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Security for all not Feasible

Kuldip Nayar

Two more policemen died in the valley. This is not the first time that there is casualty in Kashmir. But the disconcerting aspect is that killings are taking place at regular intervals. New Delhi has not been able to quell violence. Probably, the cause is eluding the Narendra Modi government at the center that has to be tackled if violence has to be stopped.

That at least two militants could sneak into the hospital complex to free the jailed LeT terrorist from Pakistan is alarming, indeed. This means there is no safe place in the valley. But the worst is the terrorists have no consideration for even the sick. At the same time, it also exposes our security set up when the 22-two year old Mohammad Naveed Jhutt, who was arrested in Kulgam in Kashmir in 2014, managed to escape with the assailants during broad daylight from outside the government-run hospital, where he had been taken for medical check-up.

The terrorists seemed to have had a foolproof setup working in the valley to know when and where Jhutt would be taken as they have

been lying in wait in the hospital's parking lot before opening fire when he was brought along with other prisoners. Jhutt is believed to have been involved in multiple attacks, including on some civilians and army personnel.

In fact, every political party has someone to inform it about the arrival of any outsider in Srinagar. The terrorists and others line-up resistance according to the danger posed. The intelligence system is too porous. The Mehbooba Mufti's government admits to its failure. All the stone-pelters have been released, apparently as a goodwill gesture. But the real reason behind the release is the popular support they have.

The situation is such that the old militants like Yasin Malik or Shabbir Shah have become irrelevant today. The youth is leading and making no secret of the fact that they want a separate Islamic country of their own. They are neither pro-Pakistan, nor pro-India. They are pro-themselves and have made it clear to Islamabad that their movement is to prepare for their own entity.

New Delhi realizes it but has

no alternative to offer to them. Its answer seems to be security forces which are suffering more and more casualty. Strangely the former chief minister Farooq Abdullah introduced religion by declaring that the youth is the new identity of Islam. They are Muslims he says. But thank god, he doesn't question Srinagar's accession to New Delhi.

Pakistan understands that the entire partition formula would come to be questioned if it underlines the entity factor. Therefore, it emphasizes that the two countries should sit across the table and find solution which is acceptable to both. That, in fact, means Islamabad does not want to face the fact. The reality is that the Pakistan-occupied Kashmir is sought to be a separate Islamic country.

New Delhi has made it clear that it would not have talks until it is assured that Pakistan would not give shelter to terrorists, nor would it be a party to militancy. But this is only a pipedream. True, Islamabad's proxy war in the shape of mercenaries, the ISI saboteurs and even the armed forces—Pakistan describes all this as 'its moral and diplomatic support' to the militants—has not allowed the state to settle down to normalcy for years. In the last one decade, the interference from across the border has been colossal. Still, frankly speaking, India has had no policy on Kashmir and it has committed a mistake after mistake.

One can go back to the time when Sheikh Abdullah, then Kashmir's sole leader, was detained in 1952 because he wanted India to live up to its promise of autonomy. That meant transferring all powers to Srinagar except those relating to foreign affairs, defence and

communications. Or to 1989, when the state assembly elections were rigged to force the Kashmiri youth infer that the ballot box would not bring them power, but the bullet might.

Pakistan was only looking for an opportunity when the angry young Kashmiris would cross the border to get training and arms. That it smuggled in some of its own armed men to guide them was natural because it had waited for nearly four decades to build an uprising in the valley. In the militancy and the state's response that followed, a large number of Kashmiris and members of security forces lost their lives.

The Kashmiri leaders, particularly the younger lot, have to face the realities. An opportunity is coming their way in the shape of the Lok Sabha election next year. If they are in the same House, they can demand from the nation what has been denied to them even after the 1952 Delhi Agreement, that is, their special status. They can insist on all precautions for a fair election. But they cannot afford to miss the opportunity.

By getting elected to Parliament, the Kashmiri leaders will have an opportunity for disproving the government allegation that their support was primarily because of fear and fundamentalism they have spread in the valley. They should understand these the uncertain situation in Kashmir has led New Delhi to deny the state the liberal economic assistance which it should get. Many packages have been announced in the past decades. It was first Rajiv Gandhi who promised an allocation of Rs 2,000 crore. The successive prime ministers after him have been raising the

figure, but never allocating even a fraction of it. Delhi has also misread to some extent the reason for people's sulkiness there. Had there been economic development in the state, the Kashmiri youth's focus of attention would have been different. One has only to think of the days when they would look forward to the arrival of tourists. After going through intermittent violence, the Kashmiris have realized that there is no go from the tourists who come in large number and spend money.

Today, people are sick of violence. The security forces and the terrorists from across the border have made them live on edge. Poor living conditions have deteriorated further. They want development, not politics, which the Mehbooba government has been lately selling to them vigorously. A responsive, clean and purposeful administration in the state would have lessened their and Delhi's headaches.

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Muslims in India : Appeasement or Discrimination

Ram Puniyani

A democracy should be judged by the parameter of 'how safe and secure the religious minorities are'. In India, from among the religious minorities, Muslims and Christians are singled out for discrimination and physical violence. In addition many misconceptions are spread against them. Muslim minorities have been subject to demonisation in a serious way. They are also victims of communal violence and indiscriminate arrests on the pretext of terrorist violence, while at the same time the misconception that Muslims have been appeased has been widely spread.

With the formation of Indian National Congress (INC) in 1885, many Hindu nationalists opposed inclusion of Muslims in INC. Later during the freedom movement, the people belonging to this ideology accused Gandhi of appeasing Muslims. This propaganda about appeasement became very intense after the Shah Bano case, when the Government brought in Muslim Women protection bill to negate the Supreme Court judgment which granted maintenance to Shah Bano, a divorced woman. It is true that the implementation of secular policies of the ruling Government has been weak. One must add that other parties have also tried to appease fundamentalist Muslim leadership. While the fundamentalist Muslim leadership has been appeased, Muslims in general have been discriminated against; they are a part of the lowest socio-economic strata of society, and thus are far from being appeased.

Muslim Community in India

Islam came to India first through the Arab traders at Malabar Coast in seventh century. Later through Sufi saints many untouchables took to Islam to escape caste tyranny. Those taking to Islam came from the sections which belonged to the lower socio-economic strata in society. With the coming of modern education, elite Muslims took to education in large numbers while not much was done for education of the poor sections of Muslims. To add to the problem, following independence, a large number of affluent and salaried-educated Muslims left for Pakistan, leaving the lower sections here in larger numbers. The Muslim society at large remained in the grip of illiteracy and poverty.

Prof. Mushirul Hasan points out that for the "Muslim communities that remained in India, partition was a nightmare. . . . (While) lawyers, doctors, engineers, teachers and civil servants were comfortably ensconced in Lahore or Karachi either in response to Mohammad Ali Jinnah's clarion call or to bolster their career prospects. On the other hand, the so-called Islamic community in India, which had no place in Jinnah's Pakistan, was fragmented, and left vulnerable to right wing Hindu thoughts." (Hasan, 2001, p. 7)

After Independence, communal forces started the propaganda that Muslims are responsible for partition. The communal political groups popularised the biases against Muslims. These misconceptions

against Muslims related to issues like: Muslim kings destroyed Hindu temples; Muslim kings spread Islam on the strength of the sword; etc. Their social conditions related to poverty, like poor hygiene, also became the butt of misconceptions against them. These misconceptions formed the base of the communal violence. The majority of victims of violence were from among the poorer sections of society, and the majority among them were Muslims. Communal violence in turn led to their ghettotisation, and the Muslim community started becoming inward-looking in nature. Due to repeated violence against them, their focus on security took precedence over equity issues. This led to neglect of education. In the last couple of decades, particularly after 9/11 2001, in several cases of terror attacks, many innocent Muslim youth have been arrested.

There was a trend of the police authorities arresting college/university students on charges of terrorist acts, and then letting them rot in jails for long periods before the courts come to their rescue. Towns like Azamgarh and Bhatkal were propagated to be dens of terrorists. Madrassas have also been looked down as places breeding terrorists. At times, many parents scared of the prospect of their children being implicated by the police recalled them back from colleges. The careers of many Muslim youth who were pursuing their studies in professional colleges or were practicing as young professionals got ruined. This again added to the

tendency of Muslim community to withdraw into their own shells. There is another parallel phenomenon that has taken place during the last four decades: that of Muslim youth seeking and getting jobs preferentially in the Gulf countries. This section did become slightly more affluent, but is only a small segment if we look the situation from an all India perspective.

Muslim Appeasement

This propaganda is so strong that reality gets lost from popular perception. As per official data, the employment of Muslims in government jobs is abysmally low. For example, table 1 shows Muslim employment in Central services. Though their ratio in population is more than 14%, their share in government jobs and private employment is not more than 3%.

As far as the representation of Muslims in the private sector is concerned, it is no better. A study done some time ago showed that in the private sector, including the two top business houses of the Tatas and Birlas, Muslim employment was only 8.16%, while for the Scheduled Castes it was 11.5%. In the executive cadre Muslims were only 1.5% while in the clerical class they were 8.28%.

Table 1: Muslim Employment in Central Government Services, 2000

| Group | Estimated Strength | % of total strength | Muslim % in 1992 |
|-------|--------------------|---------------------|------------------|
| A | 77,680 | 2.05 | 1.61 |
| B | 1,74,675 | 4.63 | 3.00 |
| C | 23,87,625 | 63.22 | 4.41 |
| D | 11,36,686 | 30.09 | 5.12 |
| Total | 37,76,666 | 100.00 | |

Source: Omar Khalidi, Muslims in the Indian Economy, Three Essays Collective, New Delhi, 2006, p. 45.

Muslim Artisans

A large section of Muslims is associated with a number of handicrafts and related trades. Here they tend to be employed as workers, while the retailers and exporters belong to other communities. Khalidi provides the following statistics, quoting from a 1991 survey, that provide information about Muslim employment in various handicrafts in the state of Uttar Pradesh: art metalware (76%), zari, gold thread/brocade and zari goods (89%), embroidery (87.5%), cotton rugs (67%) and woodwares (72%). In several other states too, Muslims are engaged in similar artisanal activities in large numbers. Yet, the State appears to have done little to help Muslim artisan families and communities.

On the contrary, the economic policies have led to a worsening of conditions of artisans over the last few decades; consequently, Muslim artisans too have been badly affected together with artisans from other communities. Thus, earlier, there were over 5,00,000 weavers living in and around Varanasi, weaving silk saris mainly for the domestic market. But since the 1990s, these silk handloom weavers have seen their markets vanish. Similar is the fate of other textile centers like Bhivandi,

Malegaon, etc., where Muslims were employed in large numbers. There are many reasons for this decline, such as increasing competition from power loom weaving, changes in government protection policies, rising prices of raw silk and shifts in market demand. In the past many years, there has also been a change in import policies allowing imports of cheap silk fabric from China.

Muslims: Socio Economic Condition

Muslims have also not been able to take advantage of various government schemes for groups such as small farmers, marginal farmers, agricultural laborers, landless laborers, etc. This is partly because of discrimination and indifference on the part of planning and implementation authorities, and partly because of lack of awareness and knowledge of such schemes among Muslims. Consequently, the limited progress that some sections of Muslims have been able to make in recent years owes almost wholly to their own efforts. Overall the economic conditions of most Indian Muslims are unenviable, to say the least. Most of them eke out a hand-to-mouth existence either by way of self-employment in petty trade or by working in the unorganised sector. They are engaged mostly as construction labourers, rickshaw, taxi and truck drivers, handcart pullers, coolies, barbers, tailors, carpenters, pavement hawkers, or at best as mechanics, fitters, plumbers, electricians or welders.

The Muslim ghettos which have come to be formed in the aftermath of violence are islands of deprivation, generally cut off from civic facilities, economic provisions, good schooling, etc. The banks and

big companies are reluctant to open their offices in these areas. The only reason why Muslims stay in these areas is because they see these as an arrangement for protection.

Gopal Singh, Sachar Committee and Ranganath Mishra Reports

In the light of worsening economic condition of Muslims, the Congress and later the UPA Governments appointed various panels / commissions, such as the Gopal Singh Committee, Sachar Commission and the Ranganath Mishra Commission to study the socio-economic backwardness of Muslims. All these reports pointed out that far from appeasement, the condition of the Muslim community is worsening.

Let us see for example what the Sachar Committee says (November 2006). The committee after extensive home work found that the Muslim minority is way behind the national averages in most parameters of social development, its economic status has been sliding seriously, its representation in jobs and bank loans is abysmal, and its representation in the political process has been very poor and worsening. In sum and substance, the Muslim community is under-represented in most of the arenas of society barring the jails. The Gopal Singh committee had also affirmed the poor status of this minority. The Muslim community has also suffered disproportionately in riots as compared to its percentage in population. The Sachar Committee recommended that an Equal Opportunity Commission should be set up, a national data bank should be started, a nomination procedure should be started to ensure the participation of Muslims in public bodies, a procedure must

be evolved to evaluate text books to purge them of material that may impart inappropriate social values, especially religious intolerance, etc.

State Response to Reports of Minority Commissions

The report of the Gopal Singh committee was never implemented. Two decades later, in response to the Sachar Committee report, Prime Minister Manmohan Singh stated in the National Development Council that we need 'to devise innovative plans to ensure that minorities, particularly the Muslim minority, are empowered to share equitably in the fruits of development, they must have the first claim on resources.' This statement was followed up by a statement in Parliament by the minister of minorities affairs that the government will implement the recommendations of Sachar Committee. This was proved to be an illusion. The BJP came down heavily on this statement, asserting that the Prime Minister's statement smacks of rank communalism. The RSS combine also launched a vicious propaganda offensive. All this demolished any hope that the State will pick up the courage to take proactive affirmative action for Muslim minorities.

The pressure of communal propaganda and opposition from Hindu 'nationalists' killed any chances of the recommendations of these reports being implemented. The government did try to contemplate steps short of reservations to improve the lot of the Muslim minorities. One of the important steps that it did consider implementing was the idea of Equal Opportunity Commission to improve the lot of minorities. As it turned out, the government could not muster enough courage to implement

any of these steps to alleviate the lot of Muslim community. With the Modi sarkar coming to power in 2014, the chances of any such steps being implemented have receded far into the background.

Last Three Years

During the last three years, ever since Modi has come to power, despite the talk of Sabka Saath Sabka Vikas (with all, for development of all), the government has systematically implemented policies to break the back of the Muslim community. One prominent example of this is the policy related to beef ban and closure of meat shops, on the ground of their being illegal. The already existing laws on cow slaughter and beef ban have been tightened. A social atmosphere has been created around 'Holy Mother Cow'. The implementation of this seems to be guided more by hatred of Muslims than love for cows. An atmosphere of terror has been created by the lynching of innocent Muslims by cow rakhshaks (protectors), who are Hindu nationalists ideologically inspired by the RSS-BJP. Such an intimidating atmosphere has been created that even those transporting cattle and dealing with meat/beef are too scared to pursue their business. Muslims are being relegated to second class citizenship at great speed.

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Amending the Constitution of India

Vinayak Davray

The Constituent Assembly

The national movement, by the end of the second decade of the twentieth century, had begun to espouse the demand for the right of Indians to frame their own constitution. In May 1928, at the initiative of the Congress, an All Parties Conference was called which appointed a committee to determine the 'principles of the Constitution of India'. The Nehru Report, submitted in August 1928, was in effect an outline of a draft Constitution of India. (Many of its features were later included in the Constitution of India.) In the early 1930s, the Civil Disobedience Movement saw hundreds of thousands on the streets and tens of thousands in jail; the demand that Indians must have the right to frame their own Constitution began to gain huge public support. And along with this, the idea began to gain ground that this should be done through a Constituent Assembly elected for this purpose on the basis of widest possible franchise, and not through a conference as was the case with the Nehru Report.

An idea for a Constituent Assembly of India was first proposed in 1934 by M. N. Roy, a pioneer of the Communist movement in India. Soon after, the Congress too voiced the demand for a Constituent Assembly elected on the basis of adult suffrage or as near it as possible. The demand for a Constituent Assembly was repeated frequently thereafter. The British partially conceded this demand first in August 1940, and then through the

Cripps proposals of March 1942, but both were rejected by the Congress. The Congress then launched the historic Quit India movement in August 1942; the famous resolution of the All India Congress Committee of 8 August 1942 exhorting Indians to 'Do or Die' also said that the provisional government of free India would evolve a scheme for a Constituent Assembly. The mass upsurge that followed made it clear to the British that they could not reject this demand much longer. Following the end of the Second World War, in March 1946, the British Government sent a Cabinet Mission to India to resolve the whole issue of freedom and constitution making. Under the scheme proposed by it, accepted by the Congress after intense discussions, members of the Constituent Assembly were to be elected through indirect elections, by the recently elected legislative assemblies of the provinces. The total membership of the Constituent Assembly was to be 389, out of which 296 members were to be from British India, and 93 from the Indian Princely States. However, as a result of the partition under the Mountbatten Plan of 3 June 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

Initially, the Constituent Assembly comprised only of members from British India. Elections of these were held in July-August 1946. The first session of the Constituent

Assembly of India was held in New Delhi on 9 December 1946, with Dr. Sachchidananda Sinha, its oldest member, as its provisional chairman. On 11 December, 1946, the Assembly elected Dr. Rajendra Prasad as its permanent chairman, an office later designated as President of the Assembly. On 13 December, Jawaharlal Nehru moved the famous Objectives Resolution. Jurist B.N. Rau was appointed Constitutional Adviser to the Assembly.

The Assembly's work had five stages:

- Committees presented reports on issues.
- B.N. Rau prepared an initial draft based on these reports and his research into the constitutions of other nations.
- The drafting committee, chaired by B.R. Ambedkar, presented a detailed draft constitution which was published for public discussion.
- The draft constitution was discussed, and amendments proposed and enacted.
- The constitution was adopted, with a committee of experts and played a pivotal role.

The Constituent Assembly appointed a total of 22 committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. The major Committees and their

chairmen were:

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following sub-committees:
 - i. Fundamental Rights Sub-Committee – J. B. Kripalani
 - ii. Minorities Sub-Committee – Harendra Coomar Mookerjee,
 - iii. North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
 - iv. Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee – A. V. Thakkar
5. Rules of Procedure Committee – Dr. Rajendra Prasad
6. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
7. Steering Committee – Dr. Rajendra Prasad
8. Drafting Committee – Dr. B. R. Ambedkar

The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution

for Independent India. It held its last session on 24 January 1950. During this period it held eleven sessions, sitting for a total of 165 days. The Constituent Assembly adopted the Constitution of India on 26 November 1949, which became effective on 26 January 1950.

The Constitution of India is the fundamental or supreme law of the nation. The procedure for amending the constitution is laid down in Article 368 (Part XX) of the Constitution. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.

Checks and Balances

The framers of the Constitution, that is, the Constituent Assembly, established a three-pillar system for governance of the country—the Legislature (the Parliament), the Executive (the Council of Ministers) and the Judiciary (the Supreme Court). The Constitution of India has conferred the power of amending the Constitution to the Parliament and the power to interpret the Constitution to the Supreme Court. This is the classic ‘check and balance’ system. The Parliament would like to exercise discretionary power to amend the Constitution, while the Supreme Court would like to restrict that power. This has led to the laying down of various doctrines or rules in regard to checking the legality of an amendment, the most famous among them being ‘the basic structure doctrine’ laid down by the Supreme Court in the case of *Kesavananda Bharati vs. State of Kerala*.

The Constituent Assembly did not favour either the Parliament to be ‘supreme’ like in Britain, nor did it set up a rigid special procedure

for amending the Constitution. It adopted a combination of ‘the theory of fundamental law,’ that underlies the written Constitution of the United States, and the ‘theory of parliamentary sovereignty’ as exists in the United Kingdom. The Constitution of India vests constituent (amending) power upon the Parliament, subject to the special procedure laid down in Article 368. The Constitution of India does not have procedures such as a referendum. It is only for amendments of specific matters—which are only few—that the ratification of the State Legislatures is required. All other articles of the Constitution can be amended by the Parliament. The only limitation is that this should be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

Amendment Procedure

With its 395 articles, 12 schedules and two appendices, the Indian Constitution is one of the longest written constitutions in the world. The procedure to amend the Constitution is partly flexible and partly rigid. An amendment to the Constitution can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. There is no provision for a joint sitting in case of disagreement between the two Houses. The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If

the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368 itself, it must be ratified by the Legislatures of not less than one-half of the States. Only after this ratification is completed can the amending Bill be presented to the President for his assent.

Categories of the Amendments

The Constitution provides for three categories of amendments. The first category includes those provisions of the Constitution that can be amended by a **simple majority**, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). These include: admission or establishment of new states; allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.; salaries and allowances of the members of Parliament; rules of procedure in Parliament; and other such provisions. These amendments are excluded from the purview of article 368, which is the specific article dealing with the power and the procedure for amending the Constitution.

The second category includes amendments that can be effected by Parliament by a prescribed '**special majority**;' and the third category of amendments includes those that require, in addition to such 'special majority,' **ratification by at least one half of the State Legislatures**. These last two categories of amendments are governed by article 368.

Amendments under Article 368

Article 368 (1) [Part XX] of the Constitution of India grants constituent power to the Parliament

to amend the Constitution by way of **addition, variation or repeal** of any provision according to the procedure laid down therein. Article 368 has been amended by the 24th Amendment in 1971 and 42nd Amendment in 1976.

Full text of article 368

The following is the full text of Article 368 of the Constitution, which governs constitutional amendments:

368. Power of Parliament to amend the Constitution and Procedure therefor:

- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in –

- (a) article 54, article 55, article 73, article 162 or article 241, or

- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- (3) Nothing in article 13 shall apply to any amendment made under this article.
- (4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.
- (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

There is no provision for a joint sitting in case of disagreement between the two Houses. Total membership in this context has been defined to mean the total number of members comprising the House

irrespective of any vacancies or absentees on any account vide Explanation to Rule 159 of the Rules of Procedure and Conduct of Business in Lok Sabha. The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368, it must be ratified by the legislatures of not less than one-half of the States.

Ratification is done by a resolution passed by the State legislatures. There is no specific time limit for the ratification of an amending Bill by the State legislatures. However, the resolutions ratifying the proposed amendment must be passed before the amending Bill is presented to the President for his assent.

Role of State Legislatures

The role of the States in constitutional amendment is limited. State legislatures cannot initiate any Bill or proposal for amendment of the Constitution. They are associated in the process of the amendment only through the ratification procedure laid down in article 368, in case the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368. The only other provision for constitutional changes by State legislatures is to initiate the process for creating or abolishing Legislative Councils in their respective legislatures, and to give their views on a proposed Parliamentary bill seeking to affect the area, boundaries or name of any State or States which has been referred to them under the proviso to Article 3. However, this referral does not restrict Parliament's power

to make any further amendments of the Bill.

Role of Union Territories

Union territories have no say in constitutional amendments, including the ratification process which is only open to States. Delhi and Puducherry are two union territories that are entitled, by special constitutional amendments, to have an elected Legislative Assembly and a Cabinet of ministers, thereby enjoying partial statehood powers. Both of these territories can participate in the ratification process.

Limitations of Parliament's Powers

The Constitution can be amended by the Parliament, and only in the manner provided. Although Parliament must preserve the basic framework of the Constitution, there is no other limitation placed upon the amending power, meaning that there is no provision of the Constitution that cannot be amended. In the case of Abdul Rahiman Jamaluddin v. Vithal Arjun (AIR 1958 Bombay, 94, (1957)), the Bombay High Court held that any attempt to amend the Constitution by a Legislature other than Parliament, and in a manner different from that provided for, will be void and inoperative.

The Supreme Court first struck down a constitutional amendment in 1967 on the basis that it violated Article 13, ruling in the case of Golaknath vs. State of Punjab that Parliament had no power to amend any of the provisions of Part III of the Constitution, so as to take away or abridge the fundamental rights enshrined therein. Parliament responded by enacting the **Twenty-fourth Amendment** of the Constitution of India (in 1971),

which amended Article 368 to declare that "nothing in Article 13 shall apply to any amendment of this Constitution."

The Supreme Court, ruling in the case of Kesavananda Bharati v. The State of Kerala, held that although no part of the Constitution, including Fundamental Rights, was beyond the amending power of Parliament (thus overruling its judgement in the Golaknath case), the "basic structure of the Constitution could not be abrogated even by a constitutional amendment". Parliament attempted to remove this limitation by enacting the **Forty-second Amendment** (in 1976), which inserted clauses (4) and (5) to Article 368, effectively declaring, among other provisions, that "there shall be no limitation whatever on the constituent power of Parliament to amend . . . this Constitution." But the Supreme Court in the case of *Minerva Mills v. Union of India* struck down these clauses, on the grounds that these clauses destroyed the essential feature of the basic structure of the constitution.

Conclusion

To summarise, the Constitution of India can be amended under article 368 by a two-thirds majority in each House of the Parliament; however, the Parliament must preserve the basic framework of the Constitution; and every such amendment is subject to the scrutiny of the Supreme Court. While trying to establish the authority of Parliament over the Supreme Court, the Parliament has nullified the ruling of the Supreme Court twice: by Twenty-fourth Amendment in 1971 and by Forty-second Amendment in 1976. Both the times the then Prime Minister Indira Gandhi had mustered more

than two-thirds majority in each house of the parliament.

Therefore, although the method of amending the Constitution appears a simple one, it is not easy to tamper with the Constitution, unless an Executive manages to gather a two-thirds majority in each house of the Parliament. Secondly, the existing law forbids legislators to play around with the 'basic framework of the Constitution.' Thirdly, having vested with the power to interpret the Constitution, the Supreme Court is the final custodian of the Constitution. Thus it is a check to maintain the balance.

However, that does not mean that the citizens can rest in peace that the Constitution will never be tampered. They need to be vigilant to ensure that no forces should even think of playing around with the Constitution. An ideal democracy needs a strong opposition. Therefore there is a need to enhance the awareness among the citizens regarding our Constitution and the provisions thereof, including its amendment procedure.

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A Well-Kept Open Secret : Washington Is Behind India's Brutal Experiment of Abolishing

Dr. Norbert Haering

In early November, without warning, the Indian government declared the two largest denomination bills invalid, abolishing over 80 percent of circulating cash by value. Amidst all the commotion and outrage this caused, nobody seems to have taken note of the decisive role that Washington played in this. That is surprising, as Washington's role has been disguised only very superficially.

US-President Barack Obama has declared the strategic partnership with India a priority of his foreign policy. China needs to be reigned in. In the context of this partnership, the US government's development agency USAID has negotiated cooperation agreements with the Indian Ministry of Finance. One of these has the declared goal to push back the use of cash in favor of digital payments in India and globally.

On November 8, Indian Prime Minister Narendra Modi announced that the two largest denominations of banknotes could not be used for payments any more with almost immediate effect. Owners could only recoup their value by putting them into a bank account before the short grace period expired, which many people and businesses did not manage to do due to long lines in front of banks. The amount of cash that banks were allowed to pay out to individual customers was severely restricted. Almost half the Indians have no bank account and many do not even have a bank nearby. The economy is largely

cash-based. Thus, a severe shortage of cash ensued. Those who suffered the most were the poorest and most vulnerable. They had additional difficulty earning their meager living in the informal sector or paying for essential goods and services like food, medicine or hospitals. Chaos and fraud reigned well into December.

Four weeks earlier

Not even four weeks before this assault on Indians, USAID had announced the establishment of Catalyst: Inclusive Cashless Payment Partnership, with the goal of effecting a quantum leap in cashless payment in India. The press statement of October 14 says that Catalyst 'marks the next phase of partnership between USAID and Ministry of Finance to facilitate universal financial inclusion.' The statement does not show up in the list of press statements on the website of USAID (anymore?). Not even filtering statements with the word "India" would bring it up. To find it, you seem to have to know it exists, or stumble upon it in a web search. Indeed, this and other statements, which seemed rather boring before, have become a lot more interesting and revealing after November 8.

Reading the statements with hindsight, it becomes obvious that Catalyst and the partnership of USAID and the Indian Ministry of Finance, from which Catalyst originated, are little more than fronts which were used to be able to prepare the assault on all Indians using cash without arousing undue suspicion.

Even the name Catalyst sounds a lot more ominous, once you know what happened on November 9.

Catalyst's Director of Project Incubation is Alok Gupta, who used to be Chief Operating Officer of the World Resources Institute in Washington, which has USAID as one of its main sponsors. He was also an original member of the team that developed Aadhaar, the Big-Brother-like biometric identification system.

According to a report of the Indian Economic Times, USAID has committed to finance Catalyst for three years. Amounts are kept secret.

Badal Malick was Vice President of India's most important online marketplace Snapdeal, before he was appointed as CEO of Catalyst. He commented:

'Catalyst's mission is to solve multiple coordination problems that have blocked the penetration of digital payments among merchants and low-income consumers. We look forward to creating a sustainable and replicable model. (...) While there has been (...) a concerted push for digital payments by the government, there is still a last mile gap when it comes to merchant acceptance and coordination issues. We want to bring a holistic ecosystem approach to these problems.'

Ten months earlier

The multiple coordination problem and the cash-ecosystem-issue that Malick mentions had been analysed in a report that USAID commissioned in 2015 and presented in January 2016, in the context of the anti-cash partnership with the Indian Ministry of Finance. The press release on this presentation is also not in USAID's list of press statements (anymore?). The title of the study was Beyond Cash.

'Merchants, like consumers, are

trapped in cash ecosystems, which inhibits their interest' in digital payments, it said in the report. Since few traders accept digital payments, few consumers have an interest in it, and since few consumers use digital payments, few traders have an interest in it. Given that banks and payment providers charge fees for equipment to use or even just try out digital payment, a strong external impulse is needed to achieve a level of card penetration that would create mutual interest of both sides in digital payment options.

It turned out in November that the declared 'holistic ecosystem approach' to create this impulse consisted in destroying the cash-ecosystem for a limited time and to slowly dry it up later, by limiting the availability of cash from banks for individual customers. Since the assault had to be a surprise to achieve its full catalytic effects, the published Beyond Cash report and the protagonists of Catalyst could not openly describe their plans. They used a clever trick to disguise them and still be able to openly do the necessary preparations, even including expert hearings. They consistently talked of a regional field experiment that they were ostensibly planning.

'The goal is to take one city and increase the digital payments 10x in six to 12 months,' said Malick less than four weeks before most cash was abolished in the whole of India. To not be limited in their preparation on one city alone, the Beyond Cash report and Catalyst kept talking about a range of regions they were examining, ostensibly in order to later decide which was the best city or region for the field experiment. Only in November, did it become clear that the whole of India should be the guinea pig for a global drive to end the reliance on cash. Reading a statement of Ambassador

Jonathan Addleton, USAID Mission Director to India, with hindsight it becomes clear that he had stealthily announced this four weeks earlier:

'India is at the forefront of global efforts to digitize economies and create new economic opportunities that extend to hard-to-reach populations. Catalyst will support these efforts by focusing on the challenge of making everyday purchases cashless.'

Veterans of the war on cash in action

Who are the institutions behind this decisive attack on cash? Upon the presentation of the Beyond Cash report, USAID declared: 'Over 35 key Indian, American and international organizations have partnered with the Ministry of Finance and USAID on this initiative.' On the ominously named website <http://cashlesscatalyst.org/> one can see that they are mostly IT- and payment service providers who want to make money from digital payments or from the associated data generation on users. Many are veterans of what a high-ranking official of Deutsche Bundesbank called the 'war of interested financial institutions on cash' (in German). They include the Better Than Cash Alliance, the Gates Foundation (Microsoft), Omidyar Network (eBay), the Dell Foundation, MasterCard, Visa and Metlife Foundation.

The Better Than Cash Alliance

The Better Than Cash Alliance, which includes USAID as a member, is mentioned first for a reason. It was founded in 2012 to push back cash on a global scale. The secretariat is housed at the United Nations Capital Development Fund (UNCDF) in New York, which might have its reason in the fact that this rather poor small UN organization was glad to

have the Gates Foundation in one of the two preceding years and the MasterCard Foundation in the other as its most generous donors.

The members of the Alliance are large US Institutions which would benefit most from pushing back cash, i.e. credit card companies MasterCard and Visa, and also some US institutions whose names come up a lot in books on the history of the United States intelligence services, namely Ford Foundation and USAID. A prominent member is also the Gates Foundation. Omidyar Network of eBay (founder Pierre Omidyar) and Citi are important contributors. Almost all of these are individually also partners in the current USAID–India–Initiative to end the reliance on cash in India and beyond. The initiative and the Catalyst-program seem little more than an extended Better Than Cash Alliance, augmented by Indian and Asian organizations with a strong business interest in a much decreased use of cash.

Reserve Bank of India's IMF–Chicago Boy

The partnership to prepare the temporary banning of most cash in India coincides roughly with the tenure of Raghuram Rajan at the helm of Reserve Bank of India from September 2013 to September 2016. Rajan (53) had been, and is now again, economics professor at the University of Chicago. From 2003 to 2006 he had been Chief Economist of the International Monetary Fund (IMF) in Washington. (This is a CV item he shares with another important warrior against cash, Ken Rogoff.) He is a member of the Group of Thirty, a rather shady organization, where high ranking representatives of the world's major commercial financial institutions share their thoughts and plans with the presidents of the most important central banks, behind

closed doors and with no minutes taken. It becomes increasingly clear that the Group of Thirty is one of the major coordination centers of the worldwide war on cash. Its membership includes other key warriors like Rogoff, Larry Summers and others.

Raghuram Rajan has ample reason to expect to climb further to the highest rungs in international finance and thus had good reason to play Washington's game well. He already was a President of the American Finance Association and inaugural recipient of its Fisher Black Prize in financial research. He won highly endowed prizes of Infosys for economic research and of Deutsche Bank for financial economics as well as the Financial Times/Goldman Sachs Prize for the best economics book. He was declared Indian of the Year by NASSCOM and Central Banker of the Year by Euromoney and by The Banker. He is considered a possible successor of Christine Lagard at the helm of the IMF, but can certainly also expect to be considered for other top jobs in international finance.

As a Central Bank Governor, Rajan was liked and well respected by the financial sector, but very much disliked by company people from the real (producing) sector, despite his penchant for deregulation and economic reform. The main reason was the restrictive monetary policy he introduced and staunchly defended. After he was viciously criticised from the ranks of the governing party, he declared in June that he would not seek a second term in September. Later he told the New York Times that he had wanted to stay on, but not for a whole term, and that premier Modi would not have that. A former Minister for Commerce and Law, Mr. Swamy, said on the occasion of Rajan's departure that it would make Indian

industrialists happy:

'I certainly wanted him out, and I made it clear to the Prime Minister, as clear as possible. (...) His audience was essentially Western, and his audience in India was transplanted westernised society. People used to come in delegations to my house to urge me to do something about it.'

A disaster that had to happen

If Rajan was involved in the preparation of this assault to declare most of Indians' banknotes illegal—and there should be little doubt about that, given his personal and institutional links and the importance of Reserve Bank of India in the provision of cash—he had ample reason to stay in the background. After all, it cannot have surprised anyone closely involved in the matter, that this would result in chaos and extreme hardship, especially for the majority of poor and rural Indians, who were flagged as the supposed beneficiaries of the badly misnamed drive for 'financial inclusion'. USAID and partners had analysed the situation extensively and found in the Beyond-Cash report that 97% of transactions were done in cash and that only 55% of Indians had a bank account. They also found that even of these bank accounts, 'only 29% have been used in the last three months'.

All this was well known and made it a certainty that suddenly abolishing most cash would cause severe and even existential problems to many small traders and producers and to many people in remote regions without banks. When it did, it became obvious how false the promise of financial inclusion by digitalisation of payments and pushing back cash has always been. There simply is no other means of payment that can compete with cash in allowing everybody with such low hurdles to participate in the market

economy.

However, for Visa, MasterCard and the other payment service providers, who were not affected by these existential problems of the huddled masses, the assault on cash will most likely turn out a big success, 'scaling up' digital payments in the 'trial region'. After this chaos and with all the losses that they had to suffer, all business people who can afford it are likely to make sure they can accept digital payments in the future. And consumers, who are restricted in the amount of cash they can get from banks now, will use opportunities to pay with cards, much to the benefit of Visa, MasterCard and the other members of the extended Better Than Cash Alliance.

Why Washington is waging a global war on cash

The business interests of the US companies that dominate the global IT business and payment systems are an important reason for the zeal of the US government in its push to reduce cash use worldwide, but it is not the only one and might not be the most important one. Another motive is surveillance power that goes with increased use of digital payment. US intelligence organisations and IT companies together can survey all international payments done through banks and can monitor most of the general stream of digital data. Financial data tends to be the most important and valuable.

Even more importantly, the status of the dollar as the world's currency of reference and the dominance of US companies in international finance provide the US government with tremendous power over all participants in the formal non-cash financial system. It can make everybody conform to American law rather than to their

local or international rules. German newspaper Frankfurter Allgemeine Zeitung has recently run a chilling story describing how that works (German).

'Employees of a German factoring firm doing completely legal business with Iran were put on a US terror list, which meant that they were shut off most of the financial system and even some logistics companies would not transport their furniture any more. A major German bank was forced to fire several employees upon US request, who had not done anything improper or unlawful.'

There are many more such examples. Every internationally active bank can be blackmailed by the US government into following

their orders, since revoking their license to do business in the US or in dollars basically amounts to shutting them down. Just think about Deutsche Bank, which had to negotiate with the US treasury for months on whether they would have to pay a fine of 14 billion dollars and most likely go broke, or get away with seven billion and survive. If you have the power to bankrupt the largest banks even of large countries, you have power over their governments too. This power through dominance over the financial system and the associated data is already there. The less cash there is in use, the more extensive and secure it is, as the use of cash is a major avenue for evading this power.

Failing the Child won't Revive the Failed System

Ishu Gupta and Sandeep Pandey

The system is again set to fail the children who were brought into the system without promising access to quality education. With hardly any empirical evidence of the impact of no detention policy on degrading learning outcomes and choosing to turn a blind eye to the continuous negligence of the state towards public schools, 'No Detention Policy' (NDP) is going to be scrapped. With no attention to associating learning with the assessments, our children will again be put to stressed examination process. A 2015 World Bank report shows there are 28.86 lakh children in India who are out of school. Net enrollment rate in primary schools is 92.3% of relevant age group and same figure for secondary schools is 61.8%. This implies that in addition to the above mentioned children who don't see the inside of a school there is a large number which doesn't make the transition from primary to secondary

stage. The high dropout rate in India has been a major problem to which the government has not been able to find a solution yet.

The purpose of NDP of not failing students till class VIII stage was to ensure better enrollment at secondary stage. This is also the stage at which child is developing interest in education and getting to be more independent. Soon s(he) has to decide which subjects s(he) would choose for further study. A child dropping out of school before reaching the secondary stage is most likely going to continue in the labour job that her/his parents have traditionally been doing. The opportunity of breaking this vicious cycle is lost once the child is out of school.

A misunderstanding has been created by a segment of society which intends to use the tool of examination to block the passage

of children of masses through the education system to maintain the upper class-caste hegemony and hold over the benefits which come with education for their children by propagating the view that the NDP is responsible for falling standards of learning. The present Bhartiya Janata Party government, which is a representative of this elite segment, is preparing to bring an amendment to the Right of Children to Free and Compulsory Education Act, 2009 to remove this provision, thereby exposing children to examinations at elementary level, possibly holding some of them back for poor performance. It is obvious that axe will fall on children, especially more so on first generation learners - children from weaker socio-economic backgrounds. Hence the withdrawal of NDP is an anti-poor and retrogressive step which should not be taken by any government which gives priority to inclusive development. The character of the BJP government which wants to perpetuate the traditional caste-class-religio-gender dominance is again brought out by this proposed amendment. ASER 2017 highlights the higher drop-out rate of girls, and this move might further reduce the gender parity at the primary level.

Are children responsible for poor learning outcomes? If learning is not taking place, and a recent World Bank Development report rightly says that 'Schooling without learning is not just a wasted opportunity, but a great injustice', it is because the teachers lack the motivation and skills. Effectively then, the children will pay the price for truant behavior of the teachers. The real problem of our public education system, especially at school level, is how to make the teachers teach? If serious teaching starts taking place, learning will be an automatic outcome. Unfortunately, except for Delhi government no other government in the country is at present actively doing anything to improve the

quality of its schools. In the past Kerala, Tamil Nadu and Himachal Pradesh governments have exhibited some significant advances in this direction.

The National Curriculum Framework (NCF), 2005, credited to a committee chaired by Professor Yashpal, recommended an internal school based system of assessment that could provide information on a child's overall development on a continuous and comprehensive manner, which was included in the RTE Act. A number of states modified their assessment methods to what they understood of 'continuous and comprehensive evaluation'. But broadly everybody understood that cognitive skills alone are not important. Social and emotional skills too were to be included in the curriculum. Although for most states the non-scholastic aspect of education always took a back seat. For example, whereas all evaluations were to be done in terms of grading, some states continued with the practice of allotting marks for scholastic subjects and grades for others.

Most took 'continuous and comprehensive evaluation' to mean simply conducting tests continuously, thereby taxing the students even more. The NCF recommended an evaluation system integral to the teaching learning process to avoid any undue pain, anxiety, harassment and humiliation to help children grow as social beings. But the mindset behind withdrawing 'no detention policy' makes the children the victims.

It may not be out of context to mention that the same government which does not want to subject itself to Programme for International Student Assessment (PISA), an international survey meant to test the skills and knowledge of 15 years old students, to save itself the embarrassment of poor performance

compared to other 72 countries in which it is conducted, wants to subject its own 6-14 years old children to examinations!

The BJP government has undone the progressive steps taken earlier to de-emphasise the role of examinations in our education system, including making the class X Central Board of Secondary Education examination optional.

Nowhere in the world such large scale fraud is committed in the examination process as in our country. In some states open use of unfair means as mass copying with the collusion of education department officials and school management takes place that reduces the activity to farce. The problem of little learning or no learning does not just exist at the elementary level. Most students completing their class X or XII board examinations or sometimes even those completing their degree level education also have very poor levels of learning. This goes to show that there is no guarantee of learning just by an examination driven system.

It would have been better if the government instead of focusing on withdrawing the NDP had instead concentrated on implementing the system of continuous and comprehensive evaluation. That would have produced the desired result of improving the learning levels. Re-introducing the examination system does not guarantee that.

If real learning has to take place in the sense of acquiring knowledge, it can only take place when importance of examination is delinked from the process of education. And there are schools in this country, like the Krishnamurti Foundation schools and other less known schools which have accomplished this.

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