and compute the amount of social security benefits to be credited to their accounts. The US government decided not to collect fingerprints, since "the use of fingerprints was associated in the public mind with criminal activity, making this approach undesirable", notes the Social Security Administration,

And its website states: "The card was never intended to serve as a personal identification document."

Aadhaar is being used as an identifier to link databases, which makes it easy for government officials to gain access to personal user information, such as bank records, education data, health records, and for surveillance of phone calls and data usage. This data was not linked; under Aadhaar it is. Taking this further, the government is thinking of linking the Aadhaar number to mobile phone numbers.

The present government's rush to push for Aadhaar despite the Supreme Court's many objections and the misgivings of many critics

is in line with its eagerness to push digital money transactions. It is not just an attempt at modernisation, but having greater control and surveillance. As the demonetisation experiment proved it could bring great inconvenience to the public but not necessarily affect the government's ability to put a spin on it to sway voters. Even more than demonetisation, Aadhaar could be sold as being good for

the country since it gives greater control to the government.

Government control is one thing. Private profit is another. Nandan Nilekani, in a foreword to a report by investment banker Credit-Suisse, noted that the use of Aadhaar by the financial sector could open up a \$600 billion business opportunity. No wonder private companies are rushing to get their hands on the Aadhaar numbers.

—*The Asian Age*

(Continued from Page 10)

also a special invitee to the said function. I understand that since 1997 an annual Sindhu Darshan is being organised. To that I commented in my article that this Sindhu Darshan should not deteriorate into a Sindhi Panchayat and instead a genuine Ladakhi Cultural Festival should be held at Leh annually. I have not closely followed the developments since I was advised not to revisit Ladakh on medical grounds (breathing problem arising out of altitudinal factor). Thus, the entry of the BJP in Ladakh is hardly two decades old.

It is rather unfortunate that the solidarity of the Ladakhi Buddhists has been broken with the advent of the BJP. In the past more than 50 years Ladakh was a stronghold of the Congress. Its most respected leader was Kushok Bakula le (le=ji). Head Lama of Ladakh, who was a State Minister in early 1950s, later an MP, founder of Ladakh Bauddha Vihara in Delhi, India's Ambassador to Mongolia for a long time. Even in 1977 when the Janata Party swept the General Election in the country Rani Parvati Devi, the erstwhile

Queen of Ladakh, was elected to Lok Sabha from the Congress. P. Namgyal was a Minister of State in Rajiv Gandhi's Cabinet. Thupstan Chhewang, a former officer of All India Radio and son-in-law of Rani Parvati Devi, was initially a Congress MP. Unfortunately today the Ladakhi Buddhist community is divided into two camps, one led by the old guard of the Congress (P. Namgyal, T. Samphel, Jora and others) and the other led by the BJP represented Thupstan Chhewang, MP, and blessed by Lama Lobzang.

It is high time that Ladakh which has no ethnic, cultural or linguistic ties with the Kashmir valley or Jammu region, should be given the status of a Union Territory. Even the Shia Muslim communities of Kargil District like Baltis and Dardis have no affinities - ethnic, cultural or linguistic - with the Sunni Muslims of Kashmir valley. The people of Ladakh have always been patriotic and believed in a policy of religious accommodation. They follow the teachings of Buddha and in modern times they draw inspiration from His Holiness Dalai Lama. We salute them.

Stand Against Religious Bigotry, Defend Democratic Rights of all Citizens of India

People's Alliance for Democracy and Secularism (PADS) condemns the murder of rationalist H. Farook in Coimbatore, Tamilnadu on March 16, 2017. Farook was a member of Dravidar Viduthalai Kazhagam (Dravidian Freedom Organisation) which is inspired by the rationalist ideas of Periyar.

According to the police, the six men who killed Farook were self-radicalised and 'claimed that their radical thought had justified the murder of a Muslim who had deviated from faith and they are proud of what they had done'. After Dr. Dabholkar, Com Govind Panasare and Professor Kalburgi, Farook is the fourth rationalist who has been murdered by the so-called champions of religion. On the same day, i.e. March 16 Prof Narendra Nayak, the president of Indian Federation of Rationalist Associations was threatened with assault in Bangalore.

On March 19 in Jaipur a group of *gau rakshaks* led by one Sadhvi Kamal Didi vandalised a hotel and assaulted its staff claiming that it served beef. This violence occurred in the presence of the police. A repeat of Dadri violence last year was narrowly averted. In UP a number of meat shops have been burnt down by vigilante mobs after Mahant Adityanath Yogi's administration sealed a number of abattoirs. While it is beyond dispute that economic activity should be regulated, why have only these two activities been targeted, and what right the mobs have to attack any shop?

These are some of the latest instances of increasing violence in the name of religion in India. In fact, all of South Asia has become a battleground for religious fanatics hell-bent upon subjugating citizens' freedoms via violence and killings.

Dissent from orthodoxy is a feature of religious history and is responsible for religious reform. Such dissent has also contributed to the growth of humanist and democratic values, which are the guiding principles of the Indian constitution and underlie the fundamental rights of all citizens. These rights include the freedom of conscience, the freedom of believers to profess and practice their religion, and also the freedom of non-believers to lead a life of dignity with their agnosticism or atheism.

However, state authorities often disregard constitutional provisions. Rather than upholding the citizens' freedom to lead a life of their choice, including the right to eat food of their choice, police and judicial system routinely penalise citizens for 'hurting religious sentiments' of one or the other community. Murderers of Dabholkar, Panasare and Kalburgi are at large, and their political patrons have suffered no damage. In Jaipur police sealed a hotel on a mere allegation, while the FIR for violence on hotel staff does not even mention the sadhavi who led the mob.

Violence in the name of religion will not lead to any golden

age. The consequences of religious authoritarianism are visible in Pakistan. The Hindutva brigade is cultivating a similar scenario in India. It wants to attack or threaten all those who disagree with its ideas or diktats. Political parties must realise that their existence depends upon the constitutionally guaranteed rights of Indian citizens. The cultivation of religious aggression is sheer opportunism; and prepares the ground for the sabotage of democracy by authoritarian forces.

PADS appeals to all Indians, irrespective of their religious beliefs, creed, or caste to stand against communal hatred and violence. The people committing or instigating this violence may appear to be targeting only rationalists and minorities today. In actual fact they are enemies of democracy and freedom. All of us who value our constitutional rights must unite to defeat such forces. PADS demands that state authorities stop collaborating hooligans and vigilante mobs, and fulfil their sworn duty to protect the lives, property and civil liberties of all citizens.

— **Battini Rao, Convenor, P.A.D.S**

Janata

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Gujarat fishermen's arrest

In recent years, fishermen of both India and Pakistan are regularly arrested on the grounds of having entered into the territorial waters of the other country.

Last week, 100 Indian fishermen from Kutch region of Gujarat who went for fishing in 18 boats were arrested by Pakistan Maritime Security Agency while fishing off Jakhau coast. Last month another 115 fishermen were arrested by PMSA and their 19 boats were confiscated. In the month of March alone 225 fishermen and their 30 boats were taken under control by the PMSA.

Conversely, Indian Coast Guards have arrested 9 Pakistani fisher men who were fishing in a boat off Jakhau Coast of Kutch.

During a search done by the Border Security Force of India in the Sir Creek region of Kutch district, 4 boats of Pakistan were found abandoned and were confiscated.

Since the arrest of Indian fishermen by Pakistan is great escalation in the past one month, the Indian fishermen of Gujarat, Diu and Daman are afraid to venture into sea for fishing and are in confused state of mind.

Such sudden surge of arrest and confiscation of boats can have an adverse impact on the life of the fishermen driving them to an unwanted turning point.

Thousands of them being deprived of livelihood may end up in starvation. As the season so dry, thus devoid of agricultural labour opportunity, the fishermen, without fishing or a known alternative, may be forced to take their life off.

The NFF feels that it is not only the fisherfolk and their families but the community suffers, the young children are deeply affected by family members getting arrested, it hits their upbringing, the rigour and support they need to carry on their education.

It is high time that the Indian Coast Guard and the MSA must dialogue on this issue specifically since it is a violation of human rights and also a violation of the United Nations Convention on Law of the Sea. A meeting is scheduled next month and we urge both the governments to discuss this issue in detail.

A revival of various mechanisms like the India Pakistan Judicial Committee on Prisoners, since it

affords the arrested people an opportunity to put forward their case status, their grievances, health related issues are required.

The fisher people of both the countries have since years been demanding for a No Arrest Policy which has not even been considered for discussion till now.

Both the countries should come forward to take such progressive policy decision.

Though we are glad that the present union government was able to get about 400 Indian fishermen released from Pakistani prisons between December 2016 and January 2017, this massive arrest is causing concern and anxiety.

The Government of India shall take action on war footing and ensure that the misery of the fishermen is been reduced.

We request Honourable Prime Minister Shri. Narendra Modi and Honourable External Affairs Minister Shrimathi. Sushma Swaraj to be directly involed in resolving this issue.

M. Ilango, Chairperson, National Fisher folk Forum

The world's largest garment companies have all been linked to cotton spinning mills in India, which routinely use the forced labour of girls.

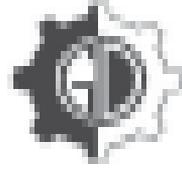
The lowest-paid workers in the most precarious conditions are predominantly women and girls.

Across the world, corporations are relentlessly squeezing down the costs of labour — and ensuring that workers and producers in their supply chains get less and less of the economic pie. This increases inequality and suppresses demand.

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