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**Yogi Should First Get
Children Admitted**
Sandeep Pandey

**India's Foreign Policy: Less
Continuity and More Change!**
D. K. Giri

**Visions of Secularism:
Triple Talaq Judgment**
Irfan Engineer

**Constitutionalism, Social Justice
and Black Money**
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Is India Run by Dynasty?

Kuldip Nayar

Congress Vice President Rahul Gandhi is wrong when he says that all of India runs on dynasties. Ruling means wielding power at the centre. Only Jawaharlal Nehru's family has had the opportunity to do so. Nehru ruled for 17 years, his daughter Indira Gandhi for 18 years and Rajiv Gandhi, son of Indira Gandhi for 5 years. Thus, the dynasty has been in power at the centre for 40 years, more than half of the period since independence in August 1947.

Nehru saw to it that his daughter would rule, if not soon after his rule but in due course. When I was working as Information Officer to Lal Bahadur Shastri then the Home Minister, I would tell him to get ready, particularly, when Nehru had a stroke. Shastri told me that *unke man me to unki saputri he* (His daughter in his mind), adding that it would not be easy. He would not challenge Panditji and go back to Allahabad. But Morarji Desai would not accept Indira Gandhi.

This happened when Nehru died. K.Kamraj, the then Congress President, was a staunch follower of Nehru. He wanted, who he had discovered, was one key that opened many locks. Sanjiva Reddy from the

South, Atulya Ghosh from Calcutta and S.K. Patil from Bombay were stalwarts in their own right but were willing to accept Shastri because he did not push himself to give them the feeling as if they were not equal.

I was working as Political Correspondence of *Indian Express*. I wrote at that time that: "In the hush of a summer night in 1963, five men groped their way to a sequestered bungalow overlooking an expansive valley in the temple town of Tirupati down South. One was ungainly and heavy, another portly, the third brisk and breezy, the fourth, slight in stature, and the fifth looked like a muscular wrestler. All of them came from different directions to defy detection, and they succeeded in doing so. There was hardly anybody in the streets. Most people had gone to bed to get sufficient sleep before responding to the pre-dawn call of the temple". After Shastri's death, power reverted back to the dynasty.

Rahul Gandhi, is, however, correct when he criticizes Prime Minister Narendra Modi for creating an 'atmosphere of intolerance'. As many as 17 crores Muslims in the country do

not figure anywhere. They have also withdrawn from the public gaze. It is as if they have accepted themselves the status of being number-2 citizen in their own country.

On the other hand, the Hindus on the whole have not forgiven them for partition. Even today, when there is tension between India and Pakistan, the Muslims are seen with the eye of mistrust. Even otherwise they are left to fend for themselves in the localities which are slums. Employment-wise, they can be counted on fingers. Very few make in competitive exams. The Sachar's committee has brought out how their plight is worse than that of dalits.

The Hindus have to retrieve them from the pool of poverty. But they are left to wallow in the abyss of helplessness. Partition on the basis of religion has drawn a line whereby the Muslims in India have suffered the most and still they are for the religious prejudice. Even mixed colonies are disappearing and Muslims feel safe among their own community people when the living condition is impossible.

With Prime Minister Narendra Modi's rule, the gulf between the two is increasing. RSS men are seeing to it that no Muslim holds a key position in the public sector. I recall that a Muslim engineer who dropped me at the Srinagar airport complained that he had gone to Bangalore in search of a job but was rejected straightaway when his credentials were known.

Quaid-e-Azam Mohammad Ali Jinnah, founder of Pakistan, envisaged that the both countries, one with Hindu majority and the other with Muslim majority would conduct affairs in such a way that religion does not come in the way of state affairs.

It is a pity that the Congress has become irrelevant. Otherwise, it could have provided secular platform to the country. Rahul Gandhi would increasingly realize that his party would have to work at the grassroots once again and try to change the temperament of the people. India fought for a democratic and secular country both Mahatma Gandhi and Jawaharlal Nehru reminded the people of their heritage which had both Hindus and Muslims as it's inherent. In fact, it is surprising that Nehru's name is sought to be effaced. Liberal BJP leader, AtalBehari Vajpayee was an ardent follower of Nehru.

Once when Vajpayee was Prime Minister, I, then Member of Parliament met him in his room, he very proudly told me that he occupied the same chair

which once Nehru did. But today the BJP is even trying to change the name of Nehru from the Nehru Memorial Centre. Some scholars are trying to stop the effort but the matter has been left to the prime minister office (PMO).

They should remember that Nehru was one of the stalwarts who sacrificed everything to oust the British. He went to jail many a time but this did not in any way lessen his determination for the country's independence. Rahul Gandhi, his great grandson, should tear a leaf from his book and put up the fight, not for the perpetuation of the dynasty but for the protection of country's ethos: democracy and secularism. People of India would again make Congress relevant. The important thing is the heritage: United, Secular and Democratic.

Another Horrific Act of Capitalist-Communal Nexus

The Socialist Party strongly condemns the murder of GauriLankesh, activist and editor of 'GauriLankeshPatrike'. The party calls upon the state and the central governments to arrest and sentence the killers of GauriLankesh at the earliest.

The Socialist Party believes that the killing of intellectuals, writers, journalists and political activists is being committed one after the other due to the capitalist-communal nexus operating within the country's politics. That could be the only reason why the governmental system does not make serious efforts to even identify the killers.

The party considers that the suicides of lakhs of farmers and the mob-lynching of the citizens of minority community too is a result of this capitalist-communal nexus, whose main players are the BJP and the Congress.

In the party's view, the increasing communal fanaticism in the country can be curbed only when neo-liberal fanaticism is rejected. Only then can there be an end to day-to-day killings and suicides.

– Abhijit Vaidya

Yogi Should First Get Children Admitted

Sandeep Pandey

There is a high profile event being organised by famous media house India Today at the City Montessori School in Lucknow to present sanitation awards in which the Chief Minister of Uttar Pradesh, two deputy CMs, Vidhan Sabha Speaker and State Minister for Law and Justice, Mayor of Varanasi and film personality ShilpaShetty are participating.

City Montessori School has been defying the order of District Magistrate of Lucknow for admission of children from disadvantaged groups and weaker sections for free education from classes I to VIII to its various branches under section 12(1)(c) of the Right to Education Act 2009. 13 Valmiki children were admitted in its Indira Nagar branch in 2015-16 because of a Supreme Court's direction. But the school has not admitted a single child on its own after that even though orders of admission of 18, 55 and 296 children for the academic years 2015-16, 2016-17 and 2017-18, respectively, are pending.

CM's visit to CMS will provide legitimacy to a school which doesn't honour the orders of his government or administration and flouts the national law openly. Yogi has made a pronouncement earlier that he'll improve the quality of government schools to such an extent that people will not have any need to get their children admitted to private schools. He has also said that everybody should get their children educated in government schools. It is noteworthy that there is a 2015 High Court order of Justice Sudhir Agarwal in U.P.

which has directed the U.P. government to make it compulsory for everybody receiving salary from the government to send their children to government schools. The previous Akhilesh Yadav government didn't implement it and neither has the Yogi Adityanath government given any indication that it is serious about implementing it. Yogi has only made a statement once supporting the spirit of the judgement. But he'll join hands with the lobby of private schools so soon in his chief ministership was not expected. He was expected to not give any importance to private schools.

The Bhartiya Janata Party government, like its predecessors, too has become a patron of the private education mafia. May be it is politically expedient for parties to protect the interests of the capitalists.

Jagdish Gandhi is the most gross symbol of commercialisation of education and questions will be raised about any government which hobnobs with him. AkhileshYadav government awarded him with YashBharti award. After Jagdish Gandhi opposed the admissions of children under section 12(1)(c) of RTE Act in his school in 2015, the AkhileshYadav government also awarded his wife Bharti Gandhi with Rani LaxmiBai bravery award. Was the bravery of the Gandhis in opposing the admissions of underprivileged children? Now the Yogi government also seems to have come under the influence of Jagdish Gandhi.

The BJP is a pro-capitalist party anyway. Narendra Modi has said that

the government schools which are not being run well should be handed over to the private groups. It is not difficult to imagine that privatisation of education is a sure way of damaging the quality of government schools and making good education out of reach of the poor child. The process of privatisation is in general anti-poor. The basic premise of privatisation is to carry out activity with the sole motive of earning profit. When schools will be run for profit making, as is already happening, how are the poor children expected to have access to them? The section 12(1)(c) of RTE Act had opened a window of opportunity for underprivileged children upto 25% of class strength in private schools for free education. But the manner in which Jagdish Gandhi and other owners of private schools are out to scuttle this provision of the Act it doesn't appear that underprivileged children will gain much from this.

A local businessman and BJP leader in Lucknow Sudhir Halwasiya has also denied admissions under RTE Act in his school Navyug Radiance. When a BJP leader is also openly violating the Act it can be imagined what the state of affairs of its implementation would be. The parents whose children have been issued orders for admission under section 12(1)(c) of the Act are running from pillar to post but their dream of getting their children educated in good schools has been grounded. Some are approaching the Court but it is not within everyone's means to take that course.

(Continued on Page 9)

India's Foreign Policy: Less Continuity and More Change!

D. K. Giri

It was believed for long that the foundation of India's foreign policy was laid by Jawaharlal Nehru, the first Prime Minister of India. He left a deep and lasting impact on the foreign policy of independent India. The core principles of foreign policy enunciated by him continue to serve as the guiding principles of all subsequent governments and Prime Ministers after him. Of course, changes in the policy were introduced from time to time in keeping with the changes in international politics. But the core remained unchanged. That is how the 'cliché' "India's foreign policy: continuity and change", gained currency. Professor Bimal Prasad formerly at Jawaharlal Nehru University as Dean of School of International Studies, then our Ambassador to Nepal promoted this approach in a seminal book under the same name. But, evidently, since the last three years with Narendra Modi of Bharatiya Janata Party as the Prime Minister our foreign policy has undergone radical changes, a clear departure from Nehruvian approach. In fact, if Nehru's architecture of our foreign policy could be called Nehru doctrine, it has now been replaced by what is termed as Modi doctrine. Visibly, there is less continuity and lot more change in our foreign policy. As someone perceptively commented on India's foreign policy, "Modi has broken the mould without rocking the boat."

Foreign Policy experts like Sumit Ganguly, in his book "India's Foreign Policy – Past, Present and Future" (2015, OUP), divides India's foreign policy into 4 phases. The first is the Nehruvian era (1947-64), which set

the benchmark for India's foreign policy. This was a period of high idealism. The second phase overlaps with tenures of Lal Bahadur Shastri, and Indira Gandhi. This phase was marked by security concerns and dependence on Soviet Union especially after 1971 war with Pakistan over Bangladesh. The third is of 1990s when trade and economy replaced security as the overriding foreign policy interest. In an informal conversation with the author, the Indian Ambassador to France confirmed in late 1990s that all the Indian Missions were asked to scout for trade and investment opportunities unlike in the past when defence deals were a priority. The fourth is the current phase 'a new phase in India's foreign policy, "a period of pragmatism".'

On a deeper analysis, however, one would find that there were only two distinct phases in India's foreign policy, one under the Congress regime, another under Narendra Modi, although intervening governments of Morarji Desai (1977-80) and I.K. Gujral (1997-98) and Atal Bihari Vajpayee (1998-2004) had some small shifts in our foreign policy in favour of the neighbours, namely Pakistan. The Janata government of Morarji Desai is also known for espousing "genuine non-alignment".

India's foreign policy, rather her national interest suffered from four cardinal faults under Nehru. Narendra Modi has begun to correct those fault lines, and that defines the radical new phase of India's foreign policy. Congress foreign apologists would contend that Modi's foreign policy is continuation of Manmohan

Singh's government's approach. Sashi Tharoor Minister of State for External Affairs in Manmohan Singh's government, says that the "hallmark of our government was the concrete decision of India's foreign policy to link India's economic transformation and growth of India with its foreign policy approach and objectives." In fact, that is part of the story. They have to acknowledge that India has given up on Nehruvian approach and corrected the historic mistakes of that period. Shashi Tharoor, before joining Congress had correctly assessed Nehru's approach to our foreign policy as a "moral commentary on world affairs." Be that as it was, it is in order that we recall those landmark events and examine how they were undone.

First, Nehru's emphasis on moralism in foreign policy in lieu of pragmatism to save our national interest; for instance, he considered the European countries and United States as capitalists-imperialists, and tilted towards Soviet Union, borrowing a lot of ideas from the latter. Thus Nehru was called a crypto communist. He dismissed the formation of European Community in 1957, a 'capitalist club' and so we did not have EEC/EU policy for long although around 60 percent of trade deficit was with EU countries. Modi has deepened our contact with EU countries and initiated new ones. Second, our policy of non-alignment was unviable, and not in our interest. For greater gains, countries surrender voluntarily part of their sovereignty. Take the case of EU countries, Germany's defence policy, Japan's and Korea's defence ties with US. As a result, all these countries, Germany,

Japan, Korea have emerged economically powerful. In fact, our non-alignment approach had to be compromised in 1956, when Soviet Union invaded Hungary, and there was an Anglo-French attack on Suez Canal at the same time. Nehru was critical of France and UK but kept quiet on Soviet action as he was dependent on USSR for their veto on Kashmir. Modi has given up non-alignment by beginning to build strategic alliances. India as a poor country had paid heavily to defend itself on its own, despite our friendship treaty with USSR in 1971. The treaty was in violation of principle of non-alignment, and drained us off as we were compelled to buy armaments from USSR.

Thirdly, Nehru's approach to Kashmir; our Kashmir policy has defined many of our foreign policy objectives. When Indian Army was beating back the tribal invaders of Kashmir backed by Pakistani Army, Nehru ordered the Army to halt, as he wanted to take the matter to the United Nation. He did this against the advice of the Army commander who wanted to a few days to clear the entire Kashmir including what is now called PoK off the invaders. Without heeding the advice, Nehru took it to UN. The rest is all before us. Successive governments have tried to fudge the issue and evade it with some veto support from USSR. But, the present government sees the problem differently. The Kashmir issue has to be settled through international military support that works as a deterrent; so no one would meddle in Kashmir.

Fourthly, Nehru's policy on Tibet; it was the British sagacity that they made a buffer between India and China in Tibet, an independent country. Nehru got carried away with Chinese overtures, so called *Hindi Chini bhai-bhai*, and gave away Tibet without any

reciprocal concessions. China came close to our borders and began to breathe down our neck. The present government has stood up to our fractious neighbours China and Pakistan, by drawing close to the United States. It is our proximity with US that China and Pakistan are holding off. We do need friends in world politics, although there is no permanent friend or foe. We have made such friends now, US, Japan, Germany, Israel and others. Such alliances are the bulwark against any invasion or trouble-making in the country. That is the departure from moralistic non-aligned third worldism of the past.

One more historical blunder needs to be noted. In 1955, India was offered a United Nations Security Council seat by the United States, how even, to the surprise of many, Nehru declined the seat and suggested the seat be reserved for China instead, as at the time China was ruled by Chiang Kai Shek, the dictator. Having lost this great opportunity to be a part of UN Security Council we are now lobbying hard to get a seat in a Security Council. Similarly, in 1957, Bhabha suggested that India was ready for a nuclear explosion. Nehru refused. If we had done so, we would have long precedent Pakistan and even China in joining the nuclear group. China made its bomb only in 1961. Thereafter, the world powers decided to ban further nuclearisation along those to retain who already had. India would have been there without any difficulty. Now we have the difficulty for entering into the NSG – Nuclear Supply Group etc.

Kashmir is a test case for the new government as it has been for the previous ones since Nehru's. As said before in this article Kashmir defines or deflates our foreign policy quite a lot. India insists on dialogue with Pakistan on Kashmir, expects Pakistan

to stop aiding terrorists operating in Kashmir, before dialogues could begin. But, is there an agenda for dialogue? Pakistan wants Kashmir; does not want any dialogue until their demand is met. India does not want to part with an inch of Kashmir. New Delhi says we can talk anything under the sun, but no partition of Kashmir from India, no way. With such rigid positions, how can there be any dialogue. Yes, there can be a dialogue, provided that we are creative, flexible and willing to learn from others.

Let me venture to suggest that Kashmir and Northern Ireland is somewhat similar. Yet, in Northern Ireland, peace prevails now. How was it done? The peace accord was achieved during the tenure of Tony Blair as the Prime Minister. In his autobiography, from his experience, he lists ten core principles of conflict resolution; one, at the heart of any conflict resolution must be a framework based on agreed principles; two, to proceed to resolution, the thing needs to be gripped and focused on continually, in exhaustively, relentlessly; three, in conflict resolution, small things can be big things; four, one has to be creative; five, the conflict won't be resolved by the parties, it left to themselves. If it were possible for them to resolve it on their own, they would have done it. They need help; Six, we must realize that, for both sides, resolving a conflict must be a journey, a process; Seven, the path to peace is disrupted by those who believe that the conflict must continue; Eight, leaders matter, the quality of leadership is a sine qua non; Nine, the external circumstances, must militate in favour of not against; Ten never give up.

Finally, who are the parties to this dialogue or negotiation, India and Pakistan? Not really. As India and

Pakistan have irreconcilable a priori position on the affiliation of Kashmir. India says it is an integral part of India, Pakistan says it should come to them. So, for India, the parties are New Delhi and Kashmir separatists and militants. Once India, closes the space for dissent and revolt, Pakistan will have no role. Let us begin the process.

On balance, Modi's foreign policy seems more confrontational than collaborative especially with our neighbours. Confrontation affects all parties negatively although some temporary benefits may accrue so, on the lines of dynamics between 'war and peace', suggested by Leo Tolstoy, confrontation must precede conciliation and collaboration in mutual benefit. Second, foreign policy is both promotion of national interest, and reflection of domestic situation. We are struggling, even after seven decades of independence, to address chronic and massive poverty, illiteracy, poor-infrastructure, lack of large-scale livelihoods, and so on. India's position in Human Development Index is much lower. This has to change if we expect to play a bigger role in international politics. Hans J. Morgethau, the author of real politik had remarked India could not pursue its laudable objectives in its foreign policy due to its persistent, wide-spread poverty. China lacks political skills as it is single-party authoritarian state, but uses its economic might in its conduct of foreign policy. Third, India has moved closer to US, and its allies, but it should retain the confidence of its long-time friends like Russia and Iran. Time and again, these countries have stood by India. True, new allies lend new support and strength, but it is equally important to nurture long-time friends, or at least, not antagonise them. This is what will test the mettle in India's foreign policy.

Visions of Secularism: Triple Talaq Judgment

Irfan Engineer

Secularism is once again being debated after the 5-member Constitutional Bench of the Supreme Court of India set aside by majority of 3:2 Judgment in Writ Petition (C) No. 118 of 2016 (Shayara Bano vs. Union of India & others), talaq-e-biddat or instant triple talaq in one sitting resorted to by some Muslim men. The Judgment is welcome in so far as it relieves Muslim women from the misery or potential misery of instant triple talaq in one sitting. However, this is only a partial amelioration of their misery. Patriarchal interpretation Qur'an's message, different Sunni fiqhs (Islamic schools of jurisprudence) – Hanafi, Hanbali, Maliki, Shafi, and Shia fiqhs (collectively called as Muslim personal law) will continue to rein even when they are in violation of fundamental rights mentioned in Part III of the Indian Constitution on fundamental rights of citizens.

There were some common grounds in three separate Judgments given in the Shayara Bano case – none of the three Judgments contested the ground that "personal laws", not being a law passed by the state, cannot be subjected to test of violation of fundamental rights of citizens. The Chief Justice of India and Justice S. Abdul Nazeer in their joint Judgment held that personal laws or laws that govern family relations viz. marriage, divorce, maintenance, custody of children, intestate succession, adoption of children, guardianship, etc., as they are not laws passed by the state, could not be subjected to judicial scrutiny as to whether they violate fundamental rights of the citizens.

It was not within the realm of discretion of judiciary to set aside a matter of faith and religion, held CJI and Nazeer J. They stated in their judgment, *"It is not difficult to comprehend, what kind of challenges would be raised by rationalists, assailing practices of different faiths on diverse grounds, based on all kinds of enlightened sensibilities. We have to be guarded, lest we find our conscience traversing into every nook and corner of religious practices, and 'personal law'."* The Honourable Justices further held, *"...while examining issues falling in the realm of religious practices or 'personal law', it is not for a court to make a choice of something which it considers as forward looking or non-fundamentalist. It is not for a court to determine whether religious practices were prudent or progressive or regressive. Religion and 'personal law' must be perceived, as it is accepted, by the followers of the faith. And not, how another would like it to be (-including self-proclaimed rationalists, of the same faith). Article 25 obliges all Constitutional Courts to protect 'personal laws' and not to find fault therewith. Interference in matters of 'personal law' is clearly beyond judicial examination. The judiciary must therefore, always exercise absolute restraint, no matter how compelling and attractive the opportunity to do societal good may seem."* (Shayara Bano vs. Union of India, 2017, p. 267, para 196). To follow personal law then, is part of freedom to profess, practice and propagate religion, unless it falls foul of

reasonable restrictions mentioned in Article 25 of the Constitution, viz. public order, morality and health.

Rohinton F. Nariman and Uday U. Lalit JJ in their joint Judgment did not contest the premise viz., that personal laws are beyond the pale of judicial scrutiny. They held that the practice of talaq-e-biddat was recognized and enforced by Section 2 of 'The Muslim Personal Law (Shariat) Application Act, 1937', a Colonial legislation. Talaq-e-biddat was therefore 'law in force' within the meaning of Article 13 (1) of the Constitution and liable to be struck down if talaq-e-biddat fell foul of the Part III of the Constitution of India on fundamental rights. The Constitutional Courts therefore had power to set it aside on the ground that it was arbitrary. Justice Kurian Joseph in his Judgment agreed with the premise propounded by the CJI and Justice S. Abdul Nazeer, viz. that talaq-e-biddat could not be termed as 'law in force' being a customary law and traditional practice. Impugned practice of instant talaq therefore was part of personal law and was amenable to judicial scrutiny for violation of fundamental rights. However, Kurian J. disagreed with the CJI and Nazeer J. on the issue that talaq-e-biddat was against the tenets of Holy Quran and that being so, it was ultra vires the S. 2 of the Shariat Act, 1937 and did not enjoy Constitutional protection. Talaq-e-biddat was therefore liable to be set aside.

Unrestrained freedom of personal laws

It could therefore be said that the learned Judges of the Constitutional Bench gave a 3:0, if not 5:0, verdict that personal laws of all communities would reign unrestrained and enjoyed the protection of Article 25[1] of the Constitution which guarantees right to freedom of religion. Personal laws, as

mentioned above, are rules of decision which pertain to marriage, divorce, etc. Unless codified (and to the extent codified) by the legislature, they are based on religious scriptures, customs, traditions and usages of communities. Custodians of religious scriptures and customs of all communities have been patriarchal and feudal elite. They often enforce them using fear of God and at times use coercive force which may include threat of exclusion from community controlled institutions, social boycott and even physical force. Personal laws often privilege a section (feudal and patriarchal elite) and disadvantage the rest in various degrees. Women and children have always been disadvantaged by the prevalent understanding of religious scriptures mediated through patriarchal culture. The custodians of personal laws – we can call them cultural entrepreneurs or gate keepers of culture, customs and traditions – are necessarily conservative, may be with a few exceptions. Much necessary changes in customs and traditions come about when individuals within communities challenge the practices and traditions in face of ostracization and coercive harassment.

Freedom to profess, practice and propagate religion accrues to all persons. All persons are equally entitled to that freedom. However, if personal laws are accorded unbridled Constitutional protection by Art. 25, the cultural gate keepers will enjoy higher degree of freedom as they can impose their understanding of religion and personal law on others. The elite cultural gatekeepers often draw lines to construct separate communal walls. These custodians of community would judge right behaviour from wrong for their entire community. Can we then say *all persons equally* enjoy freedom of religion? The elite would enjoy more rights to profess and practice religion

than other members of a community. There would be hierarchy within each community based on gender and other birth based social status. The cultural gatekeepers defend these hierarchies as God made. India would then look more like confederation of communities rather than nation of equal citizens.

Dr. Babasaheb Ambedkar wanted to make our political democracy a social democracy as well. Social democracy is a way of life which recognizes liberty, equality and fraternity as the principles of life. He warned us, *"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up."* (Dr. Ambedkar, 1949)

Despite setting aside the practice of instant triple talaq in one sitting by 3:2 verdict, there is a cause of worry. Personal laws have been placed on a pedestal of freedom of religion. There is not even a whisper of gender equality in the entire judgment. R. F. Nariman and U. U. Lalit JJ. invoke Art. 14 in support, however, on the issue of arbitrary nature of talaq-e-biddat.

AIMPLB reaction

The All India Muslim Personal Law Board (AIMPLB) in its initial reaction reminded us that the Court had upheld their submissions viz. personal laws are part of freedom of religion and cannot be interfered with. AIMPLB felt that their position had been vindicated. The Ulemas of various schools of jurisprudence would still be sitting over the lives of Muslim women enforcing their writ. Though talaq-e-biddat has been set aside, Muslim women could still be divorced by talaq-e-ahsan (two pronouncements with a gap of three months) and talaq-e-hasan (pronouncing talaq once every month three times when his wife is not menstruating). The instant talaq would be replaced by a procedure to be followed over a period of three months. While no marriage can be forced upon either partner, and it is not prudent to continue a marriage when there is an irretrievable breakdown, divorced women should not be left in a situation of destitution to fend for herself. To AIMPLB, the practice of talaq-e-biddat (something they agreed was bad in theology, though good in law) has been sacrificed but the Muslim personal law has been saved.

Secularism

The Shayara Bano Judgment has drawn red lines for the judiciary. Personal law having been declared integral part of freedom of religion, they would not be amenable to judicial scrutiny for violation of fundamental rights. Ironically, under Article 25, right to freedom of religion is not absolute. It has been subjected to 6 reasonable restrictions. 1) public order; 2) morality, 3) health, 4) other provisions of Part III of the Constitution (fundamental rights), 5) regulation or restriction on economic, financial, political or secular activity associated with religious

practice and 6) providing for welfare and reforms. The last two restrictions would require legislative intervention. In our humble understanding, when the judiciary is mandated to protect the freedom of religion, the language of Art. 25 is clear – it is subject to the other provisions of Part III, including Articles 14, 15 and 16 right to equality, recognized for all persons including gender equality.

However, so far as personal laws are concerned, The Shayara Bano Judgment seems to have passed the buck on to the executive and legislature to make it compliant with the fundamental rights. Given the political agenda of uniform civil code of the present regime, minorities fear that the legislature may impose a family law that is entirely alien to their way of life and with the intention to “integrate them into a Hinduized nation”. The learned former Attorney General – Mukul Rohatgi submitted before the Court that if they set aside the practice, the Central Government was ready to bring in legislation. This fear of imposition of an alien code keeps the flock of minority together. They fear any change, howsoever desirable and good for the community.

The Shayara Bano Judgment seems to imply that the Judiciary is obliged to uphold religious freedom of religio-cultural gatekeepers in their enforcement of personal laws. The Judiciary would refrain from protecting fundamental rights of members of the community vis-a-vis the religio-cultural gatekeepers. The Judiciary would encourage church within Islam even though the religion does not permit one. There is no agent between God and believer. Believer can seek help to understand the guidance of Quran but she is solely responsible and responsible only to God, not the religio-cultural gatekeepers. Shayara Bano Judgment

leaves gullible followers to the mercy of the self-appointed church – institutions propounding and enforcing various *fiqhs* and the AIMPLB. Islam does not oblige believer to follow any school of jurisprudence, just be guided onto the straight path (*sirat ul mustaqim*) by her own understanding and be responsible only to Allah. There is enough space in Islam for enlightened understanding evolution of law in accordance with changing times and the process is called *ijtihad*. The Ulemas of various *fiqhs* closed the gates of *ijtihad* and merely follow their respective *fiqhs*. They extol the virtue of *taqlid*, i.e. merely submitting and following without application of mind to their *fiqhs*.

While the Shayara Bano Judgment is welcome in so far as it sets aside the practice of talaq-e-biddat, the protection accorded to Muslim Personal Law on the grounds of freedom of religion is worrisome. The Judgment has left minority citizens to either the mercy of cultural gatekeepers propagating *taqlid* or to a Parliament wherein the Hindu supremacists are in majority – between the devil and the deep sea.

Three Ld. Judges of the Constitutional Bench accord protection to personal laws on the basis of Article 13 (1), which provides that only *laws* in force before the commencement of the Constitution can be declared void in so far as they are inconsistent with the Constitution. The CJI, Nazeer and Kurian JJ. held that Muslim personal law is not a ‘law’ within the meaning of the term, and therefore cannot be tested on the ground of inconsistency with the Constitution, including the fundamental rights.

Nariman and Lalit JJ. opined that personal laws operate under the Shariat

Act, 1937 and therefore is a law as defined in Article 13 (3). Article 13 (3) (a) includes within the meaning of law even customs and usages having force of law within the territory of India. Muslim personal law is not only customs and usages having force of law within the territory of India, the customs and usages are also mandated under the Shariat Act, 1937. On both counts under Article 13 Muslim personal law is "law" as defined under Art. 13 and therefore to the extent it is inconsistent with the fundamental rights under Part III of the Constitution, it is liable to be declared void and inoperative.

Operation of Muslim Personal law impacts 172 million Indians in important area of marriage, divorce, maintenance, custody of children, testate and intestate succession, guardianship, adoption of children, etc. Can we leave this vast and important area of life to the whims of cultural gatekeepers and exclude it from important rights as equality, justice, right to life and liberty?

Religion may not be subjected the challenges raised by rationalists or enlightened sensibilities; religion and 'personal law' may be perceived, as it is accepted, by the followers of the faith and not, how another would like it to be as opined by the CJI and Nazeer J. However, should the cultural gatekeepers be allowed unrestrained freedom in the name of personal law and force a section of citizens, particularly women of the community, to live as slaves or second class citizens and the judiciary feel helpless to come to their rescue?

We are not against Muslim Personal Law or any other personal law for that matter. They all have their strengths and are good for their followers. We firmly stand for diversity. However, so far as any provision of a personal law is inconsistent with the fundamental rights

of the citizens, it should be held to be void. In Shayara Bano Judgment we have achieved only partial victory. We have to carry on the struggle till these religio-cultural gatekeepers are completely marginalized or they too are in consonance with Constitutional objectives.

[1] Article 25: Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(Continued from Page 3)

People like Jagdish Gandhi who were running their schools like fiefdoms are averse to any government interference in their school in the form of 25% of their admissions being thrown open to public. In a way this is 25% nationalisation of private schools which private schools are resisting. It is upto the government to take a stand on whether it'll allow private schools to have their way or will enforce compliance of the national Act by securing admissions for underprivileged children who too now have a right to the same education as the children of rich receive.

In UP corrupt politics has made an alliance with education mafia. People who were under the impression that corruption will decrease if not be completely eliminated under the BJP rule should at least be disillusioned now. In reality corruption under BJP regime has increased. There is a

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.- In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

simple reason for this. BJP needs more money to contest elections than other parties.

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Articles 370 and 35A

Pannalal Surana

A few citizens, who during the transition period of partition, had migrated to J&K from some parts of West Pakistan, have recently formed an NGO by name "We the people". It has filed a writ petition in the Supreme Court of India challenging the validity of Article 35A. Their contention is that besides being partial to the permanent residents of J&K, it being a constitutional amendment was not included in the Constitution by following due procedure laid in Art. 368.

Before going into the legal aspects, it is necessary to bear in mind a few relevant facts:

1. At the time of partition, former princely states were advised to merge with either Pakistan or India. But Maharaja Hari Singh, then ruler of J&K did not do so till 24th October, 1947 when Pakistani men invaded that state.
2. The maharaja had an army of only 1100 while the invaders were more than 5000. Realising that he would not be able to defend the state, he asked for military help from India.
3. Government of India said that they would be able to do so only if that state merges with it. Otherwise it would be charged that it had invaded foreign territory.
4. The maharaja signed Instrument of Accession on 25th night specifically mentioning that it is restricted to only three subjects, viz, Defence, Foreign Affairs and Communications. It further stated that final decision would be taken after ascertaining the "wishes of the people".
5. India accepted IA instantly and rushed its jawans to resist the advancing Pak invaders. There was no time to engage in legal niceties.
6. The UNO had passed a resolution saying that referendum would be held only after Pakistan withdrew all its forces from all the territory of J&K.
7. Pakistan did not comply. So referendum could not be taken till today.
8. India had already started Constitution making. J&K said that as it has not finally merged with India and so, instead of participating in that Constitution-making, it would have its own Constitution. India could not say 'no'.
9. India adopted its Constitution on 26 November, 1949 and its implementation was ushered in on 26 January 1950. Constitution making of J&K was lingering on. So, with the consent of the State of J&K, Article 370 was inserted in the Constitution of India which says that article 1 of its Constitution, which states that Bharat is the name of the Indian Union would be treated as part of the Constitution of J&K, and further that the laws passed by its Parliament would be applicable to J&K only after approved by the Vidhan Sabha of the J&K. It may be mentioned here that that the Parliament can pass laws only on the subjects included in the Union List. It cannot pass laws on subjects included in the State List and can do so for items in concurrent List only with the consent of the State/s. So no fault can be found with Art. 370 on the ground that much more has been given to the State of J&K only.
10. Constitution of J&K was finally adopted in November, 1954 and thereafter, that Constituent Assembly was dissolved. The people of J&K said that exclusive rights of the permanent residents in matters of purchasing land in the State, contesting election to its Vidhan Sabha, appointment to State bureaucracy and obtaining scholarship, which have been enshrined in the State laws adopted as early as 1927 and 1932 could be transgressed by Indian Parliament because it has exclusive power under Article 35 to enact laws included in the Union List and Citizenship is part of the Union List. With a view to safeguard those rights of the permanent residents of J&K and upon asking by the Government of J&K The President of India promulgated The Constitution (Application to the State of J&K) Order 1954 which says that Article 35 A would be treated as being part of the Constitution of India since 1950. The President is empowered by the Article 392 to rectify legal and procedural lacunae. So Article 35A was embodied which contains the provision that Vidhan Sabha of J&K would be able to enact laws

about according status of permanent resident to those who have migrated from that part of J&K which is occupied by Pakistan.

That is the bone of contention raised by the NGO “We the people”.

Perusing all the facts narrated above, it becomes clear that-

1. Rights of permanent residents of J&K about purchasing land in that State figured in Art. 370 and 35A not for the first time, but were enacted by the erstwhile Ruler of the State. There was apprehension in those days that monied people from Europe and/or Punjab may purchase lands of the poor peasants of J&K. So, with a view to safeguard means of livelihood of the poor peasants of the State, laws of 1927 and 1932 were adopted by the then Ruler after due consultation with the then British Government at Delhi.

2. The NGO argues that the provision of Article 35A transgresses their fundamental right to equality before law under Article 14 of the Constitution.

Here, it is relevant to look at the Preamble of the Constitution which has accorded first place to Justice above Equality. Its import must be fully grasped. Equality is not to be viewed from arithmetical angle but to be appreciated as in consonance with Justice. It is obvious that no average peasant of any part of India outside J&K is going to purchase land in that State. Climate differences are so vast. Only a few rich persons may like to purchase land in J&K with a view to put up 5-star hotel there. Is it proper to allow them to deprive poor peasants of J&K of their means of livelihood?

Secondly, inclusion of Article 35A in the Constitution is to be accepted as rectification of procedural lacuna in the transitional period when Constituent Assembly of J&K was being dissolved. Art. 392 has been included in our Constitution with a view to overcome lacunas which could not be prevented at those tumultuous times. It is futile to say that Art. 35A should be treated as Constitutional amendment.

Let us uphold superb value of Justice and let it guide all our governance.

Every Indian citizen should extend friendly hand to our brethren in J&K which have suffered so much.

Let us not do anything that would strengthen hands of those who would like to alienate those people from mainstream India.

Senior Economists about Demonetization

Bharat Dogra

Pronab Sen, Former Chairman, National Statistical Commission, has said that demonetization was an economic disaster and its worst impact on economic growth is likely to be revealed later when new data comes in.

Responding to questions by *India Today* magazine (September 18) Sen said, “the main adverse effects of demonetization have been on the non-corporate sector, and the present GDP estimates reflect only the performance of the corporates, and the non-corporate estimates will only be incorporated once the informal sector survey data becomes available. In so far as the corporate sector is concerned, demonetization has had a relatively small effect arising from the demand side.”

On the other hand the impact on the informal sector has been much more severe. Dr. Sen continues, “The big casualty is the informal sector, which includes agriculture and a large part of construction. Since these sectors are the main generators of jobs and livelihoods, these are also casualties.”

Pronab Sen has added that the after effects are likely to linger on for some

time. He has stated, “I expect the pain to last at least another year. Perhaps much longer. In 2017-18, I do not expect the growth rate of GDP, even as measured by corporate data, to be above 6.5 per cent. With non-corporate data, it will probably be sub-6 per cent, may be significantly lower.”

In a very significant observation Dr. Sen has stated “What it (demonetization) has done is to increase the formalization of economy, not by increasing the formal sector but by reducing the informal.”

Summing up Dr. Sen says about the impact of demonetization, “A political masterstroke and an economic disaster.” Elsewhere in the response he says that at best demonetization can be called an economic misadventure and at worst a disaster.

In another article written for the *Hindu* (September 8), Pronab Sen has said that as most of those having loads of black money hold most of it not in cash but in real estate, gold, stock market and in tax havens or other places abroad and the share of black cash in total black money is only 6 per cent, demonetization policy

was at variance with the main stated objective of dealing a big blow to black money. The outcomes of demonetization in terms of both the originally stated aims of reducing black money and reducing fake currency notes are, according to Dr. Sen “abysmal”.

The *Hindu* of the same date has also carried the comments on this issue of Prof. Arun Kumar, a leading expert on black money who has stated in very clear terms that if extinguishing black money was the intention of demonetization not even 0.01% of that has been achieved. He has added that the government is highly embarrassed, and to cover it up, it has changed the goalpost.

Further Prof. Arun Kumar has stated, “The brunt of this move (demonetization) has been borne by those who never had any black money... The big failure of demonetization is that it was carried out without preparation and caused big losses to the unorganized sector. This has not been factored into the recent data on growth rate, so the loss to the economy would be in lakhs of crores of rupees.”

Dr. Ajit Ranade, Chief Economic Advisor, Aditya Birla Group, told *India Today*, “Demonetization has definitely dented growth. The rural, cash-intensive and informal economies have borne the most adverse impact. In the informal economy, a lot of work had to be stopped and some of the jobs are lost forever. The falling prices of agricultural products, especially perishables, greatly affected farm income which will take a few quarters to recover.”

Dr. Ranade said further that the informal sector has been the biggest casualty of demonetization. He has pointed out, “Costs that are upfront are

costs of printing, replacing old currency with new currency, cost of lower GDP of two or three quarters. A one percentage point lower growth means a loss of Rs. 1.5 lakh crore of national income and more than a million jobs not created.”

Prof. Rohini Somanathan of Delhi School of Economics told *India Today*, “The greatest immediate suffering may

have been on the most vulnerable—the sick needing to go to hospitals, workers with minimal savings who could not get their daily wages, artisans who faced sharp declines in demand since their goods were not daily essentials... If the lack of demand for particular products causes some industries to shut down and if these people can't find opportunities elsewhere their pain will last indefinitely long.”

Peace is Every Step: from India to Pakistan

Priyanka Pandey

India and Pakistan turned 70 this year but continue to be enemies since their partition in 1947. Much like a family feud, the two nations remain hostile and the conflict has escalated since the bitter division at the time British rule was ending. The official story in each country projects the other as precisely that, “the other” and so an enemy. There is no doubt there are serious grievances and issues that the governments and armies of the two countries have with each other. But the negative views that are perpetuated make the conflict much worse.

History textbooks project a distorted view to children. The media feeds this by exaggerating and replaying any negative event involving the other side over and over, and blaming the “other” often without substantiated basis. Efforts to reach out to the other are treated with suspicion. Political leaders on either side who make such attempts are denounced by hardliners of their own side: hardliners who use religion to divide and seize every chance to fuel hatred and revenge. False information and misperceptions create more conflict and make the official story line seem true in the eyes of ordinary Indians and Pakistanis, just like in a family.

It usually takes Indians and Pakistanis step into a third country to get a chance to meet each other. This is when, more often than not, they become friends and see that they are like each other sharing similar food, culture, and language. I have had friends from Pakistan who go out of their way, in small and big ways, therefore my perception about the other side has been very positive. But on a recent visit to Pakistan, I experienced firsthand our sameness and more important, the desire for peace that so many there spoke about, which I guess is a universal quality of the human heart.

I came across several people but I did not see an enemy. They were people just like us. They spoke the same language, wore similar clothes, and looked like us. Lahore looked a lot like Delhi. Except for the road signs in Urdu, I could have been in parts of Delhi. I did not get a feeling that I was in a foreign country. A taxi driver who took me around observed that the two countries try to scare each other by acquiring weapons and bombs. If they tried to be friends, he felt both would save a huge amount of spending on defense which could instead be used to improve the lives of their people. He was without a doubt that the people of

both countries would be better off if the two governments became allies.

This view was echoed by others I came across. One person shared enthusiastically that he was from Haryana state in India, his family spoke Haryanvi, and they looked up to India because India seemed to have greater equality for women. A young woman shared the story of her grandmother who migrated from India at the time of partition and although old by now, continued to reminisce about her hometown in India. When the person at the hotel desk asked for an identity proof, I gave my passport. It turned out he had not seen an Indian passport before because he was new in the job. He looked at it carefully, making a comparison to the green color of a Pakistani passport and then declared “we are one”. He recalled visits from members of his mother’s side of the family who live in India.

There were a couple of times when I was mistaken for a Pakistani because of my appearance and language, which reaffirmed for me that we are indeed the same people. Among those I met, I did not sense any hostility towards Indians. I received a lot of warmth and friendship. A long time friend who is a practicing Muslim mentioned during a conversation that a true Muslim holds values of forgiveness and compassion, and not hatred and revenge for others. If more Hindus and Muslims come to see that our religions have similar values at their core, forgiveness, compassion, and tolerance, then maybe there is a chance for religion to unite and not divide us. Neither religion in its essence promotes or condones violence and so any narrative that promotes division and hatred violates the religions

I left Pakistan feeling there is hope for peace. We as people hold the power to shift the stories of our two countries. We can tell a different story; one that is based on our experiences and honors the reality of our people. The people in the two lands are not each other’s enemies; the problems are because of the two governments and the militaries, as well as our perceptions. When someone speaks of the other country negatively, we do not have to validate that perception without checking the facts. We do not have to participate in spreading a negative view of the other without knowing more. We can correct, one at a time, the misperceptions that fuel strong feelings of resentment between the two countries.

Next time someone says “Pakistan is like this” or “India is like that”, we should ask if we hold the right perception. We can pause and remind ourselves that once we lived side by side in the same country. I wonder where we can be if we hold ourselves back from blaming an entire people or religion for the conflict the two sides are in. Every time there is a terrorist attack on the other side, its people suffer just like we suffer when there is an attack in our country. The people on the other side are just like us. They are also someone’s daughter, son, mother, father, brother, sister, spouse, or parent. They have the same hopes, dreams and fears as us and they too want peace. They are our real partners for peace.

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Constitutionalism, Social Justice and Black Money

B. Sudershan Reddy

....Let me start with what ought to be an unexceptional premise, but which unfortunately we seem to have lost along the way. That fealty to the Constitutional values is required of all the stakeholders and not just the Constitutional courts alone. While the Courts are needed to resolve a genuine dispute of law, or to find minimal action as being normatively needed by the State when abdication of responsibility towards a citizen or a group of citizens is of such magnitude and of an egregious nature, the Constitution places an obligation on all the major players to ensure that constitutional values are adhered to.

This point needs to be made explicit, because of late there seems to be a tendency to assume that as long as a law, and the action by the state that law mandates or gives rise to have not been examined by a constitutional court and its vires or constitutionality not ascertained the other stakeholders have no responsibility to assess the legality of their actions on the touchstone of Constitutional values. I was aghast recently, when I heard on television one prominent politician telling the anchor of a TV channel that he does not want to hear about how the decision by his party could be contrary to the Constitutional provisions. At first the politician blustered on about the law not being contrary to the Constitution, and when he realized that he was actually wrong he went on to claim that all of that does not matter as the people will support their move. The claim implicitly was that popular

support itself is sufficient to make any kind of action lawful and moral. While we could all be spouting about Kenneth Arrow's insight, that barring a referendum on each issue, no one can ever know whether a majority/plurality of the populace actually supported one amongst the many issues on which the individuals votes get cast on, there is a far simpler and preliminary reason to be aghast: it seems many of the powers that be have begun to assume that we are a majoritarian democracy and not a constitutional democracy.

The collapse of the distinction between the two, and incidence of such transgressions in an increasing number of arenas and assertions – rights of the minorities, re-subjugation of Dalits, safety of women, and high arenas of executive and even legislative action – point to the limits of constitutionalism. Yet, that only further underlines the importance of constitutionalism to protect the citizens from the vagaries and rapacity of the elites and the powers that dance not to the benefit of all the people, but to the interests of the few.

Modern constitutionalism is a product of a long historical debate of how to restrain collective power vested in a small group of people – restraining them against the collectives of people as a whole or against particular groups of them. The second facet of the debates, about vesting of collective power in rulers or institutional arrangements, revolves around what the scope of the work of

the State needs to be. As we look at historical developments, we should not expect that when an idea, especially regarding liberty or justice, is first formulated it would be visualized as being universal in coverage. Who were expected to be covered by the permissive structure of a liberty or enjoy the benefit of the uplifting blanket of justice would depend on who were thought of as lesser or greater, who was deemed to be worthy or unworthy, who was deemed to be an insider or an outsider and who was deemed to be a freeman or a slave – these were all matters of intense contestation, and the scope of coverage expanded over long spans of time covering many centuries. However, a progressive idea applicable to some necessarily raises questions about its non-applicability in the case of others. The intrinsic nature of liberties and principles of justice is that they are often founded on a core morality that speaks to essential aspects of humanity of all. The strength of a particular normative formulation would then depend on the robustness of its logic regarding the extent of its applicability. Extension of rights and principles of justice to groups hitherto excluded have occurred for multiple reasons, including but not limited to: (1) diffusion and spread of ideas, along with their adaptation; (2) spread on account of dominant cultures, both at the international level and also at the level of individual nations, whether involving colonialism or not; (3) adaptation of values and normative structures as a part of modernization of state and society; (4) struggles, both

peaceful and violent, for inclusion by hitherto excluded groups, or by entire populations seeking new rights or measures of justice, etc.

Thus, one of the primordial modes of characterizing constitutionalism would be the degree to which the State has been enabled and/or achieved extension of equal rights: (a) to periodically vote in or vote out governments, beginning with restricted franchise to a model of universal adult franchise, along with a vertically and a horizontally divided branches of government; (b) equality before the law and equal (and effective) protections of the law (including but not limited to protection from economic forces, natural forces and foreseeing the potential risks and protecting the populace from them) and benefits of armed forces – both civil and armed; (c) the nature and kinds of freedoms conceived, their distributions across groups within the jurisdiction; (d) the nature of fundamental rights assured or guaranteed, and coverage across the entire populace and/or groups; and (e) nature and principles of justice that are conceived and extended to the populace, and distributed across groups. But any which way we understand it, because of the relentless pressure from populaces in each nation for extension of values implicit in each of the organizing categories as listed by me above, all of them or some combinations of them, central normative theme of the debates in and about constitutionalism, and its progress, has been around the question of equality - equality conceived as both procedural and substantive., in actuality and as an ontological assumption and a normative imperative.

What level and kind of equality, along with liberties and policies for

substantive justice, do constitutions of modern democracies envisage in the modern world? It would be useful to begin this analysis from a conception of the state as a “nightwatchman”, providing defence and possibly policing coupled with a legal system to protect property and enforce contracts. At the other end of the spectrum are collectivized communist models, with alleged intra-party democracy. ¹

The first model is often associated with Friedrich Hayek². It is unfortunate that more often than not, our homegrown neo-liberal elites chant Hayek’s name to propose a complete evisceration of any and all roles of the State in the market. While Hayek’s orientation was generally informed by a suspicion of any form of coercive regulation of markets by the State, he recognized that in addition to the role of a night watchman, the State would be needed to regulate activities that destroy nature (protection of environment), activities that will endanger health (as for instance spurious and unverified drugs, or broadly speaking against fraud in markets and in favour of laws against deception) and efforts to provide a security net against hunger and bad health (as minimal charity in societies that have enough or can afford). The obvious problems associated with this model would be about what happens when there are no substantive improvements in the lives of those already poor, and competing with those with much. Could such a state of affair undergird a stable social and political structure? Why couldn’t the elites capture governmental machinery, in the name of greater liberties for themselves, eliminate any and all forms of regulation and suppress even the political freedoms of the poor? Who is to prevent the destruction of nature, and engendering of all sorts of

externalities that destroy the political freedoms and liberties – including right to life – of the many? And if all that matters are the choices made by individuals – as those are to be considered to be the sole measure of goodness, then if the poor and the ones who have lost form a collective to topple the state controlled by elite, why shouldn’t such an event also be treated as a natural expression of choice? For the youngsters here, I would recommend the works G.A. Cohen, particularly his “On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy”, and “Rescuing Justice and Equality” to read and absorb the debates about what ought to be the purpose of the State.

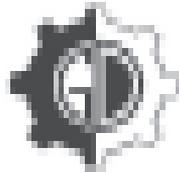
The second model is akin to the collectivized communist models in which groups of bureaucrats decide not just what gets produced but also how it gets produced, prescription of what is acceptable culture and is not, and distribution not according to what one “deserves” but according to what one needs (also to be determined by a bureaucrat). The obvious problems associated with this would be about the destruction of freedoms and liberties, as individuals and being subjected to the whims and caprice of those deciding on behalf of the collective. Because vast powers are vested in small numbers of experts, and the coercive machinery of the State is in their hands, they could take wrong decisions (even if intentions were genuine). And this could happen, even if we assume that they are genuinely concerned about the welfare of the populace, because they do not take into account all the information available, and being used to centralized decision making process in which only small coterie are permitted they do not have any feedback loops of criticism and helpful critique.

(to be concluded)

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