'SUPREME COURT RULING LED TO RETHINK'

Lawyers suspend stir for a month

Our Legal Correspondent

KOLKATA, Dec. 26. — The Bar Council of West Bengal has suspended the lawyers' ceasework for a month with immediate effect. Announcing the council's decision after a meeting today, the chairman, Mr AK Chatterjee, said law minister Mr Nisith Adhikary's assurances must be fulfilled during this period or the council will start agitating against the increased court fees again.

The chairman said the council had decided to suspend the agitation in view of the Supreme Court ruling that lawyers had no right to strike. Second, the Bar Council of India had requested the Bar Council of West Bengal to call off the protest. Third, the law minister had assured the council that the government would consider its suggestions seriously to provide relief to litigants.

The Bar Council meeting today was not held in its office, but in Sealdah court

Mr Nisith Adhikary: the onus is on him

presumably to avoid demonstrations by lawyers who wanted the ceasework to continue. But the lawyers demonstrated in the court as well.

The chairman told reporters that most of the Bar associations had asked the council to suspend the stir. Most of the council members present for the meeting decided to suspend the stir.

Mr Chatterjee regretted the law minister's statement which they said was insulting to lawyers. The council, he said, condemned it and asked the minister to withdraw it.

The atmosphere at the Sealdah court was tense all day. Lawyers gathered on the third floor of the court complex and frisked people before letting them climb to the floor above, the venue of the Bar Council meeting. Only council members, representatives of Bar associations and journalists were allowed to attend.

Dejection set in among lawyers as news filtered out that the council was considering suspending the strike. Some of them began shouting slogans.

At the end of the meeting, six council members started protesting against the suspension decision in front of reporters waiting for a briefing. They said they disagreed with the council's decision till the law minister apologised for his comments, reported in a vernacular daily today, describing lawyers as corrupt.

THE STATESMAN

27 DEC 2002

PROTEST BY LAWYERS

Symbol Of A Power Struggle?

By NR MADHAVA MENON

Advocates are officers of courts who mediate justice and uphold the rule of law. They are not employees of state or agents of vested interests competing to find space in the political power structure. As such, their accountability is to their profession and to the laws of the place where they practice. They enjoy the maximum freedom in structuring and managing professional practices according to a code of ethics which they themselves have evolved. They have a monopoly in legal representation and they alone are eligible to adorn the role of judges.

Unique status

The privileges, immunities and status they command are related to their unique status in administration of justice, the noblest of human endeavours. Have they to stop the functioning of courts indefinitely to be able to uphold justice and rule of law? How does the common man understand this paradoxical situation and still respect the profession to which they belong? If nothing serious has happened despite prolonged stoppage of courts except for further delay in the disposal of already accumulated arrears, does it not suggest that there are alternate ways by which society could manage legal and judicial work? Does the organisation and delivery of legal services deserve a fresh look by Parliament and the courts?

It is perhaps the concerns arising out of such questions which led the Supreme Court to declare that lawyers have no right to strike at all and courts have a duty to proceed with their work even when lawyers boycott courts. It is an opportune moment in our judicial history to take stock of the situation arising out of indefinite strikes called by none other than the Bar Council, the statutory bodies created by Parliament under the Advocates Act with autonomous powers and endowed with legislative, executive and judicial authority to govern the procession.

A quick survey of the genesis of the spate of strikes in the recent past is necessary to appreciate the nature and circumstances under which the leadership of lawyers resorted to such extreme form of protest. Initially a nationwide strike was launched when Parliament adopted amendments to the Civil Procedure Code intended to speed up trials in civil cases. When the matter was mooted by the Law Commission of India or when the Bill was pending in Parliament, the lawyers could have given constructive suggestions if they had any/.

A former law minister who was himself chairman of the Bar Council of India tried to accommodate the divergent views of Bar Councils, but failed. The implementation of a socially beneficial piece of legislation was effectively stalled by the organised Bar little realising the adverse sentiments it created in the minds of harassed litigants. Eventually the mater reached the Supreme Court through a public interest litigation [Salem Bar Association vs Union of India (2002) 8 scale. 146] and the Court found no constitutional infirmity in the amended CPC.

Referring to the controversial Section 89 of the amended Act, the Supreme Court said "...If is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in

Court need not necessarily be decided by the court itself. Keeping in mind the law's delays and the limited number of judges available, it has now become imperative that resort should be had to Alternate Dispute Resolution (ADR) mechanisms with a view to bring to an end litigation between the parties at an early date. The ADR mechanism contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation".

Grievances

While clarifying the legislative intention underlying some of the other amended provisions, the court set up a committee of lawyers to help implement the settlement oriented new civil procedure code against which the lawyers embarked on a series of avoidable strikes and disruption of court work. It was felt that at long last, lawyers and judges have found a way to resolve genuine grievances against reforms in the law without having to stop the functioning of courts and harassing the litigants who sought their help.

Unfortunately later events indicate that no lessons were learnt and strikes are called almost regularly at every delay minimising legislative reform which the elected representatives of the people felt was for the public good.

In West Bengal, the strike or boycott of courts continues for over a month against the hike in court fees which the government claims to be reasonable and justified. While there has been no organised protest from the litigant public who are affected by the fee hike (which incidentally was suggested by the Supreme Court itself to generate money for reform of judicial administration in the State) nor any public outcry through the media or otherwise, the lawyers found it necessary to go on a statewide strike for an indefinite period till their point of view is accepted by the legislature government.

Is this the way to seek justice or uphold rule of law, asks the common man. Is it that the elected representatives want to act against the welfare of people and only the lawyers are concerned with public interest? Why is it that the lawyers decided not to challenge the new law in the courts and get it struck down if it is unconstitutional, illegal or against public interest? Even if they found the circumstances warranting the extreme step of statewide strike (rarest of rare case), does it justify prolonged stoppage of work in all the courts for more than a month?

What is at issue? The power of the organised bar vis-a-vis the power of the executive and legislature of a state? Or, is it the power struggle of political parties and the ego conflicts of some people in the leadership which has brought the administration of justice to a standstill and held it up to so much ridicule and caused irreparable damage? After the Supreme Court judgment banning strike by lawyers, there is so much to be explained before the public by both the sides to the dispute.

Yet another nationwide strike was called by the Bar Council of India against another piece of law reform the Legal Services Authority (Amendment) Act, intended to reach expeditious relief to public sector organisations and to people who have disputes against the services provided by them. The amendment seeks to set up permanent Lok Adalats with three members including a judge of the rank of district Judge to negotiate and settle disputes in a manner that is fair, just and acceptable to the parties. If the Lok Adalat is good and necessary there no reason why permanent Lok Adalats cannot be.

If there are genuine apprehensions about procedures and settlements, the law can be challenged in court or modified through negotiation with the appropriate government. Instead, calling for boycott of courts against settlement-oriented, delay-minimising and money-saving legislative measures sends the wrong message about the intention of the advocates and their strategies as officers of administration of justice. And to do this, even after the Supreme Court clamping down the ban on strikes raises issues which relate to the role of lawyers in society and the wisdom in giving monopoly rights to the advocates in the matter of legal representation.

Image

The writing on the wall is clear for those who care to see and react. The image of the profession is already at a very low ebb. This was not the case at the time of Independence. With the advent of globalisation and privatisation of economic activities, the demand for expert legal services is likely to increase both for governments and individuals. Trade in legal services will open up the profession to foreign competition and the government will not be able to give protection while being a member of WTO.

Strike is unheard of in the legal profession anywhere in the world even in rarest of rare cases as legal services is a private sector activity where market forces are already in operation. If Indian lawyers go on strike, foreign lawyers will gladly replace them. If foreign lawyers are too costly for Indian litigants, they will seek alternate mechanisms to seek justice. Either way the future is full of disturbing questions about which the leadership of the Bar seems to be indifferent either by design or other wise.

When the subject of transnational legal practice and the Indian legal procession was sought to be discussed recently in an academic seminar presided over by the Chairman of the Bar Council of India himself, few advocates who claimed to represent the Bar did not allow the discussion to be held as they would not tolerate competition from outside under any circumstances and no one has a right even to discuss it! The mindset of such advocates and the strategies by which they obstruct legal reform are questionable, to say the least.

If they do not tolerate a free debate on issues of law and justice and they paralyse the working of courts and legal institutions whenever they perceive actions of elected legislatures contrary to their interests, the people have the right to question the privileges and immunities provided to them under law. If they do not abide by the directions of courts given in judicial proceedings they will lose whatever respect is still left and will lead the profession to a bleak future.

As a teacher of law and a member of the procession I feel sad at the turn of events and lament with the poet who wrote "... cry my country cry ...."

The Author is Vice-Chancellor, WB University of Juridical Science.

SC quashes Atal's pump cancellations

Syed Liaquat Ali
New Delhi, December 20

THE SUPREME Court on Friday quashed the Prime Minister's directive cancelling 3,760 allotments of petrol pumps and LPG and kerosene dealerships following the media exposé on some of their legality.

The apex court had constituted a two-member panel of retired Supreme Court judge SC Agrawal and former Delhi High Court judge PK Bahri to examine 413 controversial allotments to politicians and their relatives. The panel was given three months to complete its probe.

Terming the Centre's August 9 order cancelling all allotments from January 2000 as arbitrary and unjustified, a Bench of Justice YK Sabharwal and Justice HK Sema said: "The solution by resorting to cancellation of all allotments was worse than the problem. The cure was worse than the disease."

The Bench held that a controversy could not clothe the Government with the power to pass such a drastic order, which would adversely affect a large number of people. The Government could not resolve the controversy simply by sweeping it under the carpet with blanket cancellations.

The SC held the Government's decision to put both categories — tainted and genuine allotments — at par was wholly unjustified, arbitrary and unconstitutional. Instead, the Government should have ordered an independent probe into the controversial allotments.

The Bench said the cancellation order had the twin effects of scuttling the probe and depriving a large number of people of their rightful livelihood. "In governance, controversies are bound to arise. In a given situation, depending upon facts and figures, it may be legally permissible to resort to such en masse cancellation where prima facie, a large number of such selections are tainted and segregation of good and bad would be difficult and time consuming."

The Bench noted that the Government's order was a result of panic reaction.

THE IMPLICATIONS

Who gains?

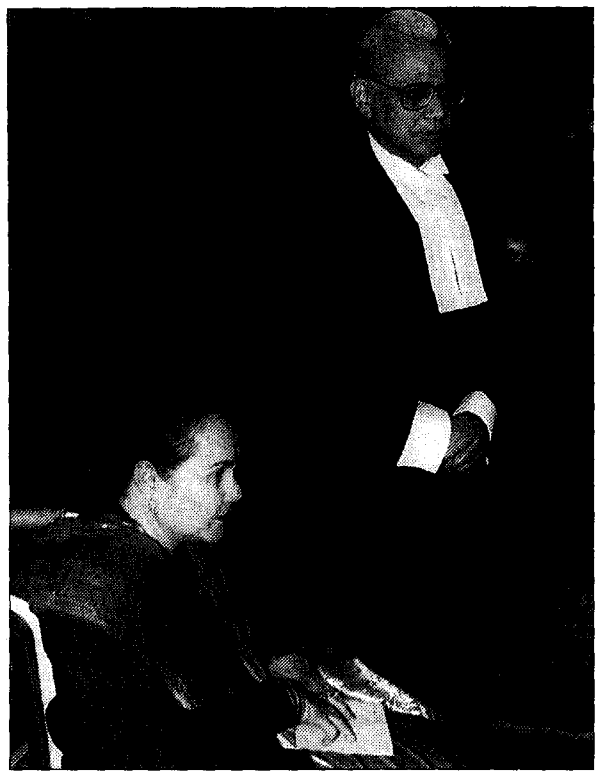
Ordinary allottees who said they had no political connections and PSUs. Both had invested large sums

Who loses?

The Government and the BJP. For the Government the reprimand is a loss of face. The party does not get its demand for a probe into allotments during Congress rule

What next?

After the Satish Sharma allotment scandal, ministerial discretion was replaced by committee review. Now a new system will have to be devised



HT PHOTO

Justice VN Khare with his wife at Rashtrapati Bhawan. He was sworn in as Chief Justice of India on Thursday.

Justice Khare sworn in as 32nd CJI

JUSTICE VISHESHWAR Nath Khare, the senior most judge of the Supreme Court, was on Thursday sworn in as the 32nd Chief Justice of India (CJI) by President Kalam at a brief ceremony at Rashtrapati Bhawan.

Justice Khare succeeds Justice GB Pattanaik, who retired after a short tenure of one and half months as CJI. The new CJI will have tenure of one and half years till May 2, 2004.

Incidentally, Justice Khare is the fourth Chief Justice of India to be sworn-in this year after Justice SP Bharucha, Justice BN Kirpal and Justice GB Pattanaik.

PTI, New Delhi

HE HINDUSTAN TIME 20 DEC 2002

V.N. Khare sworn in new CJI

By J. Venkatesan

NEW DELHI, DEC. 19. Justice Visheshwar Nath Khare, senior-most judge of the Supreme Court, was today sworn in as the 33rd Chief Justice of India. He succeeds Justice G.B. Pattanaik who retired after a brief tenure of 41 days.

The President, A.P.J. Abdul Kalam, administered the oath of office to Mr. Justice Khare at a brief ceremony held at the Ashoka Hall in Rashtrapati Bhavan. Mr. Justice Khare, who is the fourth CJI to adorn the office this year, will have a 16-month tenure till May 2, 2004.

It is for the first time in the 52-year-old history of the apex court that four Chief Justices adorned the office in a single year. Justice S.P. Bharucha, who became the CJI on November 1, 2001, retired on May 5. He was followed by Justice Kirpal on November 7 and Justice Pattanaik on Wednesday.

The Prime Minister, Atal Behari Vajpayee, the Vice-President, Bhairon Singh Shekawat, the former President, K.R. Narayanan, Mr. Justice Pattanaik, the former CJIs, including Justice Anand and Justice Kirpal, the Deputy Prime Minister, L.K. Advani, the Union Law Minister, Jana Krishnamurthy, the former Union Law Minister, Arun Jaitley, other Cabinet Ministers, the leaders of political parties, including P.H. Pandian of the AIADMK and Mulayam Singh Yadav of the Samajwadi Party, the Attorney-General, Soli Sorabjee, the Solicitor-General, Kirit Raval, former and present Supreme Court and High Court judges were among those who attended.

Outlining his priorities, Mr. Justice Khare, during a brief chat with presspersons, said, "there are many areas, including grey areas, which will be addressed".

Asked about judicial accountability and the proposed action, he said: "I have confidence in my judges. Like any other field, there are some rotten fish because of the pollution. They will be dealt with firmly in accordance with law". He made it clear that judges who fell short of the expected qualities had no place in the judiciary.

However, like his predecessors, he too did not endorse the Government's proposal to set up a National Judicial Commission. "There are some aberrations which we will have to tackle to come to the logical conclusion", but the present system of collegium of apex court judges "was adequately taking care of the issues concerning judiciary."

Enrolled as an advocate in the Allahabad High Court in November 1961, Mr. Justice Khare practised on the civil, writ and revenue side. He served as chief standing counsel for the State Government at the Allahabad Bench of the High Court.

He was appointed permanent judge of the Allahabad High Court in June 1983, the Chief Justice of the Calcutta High Court in February 1996, and elevated to the Supreme Court in March 1997. As Supreme Court judge, he was party to many important decisions on issues relating to environment, forests and public interest litigations.

His majority Constitutional Bench judgments in regard to levy of tax on inter-State sale, right of pre-emption, majority opinion in Presidential reference relating to Gujarat elections and judgment in the 11-judge "minorities" case were some of his landmark decisions.

20 DEC 2002

THE HINDU

Lawyers defy SC, strike work

By Our Legal Correspondent

NEW DELHI, DEC. 18. Defying the Supreme Court order banning strikes, lawyers across the country today struck work to protest the amendments introduced to the Legal Services Authority Act.

The vice-chairman of the Bar Council of India, Adish C. Aggrawala, told *The Hindu* that except in Jodhpur and Jaipur, lawyers in other parts of the country, barring the Apex Court, abstained from court work. Asked whether it would not amount to contempt of court, he said the Apex Court "has passed an impracticable order".

Further, he justified the strike saying "this is one of the rarest of rare cases affecting not only the litigants but also the lawyers warranting direct action". Mr. Aggrawala said the setting up of Permanent Lok Adalats and transfer of 80 per cent of the cases from regular courts to these adalats, whose decisions were binding, was unconstitutional and would prove detrimental to the interests of the litigants.He said the BCI had earlier given a call for a nation-wide strike on September 18 but it was called off when the Government invited the BCI representatives for talks. "But the Government did not accept our suggestions and we have no other alternative except to resort to strike."

When he was reminded about the Apex Court's order that the Chief Justice of the High Court concerned be consulted before resorting to strike, he said "we can only inform the Chief Justice about our strike plan. It will not be possible to take his consent for resorting to strike as no Chief Justice will give consent for the strike or he may postpone his decision".Meanwhile, the Chief Justice of India, G.B. Pattanaik, said that "lawyers can never have a fundamental right to strike. They can only protest legitimately. The law has already been settled in this regard".

In a related development, a three-Judge Bench, headed by the CJI, has ordered notice to the Centre on a writ petition filed by the BCI, challenging the constitutional validity of the LSA (Amendment) Act, 2002.

THE HINDU 19 DEC 2002

FOR GREATER JUDICIAL ACCOUNTABILITY

IT IS WIDELY accepted now that impeachment is much too unwieldy a procedure to punish judges who are guilty of corruption or misuse of authority and office. Not a single judge has been removed from office under this constitutional provision, something that not only points to the fact that the impeachment process is impractical but also underlines the need for alternative mechanisms to discipline errant members of the higher judiciary. The setting up of in-house committees to investigate the alleged misconduct of judges seems to have emerged as one of the options for dealing with this issue. The Chief Justice of India, G. B. Pattanaik, recently constituted the second such committee to probe some specific allegations of misconduct that were raised against three judges of the Karnataka High Court. The committee, which comprises three High Court judges, two of them Chief Justices, has been empowered to probe the reported misconduct of the three Karnataka judges at a resort near Mysore. A little earlier, another such committee was set up to investigate the role of three Punjab and Haryana High Court judges. The three were allegedly connected to the scam involving the former chief of the Punjab Public Service Commission, Ravindra Pal Singh Sidhu, and the committee's report on them is due to be submitted to the Chief Justice shortly.

Interestingly, the in-house inquiry against these three judges began as an unobtrusive probe around six months ago by the Chief Justice of the Punjab and Haryana High Court. When the probe was being conducted, the Chief Justice, Arun Saharya, took the radical step of withdrawing the work from the three judges, something that was restored to them only after his inquiry was completed and his report submitted to the then Chief Justice of India. In doing what he did, Mr. Justice Saharya was following a procedure laid down by the Supreme Court on the subject of dealing with complaints against High Court judges; the difference lay in the fact that it was not done before. Now, with the constitution of two in-house committees by the Chief Justice of India, attention has been drawn to a procedure which, on the one hand, is not as drastic or as unpractical as impeachment but, on the other hand, could serve as a mechanism to warn the higher judiciary that corruption and misconduct will be dealt with firmly.

What happens in the event that an in-house committee records a positive finding against a judge for misconduct or corruption? With impeachment being the only legal process to divest judges of their jobs, the only option would be for the Chief Justice of India to persuade them to resign. What such a procedure assumes is that a judge with any shred of self-respect will voluntarily relinquish his job the moment there is an adverse finding against him by a committee comprising his fellows in the judicial fraternity. If such in-house committees become an accepted norm, then this as well as other assumptions and expectations of the mechanism will be tested in the days to come.

In its consultation paper on the superior judiciary, the National Commission to Review the Working of the Constitution also suggested that committees of senior judges be set up to examine complaints about their fellows. At the same time, the NCRWC argued that the concept of 'proved misbehaviour' needs to be considerably widened. While suggesting that it is not enough if misbehaviour is limited to bribery, misappropriation or other serious crimes, the paper wondered why it should not include relatively lesser lapses such as regularly failing to observe punctuality in court or not delivering judgments for years on end. What these and other such arguments underline is the need for two things. First, a mechanism that holds the superior judiciary accountable for acts which are less grave than crimes that reflect gross moral turpitude. Second, the introduction of effective and less cumbersome procedures to judge the judges and hold them accountable for their behaviour

THE HINDU 6 DEC 2002

NON-ENFORCEABLE DUTIES

THE ENFORCEABILITY OF Fundamental Duties enumerated in the Constitution, a question under the consideration of the Supreme Court, is simply untenable because the idea flows from the erroneous juxtaposition of fundamental rights enshrined in chapter three and fundamental duties in Article 51-A. It is incorrect to suppose that since the state confers fundamental rights on citizens and undertakes obligations upon itself in the form of Directive Principles, duties should likewise be imposed on citizens. The ruling of the Supreme Court in 1986 in the Bijoe Emmanuel case that singing or learning the national anthem must not be made mandatory should serve as a general guideline to decide questions on the status of Article 51-A. What is noteworthy in that judgment is that it amply reflects evolving practices in society on the manner citizens relate to national symbols. In hindsight, it would seem that not imposing the national anthem has turned out to be the most practical and commonsensical approach to the question. Hence, the current proposal of the Supreme Court Bench to reconsider its earlier judgment may not be warranted.

Fundamental Rights constitute the bedrock of modern democracies and hence are enforced by law. They are also protected from the purview of the routine legislative business of sovereign states and this is the sense in which they are fundamental. Indeed, the law that enforces rights also imposes limits on their exercise; but the arena of such curtailment is always backed by deeper considerations of public interest. This is the spirit echoed in Article 13(2) of the Constitution which debars Parliament from enacting any law that may violate Fundamental Rights. The inapplicability of this proviso in the case of Amendments to the Constitution was assumed in the first Amendment and was stated explicitly in the 24th Amendment, both of which were enacted primarily to protect land reform laws from being challenged on the ground that they were violative of fundamental rights. There are, of course, innumerable other rights that do not necessarily issue in legal claims. On the contrary, it could be argued that duties are by definition sacrosanct, whether they pertain to the discharge of parental obligations, compliance with traffic rules or the delivery of one's professional responsibilities. Adherence to them belongs to the domain of ordinary moral or social laws appropriate in the context.

Lurking beneath any attempt to enforce fundamental duties is the ludicrous suggestion that the duties cast on citizens in Article 51-A are some kind of a *quid pro quo* for the legal protection of Fundamental Rights; a sure sign that the arena of rights itself is not on a secure footing. It is noteworthy in this context that the duty of parents towards children has been sought to be linked to the proposal to elevate the right to education as a Fundamental Right. Implicit in such a plea is the view that ultimately people are responsible for their lot. Instructive also is the political background to the incorporation of Article 51-A as part of the infamous 42nd Amendment during the Emergency. Ironically, the Article listing the duties of citizens was incorporated into the Constitution at a time when the basic freedoms of citizens were suspended. The present times, some may argue, resonate with these same political vibrations.

HE HINDU

3 NOV 2001

RELINQUISHES NEW POST

Venkataswami quits Tehelka probe panel

By J. Venkatesan

NEW DELHI, NOV. 23. Stung by criticism in Parliament over his appointment as chairman of the Authority on Advance Rulings of Excise and Customs, Justice K. Venkataswami, head of the Tehelka Commission, today resigned from both the posts. He is understood to have sent his resignation to the Prime Minister, Atal Behari Vajpayee.

Justice Venkataswami declined comment when asked for the reasons for putting in his papers. His resignation at the crucial stage of hearing in the Tehelka probe has taken legal circles by surprise.

Though he was appointed chairman of the Authority on Excise and Customs in May this year, the issue surfaced in Parliament only on Friday when members criticised the Government for violating all norms of constitutional propriety in offering a second post to him when the Tehelka enquiry was yet to be completed. According to sources, Justice Venkataswami was unhappy with the handling of the issue by the Government, which, he felt, did not defend his appointment properly though everything had been done in accordance with law and as per the recommendations of the Chief Justice of India.

The Venkataswami Commission was constituted by the Centre on March 24 last year to probe the Tehelka portal's expose on corruption in defence deals. And to find out whether there was deviation in the purchase procedures and whether the imperatives of national security were taken into consideration in defence transactions. Initially appointed for four months, its term was extended time and again and the present term is due to expire on January 23 next.

The examination of crucial witnesses, including the Defence Minister, George Fernandes, the former BJP president, Bangaru Laxman, the former Samata Party president, Jaya Jaitly, and other Section 8-B witnesses has been completed.

The panel included the financial aspect in the probe after the Centre accused the Tehelka portal of being responsible for the crash in the share market after March last, and pleaded with the Commission to include the aspect.

With the probe nearing a critical stage of investigation, Justice Venkataswami's resignation has put a question mark on the fate of the Commission, which was intended to arrive at the truth in the portal's "revelations."

The Economic Times

23 NOV 2002

Justice Venkatswami Appointed Chairman Of Customs & Excise Advance Ruling Authority

Govt, Oppn clash over Tehelka judge

Our Political Bureau
NEW DELHI 22 NOVEMBER

THE ruling coalition and Opposition, on Friday, locked themselves in a bitter tussle over the appointment of Justice Venkataswami, heading the Tehelka Commission of inquiry, as the chairperson of the Authority for Advance Rulings for Customs and Central Excise.

Taking strong exception to the appointment, the Opposition, which stalled proceedings in the Lok Sabha and staged a walkout in the Rajya Sabha, insinuated that it was meant to influence the one-man probe into the allegations of corruption in defence deals following the Tehelka expose. Charging the government with violating norms of constitutional propriety, they maintained that the "very authority which is investigating the government is sought to be a given a job by the government." Protesting the new assignment, the Left said it was yet another attempt to cover up the investigations.

The BJP, however, hit back, disclaiming any role in assigning top government post to Justice Venkataswami and accused the Congress of lowering the dignity of the judiciary. The post of the chairman of the authority is always given to a retired judge of the Supreme Court. BJP spokesperson Arun Jaitley said the appointment, made in May, was done upon the recommendation of the then Chief Justice S.P. Bharucha, who had been asked by the concerned minister to nominate someone for the post. To back up its contention, it promptly released the correspondence between the Supreme Court and the finance ministry.

The development is just an extension of the bitter battle that the two sides raged when the Tehelka controversy erupted, exposing the government to embarrassment and pushing George Fernandes and the then BJP president Bangaru Laxman out of office. It, however, must be particularly distressing for Mr Fernandes. It comes at a time when the Lok Sabha Speaker Manohar Joshi had begun to make moves aimed at ending the deadlock over Mr Fernandes' boycott in Parliament. The Congress, which had indicated on Thursday that it was willing to consider the government proposal, may now, however, be constrained to continue with the boycott.

More importantly, the controversy may raise doubts about the credibility of the findings of the Tehelka panel, particularly if it goes Mr Fernandes' way. The term of the commission is ending in January and the expectation is that another extension may not be sought.

Let Governors keep out of politics: CMs

HT Correspondent
New Delhi, November 16

GOVERNORS ARE to be eligible for a second term and for election as Vice-President or President, but will not be "expected to return to active politics". A person to be appointed as Governor should be an eminent personality not connected with the State's local politics.

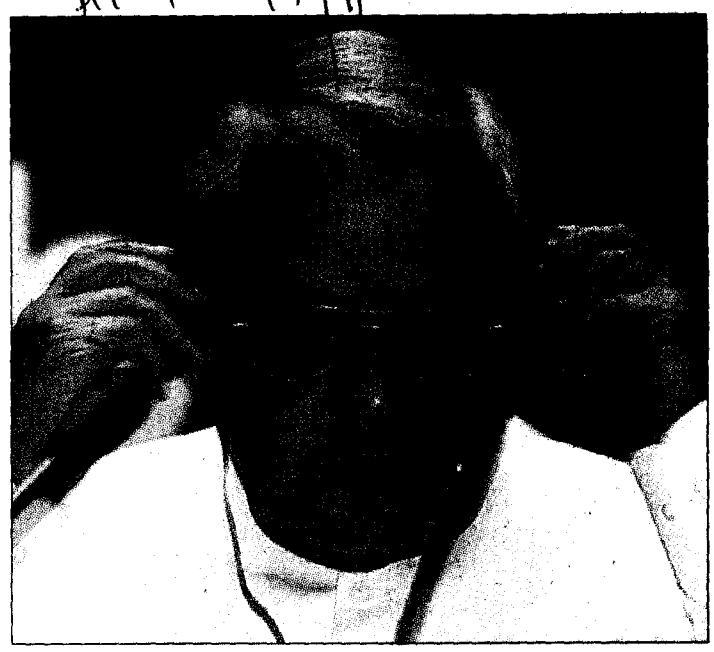
These decisions were arrived at by "consensus" at the seventh meeting of the Inter-State Council (ISC), which was chaired by the Prime Minister and attended by several Chief Ministers here today.

Another important decision was allowing the Centre to retain the power to set up a commission of inquiry against any State minister, but with appropriate safeguards.

The decisions of the ISC, which has been studying and monitoring the implementation of the Sarkaria Commission's report on Centre-State relations, are recommendative by nature. The Centre and States will have to work out ways to implement them.

Briefing reporters on the ISC's deliberations, Law Minister Arun Jaitly said that in Governor selection, consultation by the Centre with the Chief Minister concerned should be made obligatory and not a matter of convention. For this, a constitutional amendment may be necessary. He pointed out that appointment of each Governor had been held in consultation with Chief Ministers since the NDA Government took office.

Jaitly ruled out any law or code to bar Governors from returning to active politics, saying: "They will be expected not to do so." Besides, the right to contest elections is considered a fundamental right.



AFP PHOTO

Prime Minister Atal Bihari Vajpayee at the Inter-State Council meeting in New Delhi on Friday.

Though the provision to order probe into the conduct of State Ministers had not been invoked in the last 20 years, several Chief Ministers wanted it to be abolished or accompanied by a rider that any such decision would have to come after consulting them.

But Jaitly said the Centre believed that the provision might be necessary for an exigency and it may not possible to consult a Chief Minister against whom a probe is to be ordered.

The Sarkaria panel had recommended that the Centre should invoke the provision only after approval by the ISC and the two Houses of Parliament, and after detailed discussion with the State Government concerned.

Many Chief Ministers pressed their case for upward revision of royalty rates on minerals, including coal. Some CMs led by those of Andhra Pradesh, West Bengal, Tamil Nadu, Himachal Pradesh and Madhya Pradesh also wanted Doordarshan's regional channels under their control for giving publicity to their programmes.

Other decisions taken at the ISC were that all the residuary powers of legislation including taxation matters should be transferred from the Union to the Concurrent List for the States to mobilise resources and the Centre should make laws in respect of subjects of Concurrent List after "active consultation" with the States.

The ISC favoured a comprehensive Central law to allow imposition of taxes by local bodies on the properties of the Centre, which are of industrial and commercial nature.

Pattanaik sworn in CJI

By J. Venkatesan

NEW DELHI, NOV. 8. Justice Gopal Ballav Pattanaik, seniormost Judge of the Supreme Court, was today sworn-in as the 32nd Chief Justice of India (CJI). He succeeds Justice B.N. Kirpal, who retired yesterday.

The President, A.P.J. Abdul Kalam, administered the oath of office to Mr. Justice Pattanaik at a brief ceremony at Rashtrapathi Bhavan.

Mr. Justice Pattanaik, who is the third CJI to adorn the office this year, will have a short tenure of 41 days. He is due to retire on December 18. Justice V.N. Khare will become the fourth CJI to assume office on December 19 and he will have a 16-month tenure till May 2, 2004.

This is for the first time in the 52-year history of the apex court that four Chief Justices adorn the office in a single year. Justice S.P. Bharucha, who became

the CJI on November 1, 2001, retired on May 5, followed by Mr. Justice Kirpal on November 7.

The Vice-President, Bhairon Singh Shekhawat, the former President, K.R. Narayanan, Mr. Justice Kirpal, the Deputy Prime Minister, L.K. Advani, the Union Law Minister, Jana Krishnamurthy, the former Law Minister, Arun Jaitley, Cabinet Ministers, the Solicitor-General, Kirit Raval, former CJIs, former and present Supreme Court and High Court judges, and eminent lawyers attended the function.

Mr. Justice Pattanaik, who was enrolled as an advocate in February 1962, had practised in civil, criminal, constitutional and company cases in the Orissa High Court and had also appeared in the Supreme Court.

He was the State Government standing counsel from March 1, 1971 and additional Government advocate from July 19, 1974.

He worked as the Government advocate for more than four years. He was appointed Judge of the Orissa High Court on June 1, 1983 and became the Chief Justice of the Patna High Court on May 19, 1995 and appointed a judge of the Supreme Court on September 11, 1995.

'Strong CJs needed': Page 13

9 NOV 2002

THE HINDU

NO DISSIDENTS' SIGNATURES IN MEMORANDUM

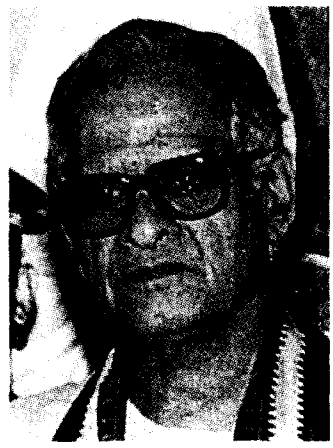
Governor rejects demand for Assembly session

LUCKNOW, NOV. 2. In a major reprieve for the crisis-ridden Mayawati Government in Uttar Pradesh, the Governor, Vishnu Kant Shastri, today rejected the demand for an immediate session of the Assembly for a trial of strength and the Samajwadi Party's claim to form an alternative government.

"....the status of the Government as yet remains the same," the Raj Bhavan said in a communiqué, breaking a day-long silence after a Samajwadi Party delegation called on the Governor on Friday and staked its claim to form the government on the basis of 204 MLAs, including 37 dissident BJP legislators.

The Raj Bhavan statement referred to Mr. Shastri's meeting with 12 dissident BJP MLAs on Thursday at which they did not convey their withdrawal of support either in writing or when asked.

The Raj Bhavan also said the memorandum given by Azam Khan, leader of the Samajwadi



Legislature Party, on Friday also did not contain the names or signatures of the "alleged" 37 dissident BJP MLAs. "If in future, these 37 alleged dissident BJP MLAs withdraw support from the Government or if the SP furnishes a letter signed by these MLAs withdrawing the support from the Government, it will be considered by the Governor at that time," the communiqué said.

The SP while staking claim on Friday had claimed the support of 204 MLAs, including the BJP dissidents, in a House of 403, two more than the half way mark.

The communiqué made it clear that till date only seven independent legislators had withdrawn support to the Government and that it still enjoyed majority.

Cong. evasive

The Congress, on whose support the Samajwadi Party was banking on for Government-formation, backed that party for convening a special session to test the strength of the Mayawati Government, but at the same time was evasive on siding with Mr. Yadav.

The former Chief Minister and leader of the Rashtriya Kranti Party, Kalyan Singh, had a meeting with the Governor and demanded the dismissal of the Government or the convening of a special session. — PTI

THE HINDU

3 NOV 2002

SP stakes claim with 204 MLAs

UP governor urged to dismiss 'minority govt'

TIMES NEWS NETWORK

Lucknow: Claiming a majority in the UP Vidhan Sabha, Samajwadi Party legislators, led by party national general secretary Amar Singh and leader of the opposition Mohammed Azam Khan, met governor Vishnukant Shastri on Friday and demanded the dismissal of the Mayawati government. They asked the governor to invite the SP to form the government and said the party would prove its majority on the floor of the House on the specified date.

About 180 legislators converged at Raj Bhavan shortly after noon and made their way straight to the room where the governor was seated. They handed him a letter claiming the support of 204 MLAs and told him that the present government had been reduced to a minority and that the SP be called to form the government.

Reminding the governor of his earlier statement when the 11 Independents had withdrawn support that the BSP-BJP government was still in a majority, they said following Thursday's developments, the government had been reduced to a minority. With the 12 BJP dissidents expressing their no-confidence, the strength of the coalition government had been reduced to 198, they said.

Later, a letter signed by Mr Khan was handed to Mr Shastri. It stated that the present BSP-BJP government had been reduced to a minority and as such had no legal, constitutional or moral right to stay in power. It requested the governor to uphold the constitutional traditions, dismiss the present government and invite the Samajwadi Party which was the single largest and also had a majority to form the government.

Quoting earlier precedents, the letter stated that governments had been dismissed when they had been reduced to a minority and new ones sworn in immediately. In '95, the government of Mulayam Singh Yadav had been similarly dismissed and Mayawati had been sworn in as the chief minister, the letter said.

● See Edit: Unholy Wedlock, Page 16

BJP top brass tries to save the day

TIMES NEWS NETWORK & PTI

New Delhi: Softening its stand towards its dissident legislators in Uttar Pradesh, the BJP top brass led by Prime Minister Atal Bihari Vajpayee said on Friday night that their grievances would be heard by senior leaders and resolved to the "extent possible".

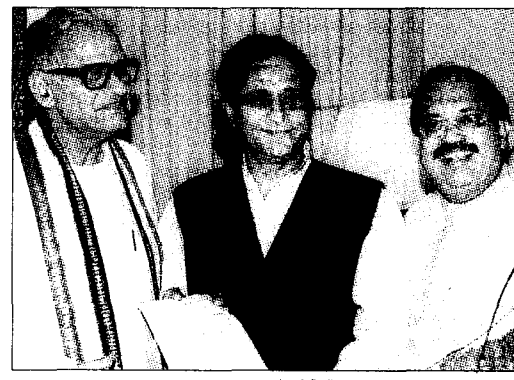
The party's central election committee, which met here late on Friday and took stock of the present political situation and recent developments in the state, emphasised the need for "maintaining the stability of the BJP-BSP coalition government and keeping up the party's image and discipline".

Earlier in the day, the BJP had threatened the dissident MLAs that no matter how large a group they may constitute, they could all be disqualified under the law.

BJP leader and lawyer Satyapal Jain, referring to a case in the Punjab high court, said that in the case of a two-member legislature party in Haryana, where one MLA, i.e. 50 per cent, more than the mandatory one-third, had walked out, the court had ruled that he was to be disqualified.

Mr Jain said this had happened because the law sets out three conditions to prevent disqualification—a split in the original party, two, a split in the legislature party and three, that at least a third should split. Since the first condition—the BJP at the national level had not split—was not fulfilled, it was therefore not a legal split and the MLA in question, Khairti Lal Sharma, was disqualified.

However, a senior constitutional expert, who has argued several cases relating to the anti-defection law, emphasised that there was a grey area in the law and that while the Punjab high court had indeed given this interpretation, the Bombay high court had given a ruling which was the exact opposite—that a split in the legislature party constituted a split in the original party and, therefore, as long as a third had split, it would constitute a legal split.



Samajwadi Party leaders Amar Singh (right) and Azam Khan (centre) present a memorandum to UP governor Vishnukant Shastri on Friday.

THE TIMES OF INDIA

2 NOV

SC guidelines for minority institutions

HT Correspondents
New Delhi/Kolkata, October 31

IN A landmark decision, an 11-judge Constitution Bench of the Supreme Court headed by Chief Justice BN Kirpal today gave State Governments and universities some control over unaided educational institutions run by linguistic and religious minorities.

While maintaining that the Government cannot regulate the admission policies of such schools and colleges, the court ruled that the State could specify qualifications for students and establish some rules and regulations to maintain academic standards. Admissions, it said, should be on the basis of merit and should be conducted in a transparent manner.

The judgment is particularly significant for the Left Front Government because it has long been trying to gain control over mushrooming unaided madrasas in the State.

However, the 500-odd minority schools that are funded by the State Government will not be affected. Abdus Sattar, president of the West Bengal Madrasa Board, told *Hindustan Times*, "The judgment does not affect the madrasas under the Board because the schools under us are fully funded by the Government and teachers are appointed by the School Service Commission."

Authorities of the Ramakrishna Mission, the other organisation that runs unaided minority schools and colleges in the State, refused to comment on the verdict until they "go through the document".

In its judgment today, the apex court said the same principle of transparency would apply in the appointment of teachers and other staff. An unaided minority educational institution (MEI) would be free to hire as it pleased as long as some essential qualifications were adhered to.

Government-aided MEIs would also have the right to admit minority students. The Bench ruled that an MEI did not lose its minority character simply because it received aid from the Government, but would have to admit non-minority students, whose constitutional rights were not to be infringed.

Aiding authorities could also prescribe rules and regulations for MEIs in the matter of admissions, it added. The apex court said State Governments would have the power to decide the percentage of non-minority students to be admitted into an aided minority institution.

WHAT THE ORDER MEANS

What happens to unaided minority institutions?

They retain control over admissions and hiring, provided they abide by qualifications laid down by State Governments and universities

What happens to aided minority institutions?

They continue to admit a certain proportion of minority students, but the percentage will now be decided by the State Governments

For a national judicial commission — II

By V.R. Krishna Iyer

THE CONSTITUTION (67th Amendment Bill), 1990, was introduced to provide an institutional framework for a national judicial commission. In many countries, mutual consultation has been the convention. The recent National Commission to Review the Working of the Constitution had suggested the establishment of a National Judicial Commission under the Constitution with the Chief Justice of India as Chairman and two seniormost judges of the Supreme Court, the Union Minister for Law and Justice, and one eminent person nominated by the President after consulting the CJI as members.

In this context, it is apt to advert to a ruling of the Supreme Court (in Presidential re-reference 1999 S.C.P.1) where consultation with the CJI was held to require consultation with a plurality of Judges, which suggests an apprehension that the CJI's individual opinion alone may be arbitrary and not binding upon the Government of India. Some mathematical pluralism, adding complexity to the system and based entirely on the impression of the Judges, has resulted in the pronouncement of the Supreme Court. A collegium is the verdict which now prevails.

The jurisdiction of the collegium extends to the transfer of High Courts Judges as well as the posting and promotion of Chief Justices. The Supreme Court, in its Advisory Opinion of 1999, has affirmed its earlier stand in regard to the primacy of the CJI's view and the obligation to consult other brethren: "The Chief Justice of India should, therefore, form his opinion in regard to a person to be recommended for appointment to a High Court in the same manner as he forms it in regard to a recommendation for appointment to the Supreme Court, that is to say, in consultation with his senior-most puisne Judges. They would in making their decision take into account the opinion of the Chief Justice of the High Court, which 'would be entitled to greatest weight', the views of other Judges of the High Court who may have been consulted and the views of colleagues on the Supreme Court Bench 'who are conversant with the affairs of the concerned High Court'. What is more intriguing is that the number of Judges to be consulted at the two tiers is purely an *ipse dixit* of the Judges with no reference to any Constitutional provision. Regarding the transfer of Judges, there was once a Peer Committee to decide but now the same power is vested in a collegium with the CJI at the top. Why so? Because the Judges hold so. The key point is that in the entire discussion in both the rulings there is no reliance on any specific article of the Constitution. In short, appointments and transfers of judges belong to the judges — a family affair — although the text of the Constitution sounds a contrary note.

Another important matter which calls for consideration is the need to deal with delinquent judges. It is clear impeachment is an extraordinary remedy which rarely operates satisfactorily and hardly proves effective in most cases of misconduct. The Judiciary is not the least dangerous branch of Government. To quote David Pannick: "They send people to prison and decide the scope and application of all manner of rights and duties with important consequences for individuals and for society. Because the judiciary has such a central role in the government of society, we should (in the words of Justice Oliver Wendell Holmes) wash... with cynical acid this aspect of public life. Unless and until we treat judges as fallible human beings whose official conduct is subject to the same critical analysis as that of other organs of government, judges will remain members of a priesthood who have great powers over the rest of the community, but who are otherwise isolated from them and misunderstood by them, to their mutual disadvantage."

"Judicial independence was not designed as, and should not be allowed to become, a shield for judicial misbehaviour or incompetence or a barrier to examination of complaints about injudicious conduct on apolitical criteria. That a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible."

We need, therefore, a forum for correction and disciplinary purposes since judicial misconduct is escalating. I agree with David Pannick that a judicial performance commission, with fair procedure and punitive power, may be a therapeutic solution. The caution suggested by him in the shape of two limitations find my concurrence:

Impeachment is an extraordinary remedy which rarely operates satisfactorily... We need, therefore, a forum for correction and disciplinary purposes since judicial misconduct is escalating.

"First, the powers of a Judicial Performance Commission should be limited to considering complaints of injudicious conduct. It would be prohibited from investigating whether the judge reached the correct decision on a point of law. Appeal courts exist to analyse the decisions of the judge. But where the judge clearly erred in law, the Commission might be entitled to consider a complaint of judicial incompetence. A second limitation on the powers of the Commission would be that it could not impose any sanction. No doubt considerable discussion would be needed to determine the composition of a Judicial Performance Commission, the procedures it would adopt, and the matters with which it would be concerned. One difficult problem is what role such a Commission should play in respect of the out-of-court conduct of judges."

The report of the performance commission must go before the disciplinary committee of the national judicial commission which must have the power to impose sanctions and punishments short of removal. Disciplinary commissions exist in most States of the United States and in some other countries. Those who take the view that it is unwise to tell the truth about the Judiciary find a befitting reply in judge Jerome Frank's (U.S. Court of Appeal) words:

"He had little patience with, or respect for, that suggestion, I am unable to conceive.... that, in a democracy, it can ever be unwise to acquaint the public with the truth about the workings of any branch of government. It is wholly undemocratic to treat the public as children who are unable to accept the inescapable shortcomings of man-made institutions... The best way to bring about the elimination of those shortcomings of our judicial system which are capable of being eliminated is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts."

So I advocate a National Judicial Commission presided over by the Chief Justice of India. Its composition may perhaps include two or three judges of the Supreme Court, two or three Chief Justices from the High Courts, two or three leading lawyers and outstanding statesmen of the country such as retired judges or former Presidents and the Leaders of the Opposition in the two Houses of Parliament. This may be expanded or pruned. Parliament, when it discusses the bill, must take note of the fact that judicial selection is not a secret operation and the names of the proposed candidate must be available for the people to know and respond. The performance of the judicial collegium, after the two signal rulings, has hardly been creditable, often been dilatory, arbitrary and smeared by favourites. The focus and locus of lobbing has shifted from Minister to Judge. The delay has continued, the quality has not improved, the merit criteria have not been articulated and the infirmities of the system persist. True there is less politics in the process but more personal affiliation. The field of selection is yet not democratically wide but confined to coteries. Of course, with all this criticism, those selected, before and after the Second Judges Case, have performed broadly well. The high office transforms the functionary.

(Concluded)

For a national judicial commission — I

By V.R. Krishna Iyer

"SUPREME BUT not infallible" is the title of a publication by the Supreme Court about itself. Fallible it is, but because it is final too, the remedy for its institutional errors, when they are grave, has to be by Constitutional Amendment. To err is human and judges are human. One such errant situation has arisen where, in what is popularly known as the Second Judges Case, the Supreme Court, reinforced in a later ruling, has wrested the power of appointment of the members of the High Courts and Supreme Court from the Executive altogether, based on a transcendental theory of Judicial Institutional Independence. The Constitution expressly denies this monopoly in the text and in the Constituent Assembly proceedings. Two judges disagreed but seven, forming the majority, gained an arithmetic victory. But that is the law since the Constitution is what the judges say it is, even if the ruling be by a sharp division. The world over, the power to appoint judges is either with the Executive or in consultation with the top judicial echelons but never to the exclusion of the Executive.

Judicial independence is made of sterner stuff as America's great judges have demonstrated, Lord Atkin and his kind in the United Kingdom have provided through luminous instances and Indian heroes and martyrs in robes have earlier blazed the trail. Hunger for power to appoint, disguised under cover of protection of institutional independence, is interpretational euphemism. The Constitution is clear. It lays down that the appointment of the higher judiciary shall be by the President "after consultation with" the Chief Justice of India and such other judges as he may "deem necessary". To 'consult' is not to surrender, nor concur. And yet, their Lordships discovered in Article 124 the opposite of what B. R. Ambedkar emphatically asserted was the intent and sense of the Constitutional provision.

Independence of the Judiciary is absolutely basic to democracy and it needs no judicial rhetoric to drive home the point. Human rights are but a mirage without a free and fearless justice system. Our founding fathers have made sufficient provision, consistent with pragmatic limitations, to defend the institution against executive, legislative or other interference. In theory, the Judiciary has neither the purse nor the sword, as part of its institutional authority, but reading the Constitution — Articles 141, 142 and 144 — together with the guaranteed retirement age and contempt power, I have no hesitation to hold that the Indian Judiciary is freer than any other high curial organ, including the mighty law lords in the U.K. and the robed brethren in the U.S.

The judges must remember that the Constitution is above them. There has been widespread demand that judicial appointments are far too paramount to be left to the judges themselves.

The fundamental issue is whether the total functional autonomy of the Judiciary is liable to be influenced by the appointing authority being the President, that is the Prime Minister. There are great institutions which call for independent operation such as the Comptroller and Auditor-General and the Election Commission but the incumbents thereof are appointed by the nation's Chief Executive. For over 50 years, the higher judiciary in India has been selected in consultation with the Chief Justice and appointed by the President according to the Prime Minister's choice. Is it conceivable for any judge of the Supreme Court to hold that the CAGs and the CEOs, the judges of the High Courts and the Supreme Court, who technically owe their selection to the Prime Minister or the Cabinet, were pliable tools in the hands of the Government? It would be libel to suggest so. If the Chief Justice of India and some of his colleagues were to be given the power to select, does it mean that those selected would be stooges of the CJI who, having been appointed by the President, would be supple to oblige Government interest since in his time he must have been an appointee of the President? The several judges who by majority (The Second Judges Case) ruled that the CJI must have the right of primacy were themselves in their time chosen by the Prime Minister and yet dared to challenge his impartiality and integrity. Chief Justices are also human and cannot be exalted into quasi-divine status. It is unfortunate that the 'consultation' used in the Constitution has been exaggerated beyond the limits of "ordinary lexical definition".

I am unhappy to disagree with the view which has weighed with the eminent majority in the Second Judges Case which runs peroratively as follows: "The foregoing considerable deliberation leads to an inexorable conclusion that the opinion of the Chief Justice of India in the process of constitutional consultation in the matter of selection and appointment of Judges to the Supreme Court and the High Courts as well as transfer of judges from one High Court to another High Court is entitled to have the right of primacy. In sum, the above logical conclusion and our social sense dictate: "Like the Pope, enjoying supremacy in the ecclesiastical and temporal affairs, the CJI being the highest judicial authority, has a right of primacy, if not supremacy to be accorded, to this opinion on the affairs concerning the 'Temple of Justice'. It is a right step in the right direction and that step alone will ensure optimum benefits to the society." (AIR 1994 SC P-342 Para 211)

I disagree with the papal infallibility attributed to the highest echelon in the Judiciary. To deify is to be egregious. The administration of justice is of such paramount importance in our human rights era that the process of appointment should be so exalted that the person selected is the best choice. The Constitution assigns the highest place to justice; and justices occupy the highest place in the Constitutional scheme. There is no doubt, therefore, that the methodology of appointment should measure up to the inviolable majesty of the office and the high value of justice delivery itself to the people as a whole. In the U.S., the President, with transparent political motive, makes his selection. But the Presidential nominee has to undergo a Senate examination of his record and jurisprudential belief. The tasks of the President and the Senate are facilitated by the practice of the American Bar Association of assessing the worth of the nominee. There is an element of exaggerated populist invigilation by the Senate Judicial Sub Committee. This procedure may not apply to Indian conditions and need not be transplanted to our land. In England, judges are chosen without any public discussion of their identity or merit. I wholly agree that the Judiciary is high above many another constitutional functionary: "Even though all the constitutional functionaries have their own constitutional duties in making appointment of judges to the superior judiciary, the role of one of the principal constitutional functionaries, (namely, the Judiciary) is incontrovertibly immeasurable and incalculable. The task assigned to the Judiciary is in no way less than those of other functionaries — legislative and executive. On the other hand, the responsibility of the judiciary is of a higher degree. As frequently said, the Judiciary is the watchdog of democracy, checking the excessive authority of other constitutional functionaries beyond the ken of the Constitution. It cannot be disputed that the strength and effectiveness of the judicial system and its independence heavily depends upon the calibre of men and women who preside over the Judiciary and it is most essential to have a healthy independent judiciary for having a healthy democracy because if the judicial system is crippled, democracy will also be crippled." (AIR S.C 1994 P-343/344 Para 217)

Having said all this, the judges must remember that the Constitution is above them. There has been widespread demand that judicial appointments are far too paramount to be left to the judges themselves and that a National Commission which accords high judicial participation, but admits of the higher echelons of the Executive and perhaps and other relevant outstanding elements, may be the appropriate machinery.

SC pulls up Krishna for contempt

Press Trust of India

NEW DELHI, Oct. 24. — The Supreme Court today took Mr SM Krishna to task for "wilfully" and "deliberately" disobeying its orders to release Cauvery waters to Tamil Nadu, and prime facie found him guilty of contempt of court.

The three-judge Bench (coram, Kirpal, CJ, Sabharwal, Pasayat, JJ), however, deferred pronouncing formal orders against the chief minister till Monday.

Hearing two contempt petitions of Tamil Nadu, accusing its neighbour of not releasing water as stipulated by the court, the Bench said: "We are prima facie of the view that there is deliberate non-compliance of our orders and this is contempt."

Karnataka counsel Mr Anil Divan pleaded repeatedly that Karnataka hadn't wilfully disobeyed the court orders and that Mr Krishna thought it fit to first "cool down tempers" because farmers' agitation throughout the state could have turned violent.

Rejecting the argument, the Bench said: "The plea of bandhs and agitations have unfortunately been raised by other chief ministers. We cannot accept it. It has to be deprecated in the strongest terms." The Bench said India's federal structure had been "dented" by the manner in which the Karnataka government chose not to implement its orders for release of Cauvery water to Tamil Nadu. The Bench asked: "What happens when a state, leave alone a private litigant, wilfully disregards a Supreme Court order?" To which solicitor-general Mr Harish Salve, appearing for the Union government, replied: "There's no limitation to the Supreme Court power to formulate a mechanism to compel a state to comply with its orders... The majesty of the Supreme Court as the arbiter of federal disputes cannot be questioned. If it is dented, our federal system will collapse."

To this, the Bench cited the disregarding of the Supreme Court orders for the construction of the Sutlej Yamuna Link canal by Punjab and said: "The federal system has been dented. Unfortunately we have reached such a situation." The Bench didn't spare the Union government either, saying it too had a constitutional duty to see that the court's orders were complied with.

Cong in a fix, page 4

Opp slams conversion Ordinance

Statesman News Service

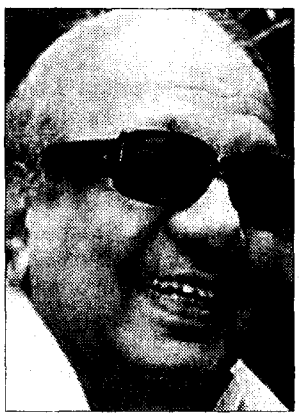
NEW DELHI, Oct. 7. — The Opposition today criticised the Jayalalitha government's decision to issue an Ordinance banning "forced" religious conversions. The BJP has welcomed it and called for such a law nationwide. Christian leaders have expressed concern over the likely misuse of the Ordinance.

Congress spokesman Mr Jaipal Reddy said: "We deplore the Ordinance imposing draconian curbs on fundamental religious freedoms. We are distressed at the cloak-and-dagger manner in which it has been issued."

He said "the Congress was not for conversions" but was opposed to any attempt to ban the fundamental rights of the people to practice religion and faith. The Congress is opposing the Ordinance on "liberal and democratic grounds" as the "Constitution guarantees right to propagate one's religion." It may "not stand the test of law".

By opposing the Ordinance, wasn't the party supporting "forceful and fraudulent" conversions? Mr Reddy said: "This is too simplistic a question to deal with the issue in its totality. It is like saying that those who oppose Pota support terrorism. We do not support fraudulent conversions. If a fraud is committed, punish the fraud." The Congress "is worried that this piece of legislation would lend itself to terrible abuse and would be converted into an instrument of intimidation".

Mr Reddy said the move was a classic case of persistent political courting, and that it was an irony that Miss Jayalalitha, who heads a Dravidian party, has "beaten the RSS on its home ground".



Miss J Jayalalitha (left) and Mr M Karunanidhi

CPI national secretary Mr D Raja said the Ordinance was a violation of the constitutional right to practice one's religion and faith. He questioned the credibility and the objectivity of the Jayalalitha government to judge 'which cases amounted to conversions through force or allurement" and said the government may use the Ordinance to settle political scores.

No motive, says BJP: The BJP said the Ordinance was not linked to reported moves by Miss Jayalalitha to get closer to the party. Mr Venkaiah Naidu said: "We want a law covering the entire country under which action be taken against those indulging in conversion. For this, there is a need to have a consensus among all political parties by having a nationwide debate." He denied that the Ordinance was linked to the Cauvery agitation, but took exception to Karnataka chief minister S M Krishna undertaking a padyatra. Talking to reporters at NSC Bose Airport in Kolkata, he said: "This should be a model for all of us."

Christians' concern: Vice-president of the Catholic Bishops' Conference of India and archbishop of Delhi Reverend Vincent M Concessao today said the freedom of conscience which is guaranteed by the Constitution of the country should be maintained while dealing with the conversion issue. If a person accepts conversion by will, the government can not come in the way of his or her exercising this right.

Ordinance unacceptable to DMK

DMK chief Mr M Karunanidhi today said the Tamil Nadu government's Ordinance banning religious conversions was unacceptable to the party, adds SNS from Chennai. "The legislation is likely to be misused against minorities just like the Prevention of Terrorism Act." The DMK is peeved at the fact that Miss Jayalalitha could have discussed the issue in the Assembly session beginning on 24 October before promulgating the Ordinance.

Temple of Justice

The Supreme Court has ruled that being a Brahmin is not a necessary condition for priesthood: Non-Brahmins are just as eligible to perform religious ceremonies or work as temple priests provided they are well-versed in the relevant rituals. The court made this observation while upholding the appointment of a non-Malayalee Brahmin as priest in an ancient Kerala temple. On the face of it, no one can quibble about the spirit of the verdict. An extension of the liberal principles that form the bedrock of the Indian Constitution, the judgment is wholly consistent with our contemporary notions of natural justice. Equally, there can be little doubt about the need for reforms within Hinduism, despite its legendary theological openness. That said, the court's intervention raises complex questions. Believing Hindus may legitimately ask whether the verdict, well-intentioned as it might be, does not run contrary to the idea of religious freedom which is also enshrined in the Constitution. It's one thing for the state to abolish a wholly repugnant practice like untouchability, even when it contradicts a certain religious worldview, but quite another to extend this principle to areas such as temple administration and the like. In other words, just how much liberalism is too much liberalism?

From a non-religious perspective, it is open to debate whether the judiciary is the right forum or instrumentality for addressing the tricky issue of religious reforms. In an ideal world, the state would have no role to play in the personal beliefs of people. And the question of social and religious change would be left entirely to the wisdom and initiative of civil society. But ours is an imperfect world. So is there a *lakshman rekha* which the state cannot transgress without appearing too righteous and overbearing? Admittedly, there can be no context-free, philosophical answer to the question. Invoking the traditional liberal idiom with its simplistic dichotomies of public versus private, identity versus freedom and law versus morality is not very helpful either. Finally, one has to ask whether the judgment will make any difference on the ground. This is so not only because Indian reality, as always, is more complex than one imagines — for instance, there already exist several temples, particularly in the south, where non-Brahmins are appointed as priests — but also because legal fiats have often proved powerless in the face of entrenched beliefs and practices. For proof, we need only look at Rajasthan, where across large parts, Dalits to this day have to fight to gain entry into temples.

SC tells TN to cooperate with Cauvery panel

TIMES NEWS NETWORK

New Delhi: The supreme court on Monday asked the Tamil Nadu government to cooperate with the Cauvery Monitoring Committee (CMC) in abiding by Prime Minister Vajpayee's directive to assess the ground situation regarding the availability of water and the crop situation in the state as well as Karnataka.

A bench, comprising Chief Justice B. N. Kirpal, Justice K. G. Balakrishnan and Justice Arijit Pasayat, asked the CMC to complete the assessment and submit a report to the PM, who heads the Cauvery River Authority (CRA), before October 3.

The matter arising out of the Tamil Nadu's petition seeking contempt action against Karnataka chief minister S. M. Krishna, water resources minister H. K. Patil and the Karnataka chief secretary, will be heard on October 4. The court asked Mr Krishna and others to file their responses within three days. It had earlier issued show cause notices to them.

Mr Vajpayee had directed the CMC to visit the reservoirs in Karnataka and Tamil Nadu and the Cauvery basin area and assess the ground situation.

CMC's counsel and additional solicitor-general Mukul Rohtagi said that because Tamil Nadu did not cooperate the team could not visit the areas in the state and demanded police protection. Mr Rohtagi said the matter was sensitive to both states and that the team needed police protection to visit Tamil Nadu.

However, Tamil Nadu's counsel K. K. Venugopal said that the directives of both the SC and the CRA was violated by the Karnataka government.

'SC opinion will correct system'

Statesman News Service

NEW DELHI, Sept. 26. — Strongly recommending that the Supreme Court reply to the Presidential reference on Gujarat, the solicitor-general told the five-member Constitution bench today that judicial opinion would facilitate the system "correcting itself."

In a brief response to the points raised during the hearing, Mr Harish Salve told the bench (coram, Kirpal CJ, Khare, Bhan, Gopalkrishnan, Pasayat, JJ) that in contrast to the stance taken by the erstwhile Federal Court, it had become the "rule" of the Supreme Court to respond to references to it under Article 143 — returning them unanswered was the "exception."

Dealing with the presumed conflict between the provisions of Article 174 (1) and Article 324, the solicitor-general said they must be made to "coalesce". Everybody agreed on the need for free, fair and periodic elections, and in his view it was only Article 174 (and Article 85 in regard to the Centre) that ensured periodic polls.

There could be differing opinions on whether Article 174 (1) directly impacted on an election schedule, Mr Salve conceded, but it was important that when the EC exercised its powers under Article 324 it bore in mind that the Governor (or the President) was constitutionally mandated to ensure regular sittings of the legislature. He maintained that Article 174 (1) had a certain relevance even when a House stood dissolved.

Rejecting the argument that the Reference was "defective" because it was based on a specific interpretation of Article 174 (1), he said both the EC and the government had consistently gone by that interpretation — the court could now opine otherwise — hence it was framed in that manner.

That interpretation had never been challenged before, he said,

'The rule of the Supreme Court was to respond to references to it under Article 143'

pointing out that the requirement for a legislature to meet at least every six months had been well accepted. That was why when a state was brought under President's Rule the proclamation under Article 356 specifically stated that Article 174 remained suspended. Those proclamations had, almost always, been ratified by Parliament, he said.

The solicitor-general said there was little dispute over the EC order of 16 August having mentioned the provisions of Article 356 after it had clarified that it was not recommending such action. It was important to accept that though there had been (as is inevitable in the present case) some "infarctions" of Article 174, the invoking of Article 356 did not follow automatically. That would require action by two other Constitutional authorities.

Furthering his arguments in favour of the court replying to the reference, Mr Salve said the contention that replies to references under Article 143 were "not binding" was of little significance. Any opinion of the Supreme Court carried weight, and he was sure that whatever the court opined in the present instance would be honoured by the Election Commission.

Whenever the educational rights of the minorities came under focus, Mr Salve recalled, much stock was placed on what the Supreme Court had stated in regard to the Kerala Education Bill in 1959 — that issue too had come before the court via a reference under Article 143.

Earlier, senior Counsel for the CPI-M and the West Bengal government Mr Rajeev Dhawan continued to press the court to decline from dealing with a political dispute. The reference was a "disguised appeal" against the EC order, he said. He observed that while the court may "have taken Gujarat out of the reference, you cannot take the reference out of Gujarat."

Propriety of presidential reference questioned

Statesman News Service

NEW DELHI, Sept. 25. — The propriety of the presidential reference over Gujarat will have to be assessed by the Supreme Court before setting out to answer it, Mr Rajeev Dhawan contended before the Constitution Bench dealing with the issue today.

Markedly different from any previous reference under Article 143, senior counsel for the CPI-M and West Bengal government described it "a disguised appeal" against the 16 August order of the Election Commission rejecting the poll schedule suggested by the Gujarat government.

The Court, Mr Dhawan said, was not required to answer references that were "defective" or "inappropriate".

An opinion of the Court, he said, could be interpreted as scathing EC and impacting on its order. The Court must bear that in mind.

Although a reply to a reference was not binding in law, any opinion of the Supreme Court did carry weight, he said in response to a query from the Chief Justice of India, and he cautioned against judicial involvement in what was essentially a political dispute.

Also contending that the Court need not answer the reference since it had been improperly framed were senior counsel Mr Milon Banerjee, Mr PP Rao and Mr KK Parasaran who appeared for the governments of Assam, Karnataka and Madhya Pradesh respectively.

Expressing themselves against the Court setting a time-frame for the polls, Mr Banerjee said the law could not provide answers to every specific situation, high constitutional authorities had to be provided some space for discretion. Mr Parasaran observed that the Constitution had exhibited a capacity to absorb situations that had not been contemplated when it was being framed, that capacity should not be diluted through judicial action.

Joining in the Opposition to judicially-imposed time limits was senior counsel Mr Ram Jethmalani who appeared for the Bihar government. The latest developments in Gandhinagar, he said, might warrant the EC reviewing its stand that Assembly elections in the state would be scheduled for November-December. Ground situations mattered most, not pre-set time frames.

Mr Jethmalani said that when the court replied to the reference it must not bind the EC down to a November-December poll because that "clarification" had been tendered on the basis of the conditions prevailing over a fortnight ago.

Things could change quickly, time frames could create difficulties.

The present issue before the Court arose from a dispute over election schedules: What would happen if both the EC and the state government agreed that the situation did not favour a poll but the Supreme Court had recommended a deadline?

Rejecting the theory that the provisions of Article 174 (1) mandated early elections, Mr Jethmalani said that it was for the first time that such an argument was being advanced by the BJP.

While there could be no real conflict between Articles 174 and 324 since they were applicable in different fields, he said, that if someone distorted their provisions to create a conflict it was clear that Article 324 must prevail. Free and fair elections were a "basic feature".

V. Rama Rao to be Sikkim Governor

By Our Special Correspondent

NEW DELHI, SEPT. 23. In a minor reshuffle of Governors today, the Goa Governor, Mohammad Fazal, was transferred and appointed Governor of Maharashtra for the rest of his term.

The Chief Justice of the Bombay High Court, Justice C. L. Thakkar, was discharging the duties of the State Governor till now. The vacancy in the Mumbai Raj Bhavan was caused in July when P.C. Alexander quit and was elected to the Rajya Sabha.

Mr. Fazal's place in Goa has been taken by the Sikkim Governor, Kidar Nath Sahani, who has been shifted to the coastal State for the rest of his term, according to a Rashtrapati Bhavan communiqué. Mr. Sahani's ill-health was the main consideration for the Government to shift him to Goa, highly- placed sources said.

In his place, the senior Andhra Pradesh BJP leader, V. Rama Rao, has been appointed. The appointments will take effect from the dates the appointees assume charge, the communique said.

SC notice to Karnataka on contempt petition

New Delhi, September 23

THE SUPREME Court today issued notices to Karnataka Chief Minister SM Krishna and four others on a contempt petition filed by Tamil Nadu alleging violation of orders of the court and Cauvery River Authority (CRA) by its neighbour on release of stipulated quantity of water.

A three-judge bench comprising chief justice B N Kirpal, justice K G Balakrishnan and justice Arijit Pasayat also issued notices to the Karnataka Water Resources minister S K Patil, the State chief secretary and the water resources secretary while asking all of them to respond to the contempt petition latest by September 30, the next date of hearing.

The court also asked the Union Government to file an affidavit by September 27 detailing the daily inflow of water into Mettur reservoir in Tamil Nadu "in order to ascertain whether directions of the Cauvery River Authority and apex court is complied with".

Appearing for Tamil Nadu, K K Venugopal termed the actions of Karnataka in not releasing stipulated quantity of water as "gross violation of apex court orders for political gains".

He said the court had ordered Karnataka to release 1.25 tmcft water on daily basis from September 4, which was in force till September 8. He said for the five days Tamil Nadu was to receive 6.25 tmcft water but Karnataka released only 2.3 tmcft.

Terming that non-release of water was causing havoc for the samba crops, Venugopal said as per the order of the CRA, which was headed by the Prime Minister, Karnataka was to release 0.8 tmcft water daily but in the subsequent week instead of the stipulated 5.6 tmcft water, the State released only 1.925 tmcft water.

He said a total of 7.5 tmcft water due to Tamil Nadu from Karnataka was never released by the State. The counsel said,"It was clear from reports that it was a conscious decision to defy the Supreme Court orders as well as those of the CRA."

PTI

Tamil Nadu Law Minister raps Krishna

TAMIL NADU Law Minister C Ponnaiyan blamed the "obdurate and intransigent attitude of Karnataka Chief Minister S M Krishna and his band of Kannada chauvinists for the present imbroglio". He alleged "the bid to colour the Cauvery issue in regionalist or Kannada chauvinist terms has vitiated the entire atmosphere," Ponnaiyan said. The Cauvery issue had inflamed passions only in Karnataka and the victims had been the Tamils in Karnataka and not vice versa, he alleged.

HTC, Chennai

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By JM MUKHI

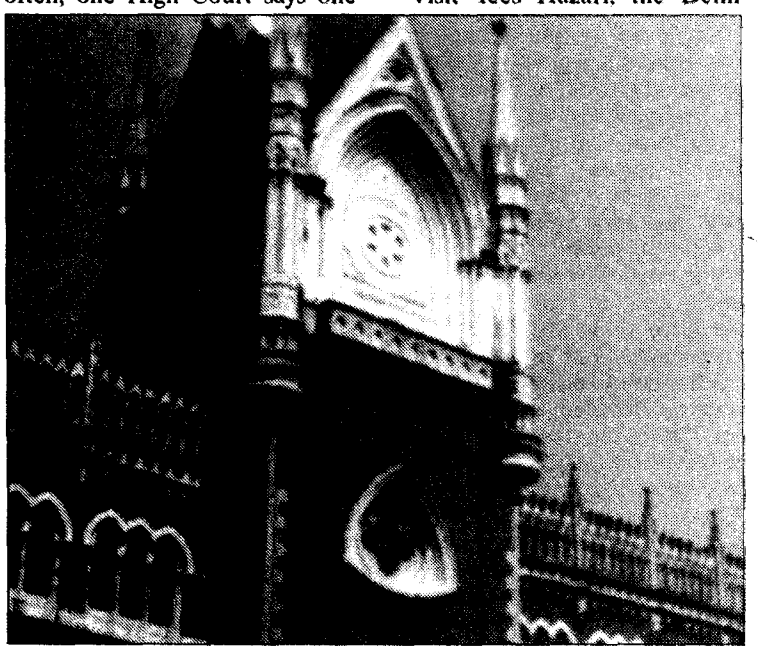
The common man is fast losing faith in the administration of justice. The judicial system is the last bulwark, the last hope, for democracy and for the rule of law when expectations of a fair deal from politicians and the bureaucrats have reached a vanishing point. A weak legal and judicial system would spell doom. It is still not too late to set matters right. The four-point recipe is to appoint the best judges you can find, make the laws simple, easily understood, rationalise and modernise the procedures and make them consumer-friendly and make legal knowledge and legal services available to the common man free or at affordable rates.

Remuneration

The quality of justice always depends on the judge. He must not only know the law, and not be hoodwinked by smart lawyers, but be impeccably honest and even-handed, independent and fearless. Every judge, whether of the "higher" judiciary or the "lower", including "magistrates", must be appointed or promoted transparently and non-politically. Attraction to this vocation must not depend on remuneration or other perquisites but on the aspirant's sense of service and dedication and his or her passion for justice. At the same time, it is of vital importance that the judge be paid a remuneration commensurate with his status and be rendered indifferent to temptation. Some may be able to recall Winston Churchill's speech to the House of Commons in which he warned of dire consequences to a society that did not pay its judges well. There are countries where the judge's sense of economic security has been assured by giving him his pay for life.

What a plethora of laws we have! The adage that everyone is supposed to know the law is obviously a joke. A large number of judgments are concerned not with simple adjudication on judicially ascertained facts but with a statement or declaration of what the law is. Judges tie themselves up in knots trying to expound the law, sometimes in hundreds of pages. Many times they differ with each other.

Some decisions turn on a wafer-thin majority. And very often, one High Court says one thing, and another High Court says the opposite. How is the citizen to know what is permissible and what is not, what will profit him and what will plunge him into loss? He knows only after the event, only after the final court, in many cases the Supreme Court, has given its decision.



Overhaul

It took a Napoleon to simplify the law and procedure for France, and a Bismarck to do the same for Germany. Their codes have stood the test of time, and it is known to all that the continental system is far more consumer-friendly, far more expeditious, and far less costly than the common law system, for example, in England and Wales.

Alas, we are caught in the common law system with its rigid system of precedent and inevitable citing of authority after authority. A paradise for lawyers. The 176 reports of the 16 law commissions appointed after 1956, many of which are gathering dust, have not touched the fringe of the problem. The task is to simplify. Perhaps some super-body appointed by a new Napoleon will accomplish the seemingly impossible task.

Visit Tees Hazari, the Delhi High Court and the Supreme Court. Look at the Cause Lists. One judge in the High Court can have as many as 60 to 80 cases on his daily list.

How can he possibly deal with them all, "do justice" to them, in five hours? How could he have possibly come prepared? Inevitably, he deals with them superficially, and is glad to adjourn on the slightest pretext. But the litigants have to move from one date to the next. Is this a system to be proud of? There are countries where the judge takes only two or three cases a day by appointment and disposes of them with concentration and expedition. Adjournments, except in exceptional circumstances, must be refused. And, of course, the judge must not play truant.

Criminal law and procedure needs drastic overhaul. There is nothing wrong with the public perception that it is taking too long to bring criminals, including errant politicians or their proteges, to justice, and that in many cases they are not brought to justice at all.

Everyone has a right to justice. Justice is no justice if it has to be bought. Why is the citizen fleeced if he but dares to ask for justice? It should be the function of the state to make knowledge of the laws freely available. It should be the function of the state to ensure that justice is free and is not dependent on power or pelf.

Why should there be court fees, ad valorem court fees at that? Why should a victim of negligence, for example, have to pay ad valorem court fees before he can claim compensation for toxic gas having entered his eyes? No court fees exist in any civilised country. Why in India?

Legal aid

And what about legal services and the quality and cost of legal services? It is a truism that the prosperity of lawyers is in inverse ratio to the health of a society. Top legal practitioners in the country now earn as much as Rs 30 lakhs per month if one is to go by the income tax returns that are filed. This is not counting the 10 per cent "clerkage" they charge on their bills.

The latest information is that a cartel of six top lawyers in the Supreme Court charge a daily fee of Rs 2.25 lakhs. The Chief Justice of India takes home a salary before tax of Rs 33,000, plus some allowances, one-tenth of what is carried away by the "fat cat's clerk"!

There is need for the state providing free legal aid to the indigent, maintaining banks of competent and well-screened state-paid counsel available to the public at moderate rates, and controlling and monitoring the fees of the so-called free-market lawyers. The unbridled commercialisation of the legal profession can bring to society nothing but harm.

But, as we have all heard, there is no political will. Sooner or later the public will be sufficiently enraged and political parties will realise that without total reform democracy itself will be in danger.

The author is a lawyer attached to the Supreme Court.

on RECORD

At the root of the problem were the Congress and the Samajwadi Party. The BJP came into the picture later... Some anti-social elements demolished the Babari Masjid when the BJP was in power. — Miss Mayawati.

★

I cannot guarantee 90 per cent polling as Musharraf can do. — Mr L K Advani.

★

None of you who does not wish to vote is to be forced to do so. — Mr J M Lyngdoh to Kashmir voters.

★

I will not board a train as long as Mr Nitish Kumar remains the railway minister. — Miss Mamata Banerjee.

★

He deceives, he delays, he denies. And the United States and, I'm convinced the world community, aren't going to fall for that kind of rhetoric by him again. — President George W Bush, after Saddam Hussein's offer to allow the return of UN. weapons inspectors to Iraq.

★

The city may be dirty, but the Metro is very clean... I do not know what the situation is now, as I have not been there for many years. — Mr L K Advani on Kolkata.

★

Just as Mr Advani doesn't like Kolkata, the people of this city also don't like him. Mr Advani's comment is an insult to a city known for its vibrant culture, long history of communal harmony and strong social fabric. — Mr Anil Biswas, CPI-M state secretary.

★

Those who had to "adjust" voting and counting procedures to win a referendum and achieved constitutional authority by the simple expedient of writing their own Constitution are ill-placed to lecture others on freedom and democracy. — Mr Atal Behari Vajpayee referring to Pakistan at the UN General Assembly.

★

The international community must act to oppose Hindu extremism with the same determination it displayed in combating terrorism, religious bigotry and fascist tendencies elsewhere. — General Pervez Musharraf, referring to the Gujarat incidents at the UN General Assembly.

★

We brought Narmada waters to Gujarat in the month of Shravan, but the Congress would have got it in Ramzan. — Mr Narendra Modi during his Gaurav Yatra.

★

I wanted advice from him regarding possibilities of IT development in our state. — Mr Buddhadeb Bhattacharjee after meeting Mr Sam Pitroda at Writers' Building.

★

The SC has vindicated our stand. Those allegations (of saffronising education) hurled on us were politically motivated, mischievous or made out of ignorance. — Dr Murli Manohar Joshi after the Supreme Court uphold the National Curriculum Framework for Secondary Education 2002.

★

Sonia Gandhi is a 100 per cent foreign direct investment in the Congress. — Mr Pramod Mahajan, IT and communications minister.

★

If you analyse a class after a decade the brightest students land up in IIT, the next lot in business, then IAS and IPS, and the rest end up in politics. — Mrs Margaret Alva, MP.

SC upholds education policy

By J. Venkatesan

NEW DELHI, SEPT. 12. The Human Resource Development Minister, Murli Manohar Joshi, today got a shot in the arm when the Supreme Court upheld the National Curriculum Framework for Secondary Education (NCFSE) rejecting the contention that it was an attempt to 'saffronise' education by the BJP-led NDA Government.

Dismissing a public interest litigation writ petition from Aruna Roy and others, a three-Judge Bench comprising Justice M.B. Shah, Justice D.M. Dharmadhikari (who gave a concurring judgment) and Justice H.K. Sema (who differed on the aspect of consultation with the Central Advisory Board of Education), said "the NCFSE nowhere talks of imparting religious instructions as prohibited under Article 28 of the Constitution".

Holding that non-consultation with the CABE could not be a ground for setting aside the new curriculum as it was not a statutory body, the Bench (whose main judgment was written by Justice Shah) vacated the interim stay granted earlier and cleared the decks for the implementation of the new curriculum with immediate effect.

"We do not find that the National Education Policy 2002 runs counter to the concept of secularism. What is sought is to have value-based education and for 'religion' it is stated that students be given the awareness that the essence of every religion is common. Only practices differ," the Bench said.

It also pointed out that "there is a specific caution that all steps should be taken in advance to ensure that personal prejudices or narrow-minded perceptions are allowed to distort the real purpose. Dogmas and superstitions should not be propagated in the name of education about religions".

"In our view, the word 'religion' should not be misunderstood nor the contention could be raised that as it is used in the national policy of education, secularism would be at peril".

"Value-based education is likely to help the nation to fight against all kinds of prevailing fanaticism, ill-will, violence, dishonesty, corruption, exploitation and drug abuses," the Bench said.

"The new curriculum was designed to enable the learner to acquire knowledge and was aimed at self-discipline, courage, love for social justice etc., truth, righteous conduct, peace, non-violence which are core values that can become the foundation for building the value-based education. These high values cannot be achieved without knowledge of moral sanction behind it."

The Bench observed "let knowledge, like the sun, shine for all and that there should not be any room for narrow-mindedness, blind faith and dogmas. If basic tenets of all religions over the world are learnt, it cannot be said that secularism would not survive".

It was also of the view that it appeared to be totally a wrong presumption and contention that knowledge of different religions would bring disharmony in society.

On the contrary, the Bench said, knowledge of various religious philosophies was material for bringing communal harmony as ignorance breeds hatred because of wrong notions, assumption, preaching and propaganda by misguided interested persons.

A word of caution: Page 11

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IN THE COURTS

SC asks Centre for split details

HT Correspondent
New Delhi, September 13

THE SUPREME Court on Friday asked the Centre to place before it all the material that prompted the Union Cabinet to mandate the creation of new railway zones. The court did not issue a notice to the Centre but asked the Attorney-General to file an affidavit.

A Bench comprising Justice G B Pattanaik and Justice Ruma Pal passed the order on petitions challenging the Delhi and Calcutta high courts' orders upholding the Centre's decision.

The Federation of Railways Officers' Associations had filed the petition questioning the Delhi High Court's order while the legal advisor of an NGO, Biswajit Deb, moved the apex court against the Calcutta High Court. The petitioners said both high courts had dismissed their petitions without giving reasons.

The Supreme Court Bench said it first wanted to ascertain whether the Union Cabinet had considered enough material before taking the decision.

Senior counsel Shanti Bhushan, representing the federation, submitted that the Government's decision was politically motivated. He said the Government had ignored the reports of various expert committees, which opposed the splitting of existing zones.

However, Attorney General Soli J Sorabjee denied the charges, saying the Government's aim was to improve the administrative efficiency of railways.

The Bench rejected the contention that copies of the government papers be supplied to the petitioner. "We are interested in examining the records ourselves," it observed. Fixing October 4 for further hearing, the Bench noted that the court had limited powers to interfere with the policy matters of the Government.

Zones to be affected by the bifurcation include Eastern Railway, headquartered in Kolkata. The Centre proposes to create a new zone, East Central Railway, with its headquarters at Dhanbad.

THE HINDUSTAN TIMES 14 SEP 2003

EC proposes, BJP opposes President's rule

Poll panel urges apex court to ignore Presidential reference on Gujarat

TIMES NEWS NETWORK AND AGENCIES

New Delhi: The Election Commission on Wednesday urged the supreme court to return the presidential reference on the Gujarat polls without making any comment on it and sought imposition of President's rule in the state.

Concluding his reply before the five-judge constitution bench headed by Chief Justice B.N. Kirpal, the EC's counsel, K.K. Venugopal, said that the questions raised in the reference were "hypothetical" to law and so it should be returned without opinion.

The counsel said, "The court should refrain from answering the presidential reference on the matter of Article 174 of the constitution, under which the time limit of six months applies only to two sessions of the house from the last sitting to the next one and not from the date of dissolution of the house".

Mr Venugopal said that if elections could not be held due to a natural calamity or a serious law and order situation in a state within the six months' period as prescribed under Article 174, then "the court should perceive that the safety valve is provided under Article 356 for imposing President's rule to avoid any constitutional crisis".

As Mr Venugopal sought imposition of President's rule in the state, the BJP's counsel, Arun Jaitley, said, "a situation for invocation of Article 356 is not to be created or engineered". Mr Jaitley, a former law minister, said that if a constitutional authority were to engineer invocation of Article 356, it would amount to use of authority for a collateral purpose and a fraud on the constitutional power.

Additional solicitor general and the Gujarat government's counsel, Kirit N. Raval, challenged Mr Venugopal's contentions, saying three options were available to the EC, which it had not resorted to: assess the situation; remove the deficiencies with the help of the state and central governments; and finally draw a conclusion after taking these steps.

"All these stages have not been gone into by the EC before passing an order on August 16 for deferring the polls beyond October 3," Mr Raval added. Mr Jaitley said the power under Article 324, which stipulates free and fair elections, cannot override the mandate of Article 174, which says that there cannot be a gap of more than six months between two sessions of the house. However, Mr Venugopal said that under Article 174 no outer limit was fixed for a ministry to continue in office six months after the last sitting of the assembly.

Policemen come in Modi's line of fire

Ahmedabad: The Gujarat government late on Tuesday night shunted out three senior intelligence officials whose confidential report had termed chief minister Narendra Modi's anti-minority speeches "inflammatory".

The government also admitted the existence of an audio tape containing allegedly anti-minority remarks by Mr Modi. "We can make it public. We have no intention to hide anything. If anyone asks for the tape we can give it," state government spokesman Purshottam Rupala told newsmen. PTI

19 SEP 2002

THE TIMES OF INDIA

PRESIDENTIAL REFERENCE DELINKED

Supreme Court upholds EC decision on Gujarat polls

By J. Venkatesan

NEW DELHI, SEPT. 2. The Supreme Court today made it clear that it would not interfere with the Election Commission's order of August 16 (to defer the Assembly elections in Gujarat) and that it would decide the three-point reference made by the President without any reference to Gujarat.

A five-Judge Constitution Bench, comprising the Chief Justice, B.N. Kirpal, and Justices V.N. Khare, K.G. Balakrishnan, Ashok Bhan and Arijit Pasayat, after ascertaining from the senior counsel for the Election Commission that it would hold the Assembly elections to Gujarat in November-December, observed that "perhaps, November-December is the most likely date for holding polls, so Gujarat is not an issue before us".

When the Solicitor-General, Harish Salve, urged the court to fix an early date for hearing, the Bench said: "If you think a decision can be given by the October 6 deadline, it is impossible for all practical purposes."

Delinking the issues raised in the Presidential reference to the Gujarat elections, the Bench told Mr. Salve that "we are proceeding on the assumption that whatever that had been stated by the Election Commission on factual aspects is correct. We are not going to say that the Commission should not have made its assessment".

The Bench further said: "We are keen that this matter be heard as expeditiously as possible because elections are to be held in Jammu and Kashmir and Gujarat this year and next year many States are going to have elections. We are going to decide only the constitutional issues on the interpretation of Article 174 (which says that there should not be a gap of more than six months between two Assembly sessions) and Article 324 (powers of the Election Commission).

Earlier, the Bench put a specific question to the Commission's counsel, K.K. Venugopal, as to what the Commission meant in its order that it would consider the holding of polls in Gujarat in November-December. "Is it for the consideration for fixing a time-frame for election or is it the time for actually holding the elections in the State," the Bench asked. Counsel submitted that it was for holding polls and not for considering the time-frame.

At this juncture, the Bench observed that "we do not think it will be incorrect to say that holding of polls in November-December will be wrong. So the question of going into the Commission's action under Article 324 does not arise".

The Bench directed the Centre, all the States and the six national political parties to file their written submissions on or before September 16 and posted the matter for hearing from September 17. The Bench also issued notice to the Centre, the Gujarat Government and the Chief Minister, Narendra Modi, on a public interest litigation petition questioning the legality of Mr. Modi continuing as caretaker Chief Minister after the dissolution of the Assembly as the Constitution did not provide for any caretaker Chief Minister. The Bench posted the case for hearing on September 17 along with the Presidential reference.

President's rule inevitable

By Harish Khare

NEW DELHI, SEPT. 2. The sum and substance of the Supreme Court's pronouncement today in the matter of Gujarat elections is that the country's highest judicial forum has refused to provide any aid and comfort to those within the Bharatiya Janata Party who were inclined to countenance the Chief Minister, Narendra Modi's politics of hatred. More than that, the court has empowered a constitutional institution to stand firm against attacks by politically motivated forces.

From the Deputy Prime Minister, L. K. Advani, down to the voluble party functionaries, the BJP had cast aspersions on the Election Commission just because it would not go along with Mr. Modi's game plan. Now, the institutional prestige of the Commission stands enhanced. The very idea of a presidential reference emanated from a desire to use the judiciary to score points. The court has rebuffed these calculations.

A section within the Government, including the Prime Minister, Atal Behari Vajpayee, is reportedly not unhappy that the apex court has virtually spiked Mr. Modi's election stratagem. There is the realisation that at least Mr. Vajpayee would not face the same embarrassment when he visits New York later this month that confronted Mr. Advani during his recent visit to London.

The next battle would be on the applicability of Article 356 in Gujarat on or before October 6 (which will mark the six-month period since the last sitting of the dissolved Gujarat Legislative Assembly on April 6, 2002).

In its order of August 16, the Election Commission had spelt out the legal consequences of its inability to hold elections in Gujarat before October 6: "The non-observance of the provisions of Article 174 (1) in the aforesaid eventually would mean that the Government of the State cannot be carried on in accordance with the provisions of the Constitution within the meaning of Article 356 (1) of the Constitution and the President would then step in."

However, there is a view within the BJP that Mr. Modi can continue as a caretaker Chief Minister even after October 6 and that there would be no need to invoke Article 356 to bring the State under President's rule. There is no legal backing for this view, and, in any case, the Supreme Court has already clubbed a public interest litigation on this question with the presidential reference; should the BJP insist on imposing its one more partisan interpretation of the Constitution, many experts believe that it would most surely be rebuffed by the Bench.

For all practical purposes, the Supreme Court today gave the Advani faction of the BJP a way out to extricate the party from the Narendra Modi prescriptions. Mr. Advani cannot apologise in London for what happened in Gujarat, and then come back to bat for Mr. Modi and his political calculations.

A spell of President's rule in Gujarat has become inevitable, and it is now incumbent upon Mr. Advani, as Home Minister, to start searching for a new Governor. Mr. Advani had once declared Sunder Singh Bhandari as disqualified to be the Governor of Bihar (when it was brought under President's rule).

THE HINDU

3 SEP 200

SC for speedy disposal of Gujarat case

TIMES NEWS NETWORK

New Delhi: The supreme court said on Thursday that the presidential reference on the Election Commission's order not to hold elections in Gujarat before November required to be heard "as expeditiously as possible". However, it adjourned the hearing until Monday since many of the states had not received the notice issued on August 26.

A five-judge constitution bench comprising Chief Justice B.N. Kirpal, Justice K.G. Balakrishnan, Justice Ashok Bhan and Justice Arijit Pasayat said that although elections were held every year, "the reference raises several important issues which need to be decided as expeditiously as possible".

Solicitor-general Harish N. Salve said that as many state governments have already appeared before the court, a time schedule could be drawn but on Thurday itself for hearing the reference.

But Congress counsel Kapil Sibal objected to this, saying it would not be proper to draw a time schedule for the hearing without the service of the notices being completed in the court's record.

The Centre is pressing for an early opinion as it feels that Article 174 of the constitution mandates that the Gujarat assembly has to be reconstituted by the October 2 deadline, that is, within six months of the last assembly session in April.

While Article 174 (1) provides that there should not be a gap of more than six months between the two sittings of an assembly, Article 324 gives exclusive jurisdiction to the EC to conduct and superintend polls.

The main objection of the Centre to the EC's August 16 order, which ruled out early polls in Gujarat, centred around the observation made by the EC that if elections were not held in the state as per the mandate of Article 174, the President should step in under Article 356.

President A.P.J. Abdul Kalam had therefore sought the apex court's opinion on three points. First, is Article 174 subject to the decision of the EC under Article 324 as to the schedule of assembly elections?

Second, can the EC frame a schedule for the elections to an assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?

And third, is the EC under duty to carry out the mandate of Article 174 of the constitution by drawing upon all the requisite resources of the Union and the state to ensure free and fair elections?

Govt singed in pump fire as SC stays order

TIMES NEWS NETWORK

New Delhi: The NDA government suffered a severe jolt on Wednesday with the supreme court ordering a stay on Prime Minister Atal Behari Vajpayee's August 9 decision to cancel the allotment of petrol pumps, gas agencies and kerosene dealerships made after January 2000.

It also directed the Centre to return the cancelled allotments to the dealers within two weeks. While fixing November 12 for the final hearing of the matter, the court said the proceedings in all other petitions pending before high courts would remain stayed during the pendency of the cases before the apex court. It clarified that its order would supersede the interim orders passed by various high courts or subordinate courts across the country.

A bench comprising Chief Justice B.N. Kirpal, Justice K.G. Balakrishnan and Justice Arijit Pasayat said the status quo order would not be applicable to 1,298 cases where the oil companies had issued only letters of intent (LoIs) to the dealers without commissioning the petrol pumps, gas agencies or kerosene dealerships.

To protect those who had been issued LoIs, the bench restrained the government and the oil companies from transferring these LoIs to any other person. The status quo order will be applicable to 2,248 cases where the dealerships and agencies were commissioned.

Referring to the huge number of cases pending before the high courts, the bench transferred only 11 petitions, terming them representative in nature and addressing all questions raised in challenge to the August 9 decision. "We direct that possession be restored to dealers who shall maintain proper accounts and continue to operate their respective business as per their original contract with the oil companies," the bench said, referring to the 463 allotments where oil companies had taken possession of petrol pumps and dealerships pursuant to the August 9 decision.

As the bench ridiculed the government for not giving any notice to the dealers before cancelling 3,546 allotments made since January 2000, additional solicitor-general Kirit N. Raval said that the government had taken the decision after due deliberation and due to the controversy surrounding the selection process.

The bench said, "Sure, you have taken the decision after due deliberation, but what prevented you from issuing a notice to a person before taking away his livelihood? Who will pay the instalments for the repayment of loans he has taken?"

The court continued, "If the reason for cancellation is fraud, we have no sympathy for them. But that is not the case here."

Among the 11 petitions challenging the cancellation of dealerships transferred to the apex court were five from the Delhi high court, three from the Rajasthan HC's Jodhpur bench, one the Bombay high court.

SC issues notices on Gujarat polls, hearing on Thursday

Statesman News Service

NEW DELHI, Aug. 26. — The Supreme Court today launched the process of dealing with the presidential reference on the deferment of Assembly elections in Gujarat by issuing notice to the Election Commission, all state governments and six national political parties. The notice is returnable on Thursday.

On that day, the five-member Constitution Bench (coram. Kirpal, CJ, Khare, Balakrishnan, Bhan, Pasayat, JJ) will fix the schedule for hearing the views of those to whom the notice has been issued.

When the presidential reference came up for a preliminary hearing today, the Bench declined to immediately commit itself to an expeditious disposal of the matter. "We will take care of that when fixing the schedule" the Chief Justice told the Solicitor-General, Mr Harish N Salve, who drew attention to the urgency of the issue.

The Court also rejected a plea to involve the regional political parties in the proceedings as that would be "unwieldy" and make it difficult to control the proceedings, the CJI observed.

Today's hearing was brief, the Court issuing notice almost immediately after the Solicitor-General made a few opening remarks on the presidential reference, and pointed out that under Article 174 the Gujarat Assembly was required to be constituted by 2 October.

The standing counsel for the Election Commission accepted the notice, as did the counsel for the Congress, the BJP, the CPI, the CPI-M and the Nationalist Congress Party. The Bahujan Samaj Party was not represented by its counsel at the hearing.

The Court directed that notice be immediately served to the Advocates-General and the chief secretaries of all state governments. The Supreme Court registry had earlier issued notice to the Attorney-General of India, Mr Soli J Sorabjee, and the Solicitor-General, whom the Union law ministry has said will represent the central government.

The presidential reference to the Apex Court under Article 143 was the legal avenue which the Union government chose to explore after the Election Commission declined to hold early elections to the Gujarat Assembly as desired by the state government.

The three questions on which President Dr APJ Abdul Kalam sought the opinion of the Supreme Court were:

- Is Article 174 subject to the EC's decision under Article 324 as to the schedule of Assembly elections?
- Can the EC frame a schedule for elections to an Assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?
- Is the EC under a duty to carry out the mandate of Article 174 by drawing upon all the requisite resources of the Union and the State to ensure fair polls?

Modi *yatra* dares Vaghela in his den

GANDHINAGAR, Aug. 26. — The starting point of Mr Narendra Modi's *Gaurav yatra* from Phagvel in Kheda districts under Kapadwanj constituency is an attempt to beard the Congress "lion" Mr Shankersinh Vaghela in his den. The newly appointed PCC chief was elected to Parliament from Kapadwanj with a margin of 65,000 votes.

Cow slaughter is being cited as another motivation for flagging off the *yatra* from Phagvel. Mr Modi will begin his yatra from a temple of Bhatiji Maharaj, who was known for his fight against cow slaughter.

In New Delhi, the BJP today took up the fight for Gujarati pride, with Mr Mukhtar Naqvi objecting to Mrs Sonia Gandhi's reference to the state as "Godse's Gujarat" during her visit, though it was pointed out that she had only said some were "behaving like Godse". — SNS

Passing the ordinance

This lack of sync between the judiciary and the executive is disturbing

THE proposed Representation of the People (Amendment) Ordinance has now been returned to the president and will be the law of the land. But the hasty manner in which it has been sought to be pushed through is worrying and will have significant ramifications for Indian democracy. The most disturbing aspect of all in this entire process of getting the ordinance passed — starting with the Supreme Court order of May 2 to the union cabinet's decision to go ahead with the ordinance on Saturday — exposed a lack of sync between the various institutions that constitute the democratic apparatus.

The fact is that the country's political parties — it would be unfair to blame just the NDA government on this score since there has been a fair amount of consensus cutting across party lines on this score — have failed to seriously address the concerns raised by the apex court. The court, responding to a public perception that the 1951 Representation of People Act has failed to keep criminals from entering state assemblies and Parliament, had recognised the citizen's right to know a candidate's criminal background, assets, liabilities and educational qualifications, so that he/she could make an informed choice while voting. The nation's politicians may have had some valid reservations to some aspects of this order and that would have been perfectly understandable. But their response, as reflected in the Representation of the People (Amendment) Bill, 2002, drafted by the union law ministry, betrayed an impulse to fob off the Supreme Court's concerns rather than address them.

It is the bad faith which characterises their response that is unacceptable. It was this superficial, quick-fix response from the country's political masters to the citizen's demand for more substantive electoral law reform that had led President Kalam to send the draft ordinance back to the cabinet for reconsideration. The cabinet — specifically drawing encouragement from the fact that there was political consensus behind it — preferred to stand firm and leave the legislation unaltered. All that can be said is that it is unfortunate in the extreme that an issue as complex as the citizen's right to be informed about political candidates has been handled in so cavalier and self-serving a manner.

EC ORDER ON GUJARAT POLL SCHEDULE

SC to hear presidential reference today

By Neena Vyas

NEW DELHI, AUG. 25. A five-judge Constitution Bench of the Supreme Court will begin hearing tomorrow the presidential reference made to it in the context of the Election Commission order deferring the announcement of a poll schedule for Gujarat on the ground that the situation in the State was far from normal, that a fear psychosis pervaded the minds of the people, and that the State was experiencing a drought.

The Election Commission had indicated that it was exercising its powers under Article 324 of the Constitution under which it was bound to ascertain whether conditions on the ground were suitable for free and fair elections.

While the Opposition parties welcomed the Commission's decision, the Government concluded that the Election Commission had violated Article 174, which mandated that not more than six months should elapse between one Assembly session and another, as delayed polls would mean that the new Assembly would not be able to meet before October 6 when the six-month deadline would end.

The Bharatiya Janata Party and the National Democratic Alliance dispensation at the Centre were especially irritated by the Election Commission's reference in its report to Article 356 of the Constitution (under which the Centre can impose President's rule on a State, in this instance on Gujarat, to get over the constitutional crisis after October 6).

The arguments on both sides of the political divide have been heard by the public time and again on television and in the print media. And these will now be made before the Bench, to be headed by the Chief Justice, B. N. Kirpal, with Justice V. N. Khare, Justice K. G. Balakrishnan, Justice Ashok Bhan and Justice Arijit Pasayat as other members.

The Solicitor-General, Harish Salve, will represent the Centre and the court registry has already issued notices to both Mr. Salve and the Attorney-General, Soli Sorabjee, while the former Additional Solicitor-General, Abhishek Singhvi, is expected to represent the main Opposition party, the Congress.

The CPI (M) may have top guns like Fali Nariman and Ashok Desai to represent them in this matter.The main points in the presidential reference relate to three Articles of the Constitution — 174, 324 and 356. Can the Election Commission use its powers under Article 324 to override Article 174? Can it frame an election schedule on the premise that if Article 174 is violated, the constitutional remedy would lie in Article 356, that is, imposition of President's rule?

Senior leaders in both the BJP and the Government have indicated that they are appalled by the Commission's orders because it would virtually force Parliament to impose President's rule in Gujarat after October 6, and that it will set a "bad precedent," which must be clarified (and avoided).

However, the Opposition parties have said that the BJP is bent upon using the communal card for electoral advantage, that the Election Commission is right in that the situation in Gujarat is not conducive for elections, and finally that Article 174 does not take away from the Commission the powers to decide the election schedule in a manner that ensures that the elections are free and fair.

Dr. Singhvi has been arguing that Article 174 (1) does not apply when an Assembly has been dissolved (as is the case in Gujarat).

Or that, assuming it does (without conceding this), the Article in no way impinges upon the power of the Election Commission under Article 324. And finally, that the Commission neither suggested nor recommended the use of Article 356.

CONTROVERSY IS OVER: MODI

AHMEDABAD, AUG. 25. A day after the Prime Minister, Atal Behari Vajpayee, rebuked him for the "indecorous insinuations" against the Chief Election Commissioner, J. M. Lyngdoh, the Gujarat Chief Minister, Narendra Modi, today said the controversy has come to an end following Mr. Vajpayee's "guidelines", but stuck to his demand that the Election Commission hold early Assembly polls.

"Following the Prime Minister, Atal Behari Vajpayee's guidelines on the issue the controversy with the Chief Election

Commissioner has come to an end," Mr. Modi said in a statement here.

However, he said his stand on elections to the Assembly was very clear _ that five crore people of Gujarat should be given the opportunity to elect a popular government as early as possible.

In a virtual disapproval of Mr. Modi's attack on Mr. Lyngdoh, the Prime Minister had yesterday said no one should use "improper language or make indecorous insinuations" in expressing views on the EC's decision on Gujarat.

Mr. Vajpayee had also asked the democratic institutions to work within their Constitutional limits and appealed to "all for an immediate end to this unseemly controversy." _ PTI

The Supreme Court reference

By Rajeev Dhavan

The Supreme Court should not feel pressured by the BJP's urgency. Having undermined democracy, the BJP should not be allowed to undermine the patient wisdom of the rule of law.

THE BJP as a political party is vitally interested in the Gujarat elections. But, when it rules India, the BJP cannot place its party political interests above the nation's interests. The Union Government's powers cannot be abused for the benefit of a political party. As a party, the BJP had made its submissions to the Election Commission. The E.C. disagreed. Now, the BJP is using its power to obtain the Supreme Court's advisory opinion as an appeal mechanism against the E.C.'s decision. Why? This is only because the E.C. had the constitutional courage to disagree with the party in power. The matter could have lain there. But, the BJP's electoral stakes are too high. Rather than provide a healing touch to Gujarat, the BJP wants to exploit the situation. Its allies are silent. They betray constitutional indiscipline and lack real constitutional courage.

On August 16, 2002, the E.C. wrote a detailed order in which it accepted that normally elections should be held in six months — unless there were compelling reasons to the contrary. In fact, the E.C rightly reminds the BJP that while imposing President's Rule in Goa on February 10, 1999, the six months rule (in Article 174) was specifically suspended. On that date, the BJP was in power. But, it had a different strategy for Goa from Gujarat. The E.C. wants the Constitution to be read as a whole — to subserve the interest of the voter and democracy. Citing the Supreme Court, the E.C. referred to the Seshan (1995), Gill (1978) and Trivedi (1986) cases to reinforce this simple point. In the Haryana (1984) and Assam (1993) cases, the Supreme Court gave the ultimate power to determine when a free and fair election can take place to the E.C. after it has consulted the States. No doubt, the State's assessment is important, but not final. It would be constitutionally abominable if such a decision was left to the ruling party in the State. Our Constitution made the dramatic change from the pre-1950 British state control of elections to an independent Election Commission. Why? To ensure that the running, timing and conduct of elections and making election rolls was given to an independent constitutional authority not politicians in power. This is, and must be, surely beyond dispute.

What the E.C. found in its visits to Gujarat of July 31 to August 4 and August 9-11, 2002, was alarming. This was in addition to the vast amount of evidence already in the public domain. The Gujarat Government simultaneously argued that only 12 out of Gujarat's 25 districts were affected even though rations were being distributed in 20 riot-stricken areas. Clearly 80 per cent of Gujarat's districts remain administratively unstable. R.B. Sreekumar of the Gujarat Police officially told the Commission that out of the 182 constituencies in Gujarat, 154 were affected by riots (including 151 towns and 993 villages and 284 out of 464 police stations). Of the 121 relief camps, all but eight have been shut down. The people have dispersed, but not dared to go home. On August 3, 2002, the State's Secretary, Administration, told the E.C. that "... neither the Revenue Department nor the Collectorate have any system to track down the inmates of the camps once they have left without returning to their home". While there is disquiet, will they return to cast their votes? The law and order situation remains precarious. On July 12, 2002, when the rath yatra took place, 14,821 police were deployed in one area. Do we want elections under armed guard? No doubt, the State Government and the police say the situation is normal. But, this is belied by their own statements, and the truth.

The Municipal elections due in February 2002 were deferred till after the monsoon because of riots. On June 12, 2002, the State Government deferred elections in a large number of panchayats and districts till October 11, 2002, because of the monsoon. Drought and water were also a reason for postponing elections in 2000 and 2001. Elections were held in 1,677 panchayats in April 2002. But, the State Government gave Rs.60,000 in 620 such elections to ensure they were not contested! Busy with riots, rain and drought, the administration is not ready for elections. The electoral rolls are not ready. The E.C. has given a specific direction that objections will be heard till September 18, 2002. Issuing identity cards will start on October 1 during revision. Should Gujarat have elections with incomplete rolls and a missing electorate under conditions of persecutory instability? The E.C. does not think so. It is right.

LAW AND SOCIETY

References to the Supreme Court should not be made lightly. The Advisory References are a British legacy. But, it is a unique constitutional mechanism if used responsibly. Of the 10 references, the first was the Delhi Reference (1951) on rule making powers of the Government. The rest dealt with serious crises such as the Kerala Education Bill Crisis (1958), and the Uttar Pradesh High Court-Assembly stand-off (1965), the Cauvery imbroglio (1993), federal questions on the customs tax power of the Union over the States (1963) or the territorial integrity of India as in the Berubari Reference (1960). The President's Election Reference (1974) was necessary because Gujarat Assembly members were not available to vote due to President's Rule. But, an element of opportunism had crept into later References including the pre-emptive reference on Special Courts (1979) which was directed against Indira Gandhi, the Judges Reference (1998) to contain Justice Punchhi and the Babri Masjid reference (1993) to resolve a problem that the then Prime Minister, Narasimha Rao, had created and which the Supreme Court refused to answer. The Gujarat Election Reference (2002) is an overtly opportunistic reference by a political party in power to achieve electoral gains.

The present crisis was created by the BJP when the Chief Minister, Narendra Modi, dissolved the Gujarat Assembly on July 15, 2002, when he should have recalled it. The Assembly would have continued; and Mr. Modi would have been accountable to it. But, he did not want that. President's Rule would have made Gujarat answerable to the Union Parliament. But, the BJP did not want that. Now we have three questions. The first question is about the E.C.'s power to decide on free and fair elections after the six months (under Article 174) have expired. But, the E.C. has already accepted the BJP's view that the six months rule will normally apply as a norm but not absolutely where free and fair elections are not possible. The E.C. still plans to hold elections within the five-year term which ends March 2003. The E.C.'s stance is constitutionally bonafide and plausible enough to be gracefully accepted. The Supreme Court does not have to be roped in to resolve the BJP's squabble.

The third question asks if the E.C. can use its resources and forces to hold elections before the six-month period. This is an invitation to invite the army and police to superintend the electoral process. This is a frightening thought we have been spared so far. The second question about President's Rule is an unfair question. The E.C. has not asked for President's Rule, but simply shown that it was imposed by the BJP Government in Goa.

Having created this crisis, the BJP has no qualms about exacerbating it — albeit by threatening the E.C. by this reference. The President's Election reference (1974) was answered between April 30 and June 5, 1974. But, the law reports show that each State was issued notice and assisted the Court; as in other references. The Supreme Court should not feel pressured by the BJP's urgency. Having undermined democracy, the BJP should not be allowed to undermine the patient wisdom of the rule of law.

Constitution Bench to hear reference on Gujarat

By J. Venkatesan

NEW DELHI, AUG. 21. The Supreme Court will hear on August 26 the reference made by the President, A.P.J. Abdul Kalam, raising three important questions of law on the interpretation of Article 174 (that there should not be a gap of more than six months between two Assembly sessions) and the Election Commission's powers under Article 324.

A five-judge Constitution Bench, headed by the Chief Justice, B.N. Kirpal, will hear the Solicitor-General, Harish Salve, who had already been issued notice in this regard as the Attorney-General, Soli Sorabjee, is out of station.

The reference arose after the Election Commission in its August 16 order deferred holding of Assembly polls in Gujarat till November-December and recommended imposition of President's rule after October 3 (the last sitting of the Gujarat Assembly was on April 3) in view of the fact that Article 174 could not be complied with.

So far, Presidents have sought the advisory opinion of the Supreme Court on more than 10 occasions. The nature of the references had been the constitutionality of an existing law or a Bill presented to the President for assent; implementation of an international agreement; respective jurisdiction of the Legislature and superior courts in relation to the power of the former to punish for contempt; further interpretation of constitutional provisions relating to election of the President; powers of an inter-State water disputes tribunal in the Cauvery dispute; in the Ayodhya dispute, whether a Hindu temple or a religious structure existed at a particular place; and consultation between Chief Justice of India and his brother judges in the matter of appointments of Supreme Court and High Court judges.

The President could seek a reference on a question of law or fact only when the Supreme Court had not decided it. Also the advisory jurisdiction under Article 143 is not an appellate jurisdiction of the apex court.

While under Article 143 (2), it is obligatory on the apex court to entertain a reference and to report to the President its opinion thereon, the court under Article 143 (1) has a discretion in the matter and may, in a proper case, decline to express any opinion on the questions submitted to it. Also the advisory opinion is not a judgment and does not, accordingly, furnish a good root of title such as might spring from a judgment of the Supreme Court. Nevertheless, so far as all courts are concerned, they would be bound by such opinion.

The Supreme Court itself would, however, remain free to re-examine and if necessary to overrule the view taken in an opinion under Article 143 (1) but it would not entertain argument on points covered by the opinion on the reference.

See also Page 13

Sonia writes to PM on 'gaurav yatra'

NEW DELHI, AUG. 21. **Concerned over the revival of the controversial "gaurav yatra" by the Gujarat BJP, the Congress president, Sonia Gandhi, today sought the intervention of the Prime Minister, Atal Behari Vajpayee, to ensure that no political activity, which would weaken communal harmony, was undertaken in the State. In a letter to Mr. Vajpayee, Ms.Gandhi said the wounds of the violence had not healed, which was borne out by the findings of the Election Commission. — PTI**

Gujarat polls: SC to take up Centre, EC row

AGENCIES
NEW DELHI, AUGUST 20

THE dispute between the Centre and the Election Commission over the Gujarat election dates landed in the Supreme Court today with President A.P.J. Abdul Kalam referring the issue to the court for its opinion.

The reference will be placed before Chief Justice B.N. Kirpal, who will decide on a suitable bench of the apex court to look into the matter, Registrar General R.C. Gandhi said. Solicitor General Harish Salve is likely to approach the court in a day or two for early hearing of the reference, made under Article 143 of the Constitution.

The Centre has sought the apex court's opinion on three issues:

- Whether Article 174 (1) of the Constitution, providing that not more than six months should elapse between two sittings of contiguous sessions of the Assembly, is mandatory
- Whether the position of Article 174 (1) can yield to Article 324, which authorises the EC to supervise and conduct elections
- Whether the EC's suggestions or situation created due to its order could be a valid ground for imposition of President's Rule under Article 356 of the Constitution.

Although the EC's decision against early polls in Gujarat is not binding on the government, it acts as a moral force and is difficult to defy. The government had, on Sunday, decided to seek through a presidential reference the Supreme Court's view as it felt that the EC's order had raised "constitutional questions of far-reaching consequence."

The BJP's argument that "riots cannot form the basis for not holding elections" was drowned in the din over the constitutional question of "whether the EC can hold that Article 174 (1) read with Article 324, loses its mandatory effect and the way to resolve the crisis is imposition of President's Rule."

The Commission had held that the provision of a gap of not over six months was mandatory, but asserted that it would "yield" to Article 324. However, it is being contended that if the EC's interpretation is correct, then the provision of Article 174 (1) is not mandatory.

The EC also said that if it concluded that elections were not possible due to any reason, President's Rule should be imposed under Article 324 of the Constitution. The government has sought the opinion of the court on this view also.

For imposition of Article 356, there should be constitutional breakdown in the state. Another question which arises is whether the EC's inability to hold elections can be ground for imposition of President's Rule. And, if Article 356 was imposed on the basis of the EC's recommendation, ratification by Parliament would only become a formality, going against the SC's guidelines in the S.R. Bommai case. If Parliament does not ratify it, there will be another constitutional crisis.

Judiciary: a reform agenda — II

By V.R. Krishna Iyer

TRANSPARENCY AND accountability are absolutely obligatory so far as judges are concerned. Public criticism is a 'free speech' right, fundamental under Article 19. And so, hypersensitive contempt proceedings are too peevish and unbecoming for judges. So, I urge, as a matter of reform, a specific statutory provision with constitutional complexion, making transparency, accountability and amenability to public criticism as fundamental in good judicial governance.

The judicature, if it is not to stultify the justice delivery system, must reshape the justicing processes in such manner as to deliver prompt and complete relief in any cause or matter pending before it. The great obstruction between law and justice, the wall of separation between the laity and the complicated legality may be found in the exotic procedural law, Civil and Criminal (originating in Colonial Law Commissions). Macaulay and Sir James Fitz Stephen (who drafted the Evidence Act) have drawn an iron curtain between the vast masses who seek judicial relief and the court system with its functional colonialism. We have made amendments to the codes and the law of evidence peripherally, but the alien soul survives after death. In my humble submission, there is a good case for replacement of the laws by a simple, streamlined, commonsense statute. The drafting procedure is artificial and obscure. The cumbersome and technical rules of Westminster vintage are an anathema and litigative paradise.

The promulgation of a simplified procedural legislation leaving out archaic, enigmatic expressions and empowering courts with commonsense jurisdiction and plain procedure will go a long way in speeding up trials and appeals and investing early finality to litigation by cutting down the number of appeals, reviews and revisions, the besetting sin of the existing system. Conciliation, free legal services, commissions and inspections, discovery and interrogatories — these and other preliminary procedures, if made a Bar praxis, will provide remedial radicalism and save judicial time. Affirmative action, surgical approach to disputes with innovative genius, will reduce the opportunities for perjury, afterthought, and unveracity in court. Less paper work, more technology, easy facility for records, copies, and more natural court atmosphere; rather than as a strange institution with odd diction and inhibitive apparel which transform the tribunal into a native curia. The reform of the court and its processes is a high priority on the agenda of the state. Indeed, even the judicial dress and form of address may well be given a swadeshi touch. All this is not a tall order but a simple task, given a spirit of democratic dynamism and willingness to be Indian.

Law, like any other social science, rapidly changes, even as technology, in its revolutionary stride, shakes up the world. Continuing education, to cope with the new dimensions and dialectics of social change, is an urgent desideratum if the rule of law is to run close to the rule of life. Colleges for judges, research and development in jurisprudence and innovative experiments promotive of Constitutional values are therefore a creatively operational requirement. Colleges for judges, with R&D departments, not the idle waste of brick and mortar as in Bhopal, is on the agenda of reform — prescribing for judges a course annually to update and activate obsolete, precedent-prone judicial minds.

Any progressive institution like the Judiciary must plan its advance. The need for more judges, new technology, staff increase, additional buildings, new courts, patterns of fee collection, anti-corruption exercises and a variety of versatile changes in the system justify a wing of the Planning Commission devoted to judicial planning, with a judge or more to be members of judicial affairs within the Commission. The Indian Law Institute may aptly organise a judicial R&D division presided over by a judge.

Finally, I reach a matter of great moment — a National Judicial Commission which may be versatile in functions, multi-purpose in performance and meaningfully plural in composition. The judiciary is not the "least dangerous branch" of Government, sans purse, sans sword, as is often assumed, but can be the most despotic, unaccountably empowered and unreviewably authoritarian.

It is desirable to provide for a socially and politically purposeful Annual Report of the Court in each State, with highlights of democratic, humanist gains, criminal pathological and corrupt trends, as screened by the judicial process from the trial court to the High Court referring to law's delays including judicial insouciance and official indolence. This Report must be before the Legislative Houses and the public, to be "washed in acid" (as the great Justice Holmes put it).

The law of contempt needs drastic re-definition with more safe space for free speech sans malice or mischief.

Appointments of judges, transfers, censures and elevations and disciplinary oversight of the higher judiciary must be vested in a high-powered body with sensitive regard to the independence of the Judiciary and the integrity of the instrumentality.

The Nine-Judge Bench (of the Supreme Court) in a mighty seizure of power (5 to 4 divided court) wrested authority to appoint or transfer judges (contrary to the explicit assertion of Babasaheb Ambedkar in the Constituent Assembly) from the top Executive to themselves by a stroke of adjudicatory self-enthronement. And, in practice, on filling vacancies, the judges disagreed *inter se* and the alleged remedy of good judges being promptly picked up aggravated the malady of favouritism, arbitrariness, dilatoriness and injustice to women and Scheduled Castes, Scheduled Tribes and like communities. Instead of the Ministers, judges' patronised. The system needs overhaul and democratisation.

If wars cannot be left to generals alone, judicial administration cannot be left to the 'robed brethren' alone. A superlatively dignified Judicial Commission, with the Chief Justice of India presiding, is a must.

Constitutions like those of Nepal and South Africa contain provisions for Judicial Commissions. Almost all the States of the U.S. provide for commissions for investigating the conduct of judges at all levels.

The composition of the proposed Indian Commission is a matter for pragmatic consideration. The Law Minister and the Home Minister have to be there. A few senior judges of the Supreme Court and of the High Courts may usefully be members, the Bar Councils of India may be represented and, perhaps, high academics from the law universities may be a valuable addition. A couple of outstanding statesmen, not involved in the political polemics of the country, may bring in a fresh approach in the selection process.

The Commission may prepare a panel for the High Courts as well as the Supreme Court and release the names for public response. A broad-spectrum search from among lawyers and even professors, with special stress on women and backward sections, may have to be made without confining to the upper income groups and socialites at the bar. The habit of choosing the judges of the Supreme Court only from among Chief Justices is not the wisest course. Bright young judges can be elevated and may prove to be 'brethren' of distinction.

Critical appraisal of the Judiciary and punitive *in camera* inquiries in case of misconduct are desirable. The courts are not beyond responsible rebuke if they fail to maintain standards.

Indian judges do maintain a reasonable standard of conduct and competence. Some rotten apples do not condemn the orchard. All in all, they are a good lot and do command the country's confidence. American judges of the highest court are terribly criticised, but the court still is held in high esteem. The law of contempt needs drastic re-definition with more safe space for free speech sans malice or mischief.

(Concluded)

THE HINDU

SC to hear all petrol pump cancellation cases

Press Trust of India

NEW DELHI, Aug. 14. — The Supreme Court today issued notices to the allottees who have moved High Courts challenging the government's decision to cancel allotments of petrol pumps and LPG dealership following the Centre's petition that all cases be transferred to the Supreme Court or a High Court.

Fixing 26 August for hearing, a three-judge Bench, comprising Chief Justice Mr BN Kirpal, Mr Justice KG Balakrishnan and Mr Justice Arijit Pasayat, issued the notices after the petition was "mentioned" by Solicitor-General Mr Harish Salve and advocate Mr Sanjay Kapur.

The Centre moved a transfer petition in the court following orders by the Delhi and Rajasthan High Courts on petitions filed by certain allottees restraining the Centre from going ahead with its decision to cancel their allotments. Several petitions were filed in the High Courts of Rajasthan, Delhi, Punjab and Haryana, Andhra Pradesh, Goa, Allahabad, Madras, Kolkata, Gujarat and Karnataka and two of them stayed the operation of the Centre's directive in a few cases.

In its petition, the Centre said: "With a view to avoiding inconsistent decisions of different High Courts and district courts, it would be in the interest of justice that the Supreme Court may transfer the said cases to itself and dispose them or in the alternative transfer all such cases to one High Court."

The Delhi High Court stayed Centre's order cancelling allotments in six more cases while posting till Friday the hearing on writ petitions by 13 allottees seeking similar relief in view of the government moving the Supreme Court.

Mr Justice Manmohan Sarin, who stayed the cancellation of the allotments of six people this morning, posted hearing on 13 more cases which were referred to him later in the day by the Chief Justice after they were mentioned before his Bench.

Mr Justice Sarin declined to hear the new cases saying it wouldn't be proper for him to take them up after the Centre had filed a petition in the Supreme Court and posted the case for Friday.

While staying the government's cancellation order in the six cases, the court issued notices to the Centre and oil companies directing them to file replies to the petitions moved by these allottees. The stay was granted in three cases, one in Delhi and two in Haryana, one LPG dealership in Haryana and two kerosene dealerships in Delhi.

The allottees have sought stay on the order saying they were given the allotment purely on merit.

Judiciary: a reform agenda — I

By V. R. Krishna Iyer

OUR COURTS are on trial, our judges are under challenge, our justice system itself is so arcane and obscurantist that alienates it from the people. This fundamental flaw needs correction. The constitutional vision of justice is committed to people's values. The Preamble spells out its pledge of justice, social, economic and political. Executive justice is often arbitrary and weighted in favour of the haves as against the have-nots. The legislative instruments, at the State and Central levels, likewise make laws, which favours the heavy-weights in society. The judicial process is operated by classes who do not represent the proletarian masses, but are selected from an elite group or upper middle class category. The social justice perspective, the people-oriented credentials, the secular, socialist essentials are frequently alien to the selection process of the brothers on the bench. Long distance justice, over-expensive methodology, unapproachable systemic inhibitions vis-a-vis the poor and the deck upon deck infrastructure make the law alien to the laity

Our social realities require creative mutation if the 'tryst with destiny' India made is to be fulfilled. First we must graph our aims clearly and then proceed to accomplish it. Oftentimes, there is a yawning gap between our real goal and reformative exercises. The search for the fundamental focus, in relation to the administration of justice, begins with the right questions. We have to ask ourselves: "Who are our people? Where is their habitat? What, in human terms, does justice mean to them? How can law and its administration, through conventional court processes, fulfil the hunger of the common man for simple, quick justice, which assures to him a fair share of the good things of life? Why can't we abolish the causes of litigation and build a new way of life or legal order? By what means does the law in the books communicate with life in the raw? Can the gap between lawyer's law and the rule of life be bridged?

The present situation is near disaster. Arrears are mounting, vacancies remain unfulfilled. The quality of the Judiciary, in terms of legal equipment and appreciation of the injustices of the millions, is on the descending scale while the avidity for more judicial emoluments in a country of poverty is on an ascending scale. The criteria for selection of judges from the trial level to the Supreme Court have not been understood at all. The Public Service Commissions, the judges of the High Courts sitting to select District Judges and recommend panels to higher echelons go by impressionistic, elitist standards, indifferent to the Constitutional prescription of social, economic and political justice, abolition of indignity and defence of human rights. Is the candidate sensitive to the problems of poverty-stricken people, of destitute women, neglected children, industrial pollution or high corruption? Have they been concerned with social justice issues, public interest litigation, environmental problems or any of the problems of labour and peasantry, consumer litigation and people's causes? The truth is that the class character of the judge injects a certain subconscious prejudice and his appraisal, without fear or favour, affection or illwill, is subject to social, communal, economic and political biases lying buried in the bosom of the judge but springing to the fore in concrete causes.

It is, therefore necessary, if secular, socialist, truly democratic justice is the desideratum, to handpick persons not with affluent connections, communal clout or political links or high status, but those who have had a background of social penury, working class experience or involvement in people's causes. Today the whole process is a reverse of what the Preamble envisions. So the first imperative of reform is the drawing up of radical guidelines for selection of avant-garde jurists and people-oriented advocates. These indications have to be codified and Scheduled Castes and Scheduled Tribes given special coaching and consideration. This area of criteria for judicial selection is invariably covered up by the specious expression 'merit'. What is 'merit'? Not fashionable rubbish or classy attainment which take them away from the sorry realities of life and concern them in a well to do world with its own allergy and affiliation. If the Bench is to suffer transformation the Bar too must undergo value change. Currently, the common currency which measures the lawyer's eminence is the income he makes or the fees he charges or the vast influence he holds over political leaders, judicial cadres and moneyed classes. Not the service rendered by him or her from a social justice dimension nor the struggle in court and out of it in support of great human rights issues and opposition to quasi-emergency. That lawyer is best who fights for men and women in distress, for environmental problems and for the liberation of society from the grip of feudal, colonial, capitalist ethos. A profession for the people has to be a militant movement among lawyers if the right personnel are to emerge worthy to sit on the Bench.

The first imperative of reform is the drawing up of radical guidelines for selection of avant-garde jurists and people-oriented advocates.

A code of ethics for judges is a necessary mutation in the conditions of service.

Perhaps, without striking new ground but confining oneself to the requirement of the Constitution of good behaviour and competence, I emphatically plead for codification, by constitutional amendment or otherwise, what has already been unanimously accepted by all the judges of the Supreme Court and the High Courts as the basic provisions of a code. I extract hereunder some of the ethics clauses which may be converted into a code:

"The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

"A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

"No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

"Resolved further that every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be totally confidential.

"Resolved that an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against Judges who by their acts or omission or commission do not follow the universally accepted values of judicial life including those indicated in the "Restatement of Values of judicial life."

J.S. Verma as Chief Justice of India set an example by submitting a statement of his assets to the President. To my knowledge, he refused a gift from the judges of a High Court worth a few thousand rupees.

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No Constitutional vacuum

By Harish Khare

NEW DELHI, JULY 27. The Constitution does provide for an immediate but temporary succession in the event of death of the President, but there is no similar provision in case the Vice-President dies in office or should a vacancy arise. Krishan Kant is the first Vice-President to die in office.

Nor does the absence of a Vice-President for a short while produce any constitutional vacuum; hence, there is no move to advance the time-table for the Vice-Presidential election scheduled for August 12.

Article 65 of the Constitution provides for dealing with the situation of a vacancy in the office of President.

It stipulates that the Vice-President "shall act as President" until a new President gets elected as per the provisions of the Constitution. For example, within hours of Zakir Hussain's death, the then Vice-President, V.V.Giri, acted as President from May 3, 1969 to July 20, 1969. And, again, when Fakhruddin Ali Ahmed died, B.D. Jatti acted as President from February 11 to July 25, 1977.

However, on the other hand, there are many instances of the Vice-President's office remaining vacant because the Constitution-makers did not attach any urgency to filling the vacancy.

All that Article 68 stipulates is that in case of a vacancy in the office of Vice-President, an election to fill the vacancy "shall be held as soon as possible after the occurrence of the vacancy."

The office of Vice-President, thus, remained vacant when Giri moved to Rashtrapati Bhavan as acting President and later resigned to contest the Presidential poll.

There were "no-Vice President" interregnums when R. Venkatraman, Shankar Dayal Sharma and K.R. Narayanan moved from Maulana Azad Road to Raisina Hill.

In fact, the Constituent Assembly did consider the "no-Vice-President" scenario. Prof. K.T. Shah, a member of the Constituent Assembly, wanted to move an amendment to deal with such a contingency.

However, Ambedkar rejected the suggestion on the ground that the only substantive constitutional role a Vice-President performed was to preside over the Rajya Sabha and in case there was a contingency, the Deputy Chairperson could perform that role till a new Vice-President was elected.

It is to be noted that the Vice-President gets no salary as Vice-President, but gets salary and allowances only in his/her capacity as Chairman of the Rajya Sabha (as laid down in the Second Schedule).

So, for now the deputy chairperson of the Rajya Sabha, Najma Heptullah, will be the "officiating chairperson", just as she did between July 25, 1997 when Mr. Narayanan resigned as Vice-President to take over as President and August 20, 1997 when Krishan Kant took over as Vice-President.

SATURDAY, JULY 20, 2002

NEUTRALISING THE COURT

READ IN COMPLETE isolation, the Representation of the People Amendment Bill is not a bad piece of legislation. But it is totally retrograde when read together with the Supreme Court's May 2 judgment on electoral reform. The proposed legislation was supposed to reflect the spirit of the Supreme Court's directive, which made it mandatory for candidates seeking election to furnish particulars about their criminal antecedents, financial assets and educational background. What it really does however is nullify the Supreme Court's May 2 judgment (and the ensuing Election Commission's order dated June 28 based on this). In fact, the draft Bill seems designed solely for this cynical and unwelcome purpose, being little more than an unconvincing ploy to evade the consequences of the E.C.'s order by dressing up some amendments to the RP Act as a comprehensive piece of legislation to check criminality in politics.

How does the draft Bill neutralise the E.C.'s order and by implication the Supreme Court's judgment? To begin with, it makes no reference to the disclosure of a candidate's financial assets and liabilities. This was central to the Supreme Court's judgment and by any reckoning forms a vital part of the information that constitutes the voter's right to know who he is casting his ballot for. The draft Bill's deafening silence on assets is a result of the extreme reluctance that politicians (of virtually every hue) have in coming clean about their financial background. The proposed legislation is also quiet about furnishing details about a candidate's educational background, though this is arguably a relatively minor omission given (among other things) the absence of any correlation between a candidate's educational status and his corruption and criminality.

On the question of acquainting a voter with a candidate's criminal past (if any), the draft Bill requires that all those accused of offences punishable with imprisonment for two years to furnish the required details. The ostensible purpose of the two-year stipulation was to avoid making it mandatory for candidates to furnish details about being charged for certain 'political' crimes (such as organising demonstrations or participating in dharnas). But a specific clause which excuses candidates from filing affidavits about this class of crimes would have been far better than a general stipulation of this nature. The proposed legislation of course goes beyond the Supreme Court judgment in a significant way by the introduction of a clause which disqualifies candidates against whom charges have been filed in two separate cases for "heinous" crimes such as murder, dacoity, rape, kidnapping and those that fall under the purview of POTA or the Narcotics Act.

To the extent that it is a measure to check the entry of criminals into politics, the new disqualification provision is welcome. But it is a very limited restriction. The disqualification applies only when charges are framed for certain offences of an extremely grave nature. Moreover, it applies only when two such separate charges have been framed and prior to six months before nomination. Such conditions only serve to radically weaken the force of the provision. All in all, the provision only seems to reinforce the impression that it has been introduced to create the misimpression that a sincere attempt is being made to grapple with the problem of criminality in political life. The Supreme Court's judgment was based on the right to information, which is derived from Article 19 of the Constitution. Legislation which is aimed at denying the enforcement of a fundamental right is improper and worthy of condemnation.

ASSESSING ENQUIRY COMMISSIONS

THE GUIDELINES ISSUED by the Supreme Court on the appointment of sitting judges of the High Courts as commissions of enquiry only to areas involving the paramount national interests as provided under Article 262 of the Constitution represent a clear move to safeguard the dignity and prestige of the institution of the Judiciary and to restore the vitality of the commissions of enquiry as envisaged in the relevant Act of 1952. While stopping short of pronouncing on the appointment of commissions of enquiry under this law, the apex court has come out decisively against sitting judges assuming positions of responsibility under various tribunals. The move is intended to preclude the possibility that their decisions may sometimes be subject to judicial review in the High Court where the chairman of the tribunal is also a sitting judge. No less poignant is the other observation of the Bench that, often, questions are raised regarding the impartiality and objectivity of the Judiciary itself while dealing with politically sensitive cases.

Among these — the number is staggering — are those involving the most fundamental ingredients of a nation's integrity and security and safeguards for the minority communities in a pluralist democracy. If the performance of the Justice Thakkar Commission which examined the assassination of the former Prime Minister, Indira Gandhi, had raised doubts over the efficacy of commissions of enquiry in general, the failure of the Government to act upon the recommendations of the Justice Sri Krishna Commission following the Mumbai riots soon after the demolition of the Babri Masjid is a definite indication that matters are much the same more than a decade later. In fact, the Justice Varma Commission of Enquiry was constituted to go into the assassination of Rajiv Gandhi only after the Supreme Court reversed its earlier unanimous resolution not to allow its judges to sit on such commissions.

Clearly, the aspect concerning the enforcement of the provisions of the Commissions of Enquiry Act needs closer monitoring. For, it is a fact that the adverse fallout of the recommendations of commissions of enquiry has much to do with considerations of a purely political nature as well as interference with their functioning. Encroachments on the independence of the Judiciary is manifest in the critical distinction between an investigation and an enquiry being ignored in recent years. The enormous burden on the exchequer resulting from enquiries that never commence or findings that are seldom acted upon would in no small measure undermine the authority of the Judiciary as a whole. At another level, the present context must be used to commence a systematic scrutiny of the performance of commissions of enquiry, even though the Supreme Court has not dealt with this aspect explicitly. In particular, it is necessary to find ways of giving teeth to some of the basic provisions of the 1952 Act wherein there are no powers to compel persons to give evidence. Moreover, neither the evidence given to commissions nor their final report is relevant in a criminal trial. Surely, some of these correctives would have to be put in place if institutions are not to be looked upon as wanting in credibility and public confidence. They would not only enhance faith in the Judiciary but also further the democratic movement founded upon respect for the rule of law.

'SETTLES FOR RAJYA SABHA SEAT'

Alexander quits as Governor

By Harish Khare

NEW DELHI, JULY 9. The Maharashtra Governor, P. C. Alexander, has resigned. He sent in his resignation to the President, K. R. Narayanan, on Monday. Since then, the President has been advised by the Prime Minister, Atal Behari Vajpayee, to accept Dr. Alexander's resignation.

There was no explanation for the sudden resignation, though there were indications that the Maharasthra Governor was negotiating a new political future for himself. Dr. Alexander was in town today, and met the Prime Minister, Atal Behari Vajpayee, and the Deputy Prime Minister, Lal Kishen Advani. The meetings were described as "courtesy calls."

Most observers were inclined to believe that Dr. Alexander was feeling miffed at being denied the presidential nomination. The nomination was offered to him by the bosses of the National Democratic Alliance. But the offer was withdrawn in the face of considerable opposition from the Congress and the Telugu Desam. Ultimately, the nomination went to the eminent scientist, Abdul Kalam. Dr. Alexander had good reason to believe that he had been treated shabbily.

His resignation at this stage gave rise to speculation on whether he was in the fray for the Vice-President's post. However, in a brief interaction with mediapersons after meeting Mr. Advani, Dr. Alexander denied that he was a candidate for the Vice-Presidency. "There is no proposal for Vice-Presidency," he said, rejecting the suggestion that his resignation was meant as a bargaining chip. "I have crossed that stage. I have never asked for anything and posts have come to me."

Dr. Alexander's disclaimer notwithstanding, it was learnt that he had settled for a seat in the Rajya Sabha. The deal was clinched at the meetings with Mr. Vajpayee and Mr. Advani, both of whom are reported to be of the view that perhaps the NDA owed the Maharashtra Governor a favour.

Dr. Alexander would be the joint nominee of the Nationalist Congress Party, the Shiv Sena and the Bharatiya Janata Party for the vacancy caused by the death of the NCP member, Mukesh Patel. Though Dr. Alexander still had eight months in his gubernatorial innings, he will now hope to get an assured five-and-a- half-years stay in the Rajya Sabha. And once in the Upper House, his services would be available to the Prime Minister in case Mr. Vajpayee wants an experienced hand in the Cabinet.

This would be the first time since the inception of the Congress-NCP coalition Government in Maharasthra that the two partners will find each other on opposing sides, unless the Congress decides to go along with the NCP leader, Sharad Pawar's choice. The Rajya Sabha vacancy belongs to the NCP "quota." Dr. Alexander enjoys an excellent rapport with the Shiv Sena chief, Bal Thackeray, as well as with Mr. Pawar, but the Congress leadership did not take kindly to his presidential candidature. Indications are that the Congress may not grudge this old Indira Gandhi loyalist a Rajya Sabha seat.

PTI reports:

The Maharashtra Chief Minister, Vilasrao Deshmukh, held consultations with the Congress central leadership tonight on the political situation in the State. Mr. Deshmukh, who arrived in the capital late in the evening, held talks with the AICC general secretary incharge of Maharashtra, Vayalar Ravi. He also met the treasurer, Motilal Vora.

THE HINDU

10 JUL 2002

Politicians unite to dilute court directive

Bill to bypass poll clean-up

FROM R. VENKATARAMAN

New Delhi, July 8: Political parties today set aside their usual differences and joined hands to water down a Supreme Court directive regarding disclosure of criminal records, educational qualifications and assets and liabilities of candidates contesting polls.

The all-party meeting, instead, decided to move a Bill in the forthcoming monsoon session of Parliament to "circumvent" the apex court's directive.

Sources said the parties were of the opinion that electoral reforms must come from within the legislature and not be imposed by either the apex court or the Election Commission.

"The Supreme Court has surpassed itself. There will be no democracy in this country if we accept its stricture," said CPM general secretary H.S. Surjeet.

The proposal to bring the Bill was based on the grounds that Parliament alone could enact a law and that even the apex court cannot direct the government to scrap, amend or pass a legislation. Union law minister K. Jana Krishnamurthi had said as much yesterday.

THE SORE POINTS

- Declaring criminal record, if any, of candidates
- Declaring educational background
- Declaring assets and liabilities

THE OPPOSITION

Political parties say neither the SC nor the EC can tell them what to do. They want reforms to come from within the legislature

THE SOLUTION

A new Bill will drop the "educational background" clause. Assets and liabilities to be declared after election and not before. No punishment for non-disclosure of criminal record

In its May 2 judgment, the Supreme Court had directed that all candidates should declare, among other things, their educational background, criminal cases against them, if any, and assets and liabilities. The information disclosed by candidates would have had no bearing on their right to contest, provided they cleared the other provisions.

But most parties felt that the government of the day could trump up charges and embarrass rival candidates since voters of the respective constituencies would have had access to the information.

On June 29, the Election Commission incorporated these changes in nomination filing rules as the court had set a deadline of July 1 and the government did not take any decision till then.

The poll panel's contention is that almost all the guidelines are already in practice and the only additions are the three issues.

Krishnamurthi said law making was the domain of Parliament and neither the court nor the poll panel could "encroach on the domain of Parliament".

He pointed to a legal doctrine, the Doctrine of Unoccupied Field, to explain that this "field of election law has hitherto been unoccupied and hence the Election Commission has been issuing guidelines from time to time. Once the field is occupied (by Parliament), then the law would be in effect and the guidelines by the court and the commission would be redundant".

■ See Page 6

Bill on right to education gets Parliament nod

By Our Special Correspondent

NEW DELHI, MAY 15. After about five-and-a-half hours of discussion during which the Opposition questioned the Government's intentions for bringing in such a legislation, the Rajya Sabha on Tuesday unanimously passed the 93rd Amendment to the Constitution — making the Right to Education a Fundamental Right for all children in the six-to-14 age-group.

Though the discussion saw the Opposition challenge the Government on several counts right through, the differences in opinion did not translate into votes when the amendment was put to vote, and it sailed through with all 164 members present voting in favour of the motion.

Introducing the amendment in the Rajya Sabha nearly eight months after the Cabinet approved it and a good five months after it was cleared by the Lok Sabha, the Union Minister for Human Resource Development, Murli Manohar Joshi, quoted Gandhiji and Mao Zedong to show the importance world leaders attached to basic education. Blaming the British for undoing the educational network that India had prior to their arrival, he sought to show the 93rd Amendment as another measure to realise the dream freedom fighters had for independent India.

The Congress leader, Eduardo Faleiro, used the debate on the 93rd Amendment — a subject that requires the cooperation of the States for realisation of the goal — to nail the Government on the contentious issue of instituting the Central Advisory Board of Education (CABE), which has been the institution for consultations with the States on matters relating to education.

Given the fact that no provision has been made in this year's budget for implementing the obligations that the State takes on itself by making basic education a Fundamental Right, the Congressman asked the Government how it proposed to implement what he thought was an "unnecessary amendment" as there are enough provisions within the Constitution and several court verdicts providing the same.

Later, fellow Congressman, Kapil Sibal, echoed these very observations, and accused the Government of "doublespeak, insincerity and complete duplicity" for trying to show the people that it had brought in legislation while making no budgetary provision to implement it. Also, he charged the Government with appointing RSS pracharaks as teachers in the one teacher schools that have been opened across the country.

With the two Congressmen raking up the history textbook controversy and charging the Government with saffronisation of education, the BJP benches were quick to respond; stating, as did the Minister later in his reply, that the debate on this particular amendment should not be politicised.

Though the Minister sought to address the apprehensions of members in his reply, an issue that remained unresolved pertained to the rights of children in the zero-to-six category.

In between, the TDP member, R. Chandrasekar Reddy, demanded compulsory education for all children up to the age of 15, while the CPI (M) member, Chandrakala Pandey, suggested some amendments to the Bill to plug the deficiencies.

Curiously enough, both the AIADMK and the DMK voiced similar sentiments with the former's N. Jothi asking for more Central assistance and the latter's M. Shankaralingam stating that it was the Centre's responsibility to ensure quality education in the country.

Basic structure of statute won't change: Vajpayee

Statesman News Service

NEW DELHI, May 13. — As Parliament completed 50 years of its existence today, the Prime Minister assured the nation that the Constitution's basic structure would never be changed. He stressed on the guarantee of freedom of religion and freedom of speech and expression that are enshrined in the Constitution.

It was a reaction to Mrs Sonia Gandhi's observations made earlier at a function to mark the occasion. She spoke of fighting fanatical and communal forces to keep intact the secular character of democracy.

Mr Atal Behari Vajpayee didn't use the word "secular", but conveyed the message that though the Constitution was amendable and many changes had indeed taken place, the basic structure hadn't been changed. He was speaking at a gathering of MPs at the newly-built auditorium of the Parliament Library.

Mr Vajpayee allayed misgivings about the Constitution Review Commission that had recently submitted report to the government, saying the panel's findings and recommendations would only strengthen democracy. The recommendations didn't seek to change the structure of the Constitution, he said.

Mrs Gandhi had observed earlier that communal forces were striking at the very root of democracy and that the challenge had to be met by all parliamentarians.

The function at Parliament Library was organised by the communications ministry. But even Mr Pramod Mahajan admitted that it was hardly befitting the occasion considering the dynamism of Parliament that first met on this day in 1952.

During the intervening years the term of the Lok Sabha was sought to be extended from five to six years. It was here that Parliamentary democracy survived and was strengthened weathering storms such as the attack on the Golden Temple and demolition of the Babari Masjid.

The fanfare today was all for the release of the commemorative stamps, covers and two books on Parliament. And the other occasion that found favour with the parliamentarians was the dinner laid out for them and other VVIPs.

There was some nostalgia but only in the passing. Mr Rishang Keishing who was elected to first Lok Sabha and also a member of the present House was called to receive a set of books from the Prime Minister. Mr PM Sayeed is the only Lok Sabha member to have earned the distinction of being elected to the House 10 times since 1967 from Lakshadweep. Mr Vajpayee, first elected to the Lok Sabha in 1957, has been elected to the House nine times.

Ambiguity of Article 355

By K. K. Katyal

NEW DELHI, MAY 12. Parliament was immobilised for six days because the Government and the Opposition differed sharply on the format of discussion on Gujarat. Finally, the impasse ended and the two Houses took up the issue under separate motions.

The episode left an uncomfortable feeling that our representatives and law-makers appeared keener to find a way out of the stalemate in Parliament than to looking for solutions for the quick return to normality and to healing the scars of the carnage. In the debates that followed the agreement by the two sides, the specific problems, created by the communal violence, did attract pointed attention. At the same time, considerable heat and acrimony was generated with the discussion touching a new low, never witnessed before in the last five decades.

The net result was the mandate to the Government to take action in Gujarat under Article 355 of the Constitution, one of the three emergency provisions seldom noticed in the past. This was the operative portion of the Rajya Sabha motion, sponsored by the Opposition and accepted by the Government. Heavily outnumbered there, the Treasury side made a virtue of a compulsion and announced its willingness to implement this provision.

So far so good. But where is the guarantee that all that is required to be done to remedy the situation will be done by the Central Government? Could one feel assured that the Centre would not take shelter behind the ambiguity of the wording of the Article? This suspicion is not out of place, in view of the observations from the ruling camp that action under this provision was already being taken.

According to Article 355, "it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution". The Congress-sponsored motion, accepted by the Government "in letter and spirit" expressed "deep sense of anguish at the persistence of violence in Gujarat, leading to a loss of a large number of lives and destruction of property worth crores of rupees, and urges the Central Government to intervene effectively under Article 355..."

The wording of the motion was finalised in the discussions between the Rajya Sabha Chairman, Krishan Kant, and party leaders in his chamber. The Government side, it appeared, was not very specific in its stand, neither indicating its support nor its opposition. Two days earlier, the demand for invoking Article 355, forcefully put forward by the Leader of the Opposition, Sonia Gandhi, in the Lok Sabha, was not heeded by the Government. As such the official acceptance came as a big surprise. The Government persuaded itself to agreeing with the Opposition motion because it spoke of "internal disturbance" and not of a situation where the Government of the State is not "carried in accordance with the provisions of the Constitution".

POLITICAL IMBROGLIO

Constitutional experts differ on the scope and import of Article 355, some calling it a toothless provision, others insisting that it stands on its own and that the words "duty" and "protect" cast an obligation on the Centre to take substantive steps. This divergence was evident right from the beginning — during the debate in the Constituent Assembly. Among those who found it ambiguous was Nazir Ahmed, a great stickler to the form and substance of the constitutional provisions. This was what he said: "Article 277-A (the original number of Article 355) has been described by the honourable Dr. Ambedkar (Law Minister) as a thing which is not a pious wish. I think Dr. Ambedkar was repelling the suggestion which naturally arose in his own mind. I believe that Article 277-A is a record of pious wishes.

At least it lacks clarity. Its says practically nothing. It says almost everything. It enables the Centre to interfere on the slightest pretexts and it may enable the Centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the Drafting Committee for its vagueness and evasions."

Dr. Ambedkar, on the other hand, was categorical that it was not a mere pious declaration. He drew attention to two aspects — one that, barring the overriding powers of the Centre, the provinces are sovereign and, two, that any intervention by the Centre must be under some obligation which the Constitution imposes on it and that the invasion of the sovereign authority is not to be wanton, arbitrary and unauthorised by law.

This divergence will continue to feed controversies. What is important in the immediate context is that the Centre is pinned down to its commitment to "intervene effectively" to save Gujarat from communal frenzy.

The principle of judicial review has now been accepted in regard to Article 356 (on the Centre's powers to take over a State's administration). Could the issues arising out of the Union Government's actions or inaction under Article 355 be raised in a court of law? Could the judiciary be approached for action on specified steps, considered necessary for peace and stability in Gujarat? Isn't there a case for ensuring that the Centre does not get away with sham actions?

Parties to pick up tab for damages

Forcible bandh declared illegal

FROM R. VENKATARAMAN

New Delhi, May 10: Political parties throughout the country can no more call a bandh and force people to participate, coerce shops into downing shutters and damage public property.

The Supreme Court has declared it would amount to "an unconstitutional act" and a party "has no right to enforce it by resorting to force or intimidation".

In these terms, the apex court today upheld a judgment of Kerala High Court but struck down two other directions to the Election Commission mandating de-registration of such political parties.

A division bench of Justices V.N. Khare and Ashok Bhan said in a 35-page judgment: "1. That there being no express provision in the Representation of the People's Act or in the Symbol Order to cancel the registration of a political party and as such no proceeding for de-registration can be taken by the Election Commission against a political party.

"2. The Election Commission acts quasi-judicially while exercising its power to register a political party and it has no power to review the order registering a political party."

If coercion does take place, the way to justice will be conventional, the victim will have to proceed under criminal law. In the case of damage to public property, the government official concerned, too, will have to follow the usual legal procedure.

Responding to the judgment political parties and trade unions of all shades claimed they neither use coercion nor damage property. "The question of using force does not arise — neither does the question of damaging public property," said CPM politburo member Sitaram Yechuri, whose party is a regular organiser of bandhs.

Yechuri asserted that the judgment was a vindication of his party's stand against Kerala High Court's direction to the Election Commission to de-recognise political parties enforcing bandhs.

The Supreme Court upheld the commission's right to de-register a party only if it had obtained registration by fraud or forgery, if the party amended its rules and regulations declaring that it ceased to have faith and allegiance to the Constitution or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India.

On a petition by an NGO, the Institute of Social Welfare, Kerala High Court had given six directions: (a) Enforcement of a hartal call by force, intimidation, physical or mental and coercion would amount to an unconstitutional act and a party has no right to enforce it by resorting to force or intimidation.

(b) Direction to chief secretaries, DIG police and all administrative authorities and police officers in the states to implement the above direction.

(c) A writ of mandamus to the Election Commission to entertain complaints against registered political parties.

(d) A writ of mandamus to the panel to consider and dispose of, in accordance with law, a complaint against a political party for forcing a hartal or bandh.

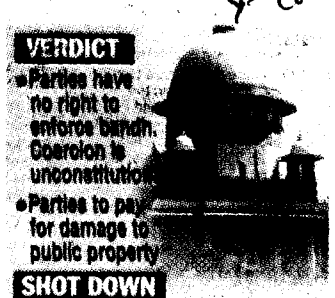
(e) Directions to the chief secretaries, DIG police and all other officers to give effect to the judgment.

(f) Direction to the state government, district collectors and other officers to take action for recovery of damages in cases where public property is damaged or destroyed during a bandh or hartal.

Among these six directions, the apex court struck down the third and the fourth and upheld the others. It upheld the main direction that enforcement of a hartal call by "force, intimidation, physical or mental and coercion would amount to an unconstitutional act". It also upheld the order for "recovery of damages to public property" during a hartal or bandh.

The Congress, the CPI and others had moved the apex court against the Kerala judgment.

■ See Page 6



THE TELEGRAPH

1 1 MAY 20

Misplaced Article

Will the real Article 355 please stand up? It is unlikely our founding fathers would have spent valuable time debating the precise need for the Article had they known of its unfortunate destiny — to turn from a dead letter into a political football. Over the past week, we've had a rush of statements and counter-statements on the meaning and scope of Article 355, and indeed, on whether or not it has been invoked in the context of Gujarat. For all of two months, the government maintained that the violence in Gujarat was a law and order problem within the jurisdiction of that state. Once the discussion on Gujarat moved to the Upper House, the government began to sing a different tune, evidently aware that it didn't have the numbers. Since then, we have had Central ministers assault us with a confusing array of interpretations, including the disingenuous one that the Article was merely a device to render a bit of friendly advice to a state, in this case Gujarat. Now, we are being told that the Article has been in force for a long time, in Gujarat, as well as in other places. When the Centre ticked off Ms Jayalalithaa for allowing her police force to ride roughshod over Mr Karunanidhi, it did so under Article 355. When the Centre despatched the army to go into Gujarat, it was under Article 355. When it sent K P S Gill to the state, it did so under Article 355. In other words, we are to believe that even as the Centre was passionately making the point about Gujarat being only a law and order problem, it was quietly arranging to despatch the army under Article 355.

This post-facto justification not only amounts to a cavalier attitude towards a document regarded as among the finest in the world, it is also insulting to the intelligence of the common citizen. Soon we might have a situation where a Union minister picks up the phone to talk to a chief minister and it is passed off as giving instructions under Article 355. The Constituent Assembly debate around Article 355 makes it clear that Ambedkar proposed it as analogous to Article IV (4) of the American constitution. However, the two situations have been rendered dissimilar by the fact that while in the former the residual power vests in the states, in the latter it vests in the Union. In the US, any central intervention is contingent on a request from the state, which is not at all the case here. The Centre has to apply its mind to the possibility of external or internal threats to the state in question, and accordingly intervene. The Centre has an obligation to remember that the Article is an enabling measure to prevent the collapse of the constitutional machinery. Therefore, to pretend otherwise is deliberately to skirt the core issue. No doubt, there is an absence of precedents in the case of Article 355. However, that is all the more reason to ensure its judicious use. For over half a century, Article 355 remained in the deep freeze because the ruling dispensations preferred the powers of dismissal under Article 356. Gujarat is a test case for the application of Article 355. It is imperative that the political class does not fail this test, if for no reason other than in the interests of the long-suffering people of Gujarat.

THE TIMES OF INDIA

3 MAY 2002

RS UNANIMOUSLY ADOPTS MOTION ON GUJARAT

Obligations under Art. 355 will be fulfilled: Advani

By Harish Khare

NEW DELHI, MAY 6. The Central Government today committed itself in the Rajya Sabha to do its "best" to fulfil the obligation cast upon it by Article 355 to protect "the lives and properties of the citizens" in Gujarat. This commitment was made by the Union Home Minister, L.K. Advani, on the final day of the Rajya Sabha debate on a motion that expressed "anguish at the persistence of violence" and "urged" the Central Government to "intervene effectively" in the restoration of law and order and to provide relief and rehabilitation in Gujarat.

The motion, moved by the senior Congress leader, Arjun Singh, was adopted unanimously after the ruling party — which does not enjoy majority in the upper House — decided to cut its losses and agreed to support the resolution. And though the wording of the motion does not amount a direct criticism of the Gujarat Government, the two-day debate nonetheless produced an unambiguous indictment of the Narendra Modi regime. Even the Prime Minister, Atal Behari Vajpayee, and Mr. Advani appeared to be keen on not protesting too loudly in defence of the Modi regime. The Opposition, on its part, left the Government in no doubt that it would continue to hold the Centre answerable for discharging its "duty" under Article 355.

Mr. Vajpayee even went to the extent of disclosing that on the eve of the BJP's national executive meeting last month in Goa, serious thought was given to sacking Mr. Modi as Chief Minister. However, the party leadership's internal "assessment" was that Mr. Modi's removal would probably mean a "worsening" of the situation. More significantly, Mr. Vajpayee seemed to suggest — as did Mr. Advani a little later — that the "sack Modi" option was still an available option.

In addition, Mr. Vajpayee ruled out the possibility of an early election to the Gujarat assembly, an implicit snub for those within the BJP who had been wanting to encash electorally the presumed "consolidation" that has taken place in the wake of anti-minority violence.

Both Mr. Vajpayee and Mr. Advani, again, described the Gujarat violence as "reprehensible" and "shameful" and a "blot" (the Prime Minister) and "barbaric" and "uncivilized" (Home Minister). The Prime Minister was categorical that "Ahmedabad" could not be the answer to "Godhra". He reiterated his Government's commitment to the rule of law and expressed his faith in the inevitable triumph of democratic values and ideas over fundamentalism of all hues.

Speaking after the Prime Minister, Mr. Advani was rather insistent that "Article 355", in his view, did not necessarily mean an inevitable drift towards Article 356 (imposition of the President's rule). Relying on the Sarkaria Commission, he argued that Article 355 imposed a "duty" on the Centre, and that this Constitutional provision was "not against the State" but it was "meant to protect the State", whereas Article 356 was clearly an "adversarial" provision.

Mr. Advani made it clear that he disapproved of the post-Godhra violence. He suggested that he had been telling his people that it was about time to put an end to the violence as it was bound to complicate the country's larger fight against terrorism. He, in fact, hinted that the intelligence agencies had "intercepted" messages from terrorist groups in Kashmir to some unknown persons to keep fomenting violence in Gujarat.

Mr. Advani found himself in a spot when the Opposition benches wanted his response to the VHP leader, Ashok Singhal's reported approval of "Hindu" violence. Mr. Advani said: "Let me say categorically the Government strongly condemns and disassociates itself" from the Singhal statement. But the Opposition was unwilling to let Mr. Advani off the hook, and extracted a vague commitment that "action would be taken" (against Mr. Singhal).

The Government clearly spared itself an embarrassment by agreeing to pass unanimously Arjun Singh's motion, but it side-stepped the Opposition attempts to make it spell out what possible steps it could take under Article 355 in Gujarat. While the Prime Minister said that the "K.P.S. Gill mission" was "a step towards directing" the Gujarat Government, Mr. Advani ignored Dr. Manmohan Singh's pinpointed query in the matter.

THE HINDU

7 MAY 2002

Kirpal sworn in as Chief Justice

Statesman News Service

NEW DELHI, May 6. — President Mr KR Narayanan sworn-in Mr Justice BN Kirpal as the 31st Chief Justice of India at Rashtrapati Bhavan today. Mr Justice Kirpal succeeds Mr Justice SP Bharucha and will be the CJI till 8 November.

The swearing-in ceremony at the Ashoka Hall was attended by Mr Atal Behari Vajpayee, the Union home minister, Mr LK Advani, the Union law minister, Mr Arun Jaitley, Attorney-General Mr Soli J Sorabjee, Solicitor General Mr Harish Salve, additional solicitors general — Mr Altaf Ahmed, Mr RN Trivedi and Mr Mukul Rohatgi — and several several judges from the Supreme Court and the Delhi High Court.

Born on 8 November 1937, Mr Justice Kirpal received most of his education in Delhi and obtained his law degree from the Delhi University. He began practicing in 1961. After 18 years at the Bar, he was appointed as a judge of the Delhi High Court on 20 November 1979 and went on to be appointed the Chief Justice of the Gujarat High Court on 14 December 1993. He was elevated to the Supreme Court on 11 September 1995.

At present, he is heading a 11-judge Constitution Bench hearing the question of who constitutes the minorities under Article 30 (1). The Bench is hearing about 200 writ petitions on the definition of "minority" and the right of the "minority" to establish and administer educational institutions. The verdict in will be a landmark one.

The President, Mr KR Narayanan, and Mr Atal Behari Vajpayee with the new Chief Justice of India, Mr BN Kirpal, after the swearing-in ceremony at Rashtrapati Bhavan on Monday. — The Statesman

Mr Justice Kirpal came in for much acclaim when he set rolling the trend of disinvestment in the public sector by upholding the Centre's decision to divest its majority stake in the Bharat Aluminum Company.

The newly appointed Chief Justice also heads the three-judge Bench which is monitoring the process of conversion of the 10,000-strong city bus fleet into single-mode CNG fuel from diesel.

Centre in a bind on Article 355

FROM OUR SPECIAL CORRESPONDENT

New Delhi, May 3: The Vajpayee government has tied itself up in knots in the Rajya Sabha over the inconclusive two-day debate on Gujarat.

The Opposition is ready to tighten the screws after foreign minister and leader of the House Jaswant Singh said the government was in full conformity with the "letter and spirit" of the Opposition-sponsored motion seeking Central intervention in Gujarat under Article 355.

"The Central government has accepted the motion and it is now their duty to impose President's rule on Gujarat," said CPM leader Somnath Chatterjee. He also suggested that the government may replace Gujarat chief minister Narendra Modi with another BJP leader, which, too, would signal Central intervention.

Unofficially, senior leaders and Cabinet ministers in the Vajpayee government are unhappy with the foreign minister's "articulation" supporting the motion in the Rajya Sabha yesterday. They are also far from ready to meet the Opposition's demand for steps like Modi's resignation or imposition of Article 355.

On his part, BJP spokesperson Vijay Kumar Malhotra tried to wriggle out of the situation. Malhotra said the Centre has already "intervened" to bring the situation under control in the riot-ravaged state.

The BJP leader said deployment of the army in Gujarat was proof that the Centre had intervened. "In an indirect way, the Centre has already used Article 355 by sending the army to Gujarat," Malhotra said. But his argument was rejected outright by both the Congress and the CPM.

Congress spokesperson Jaipal Reddy dismissed Malhotra's claim. "Article 355 does not confer on the Centre the right to send the army to a state," Reddy said. "The government has committed itself to supporting the use of Article 355 in Gujarat. Now it must act."

The government's strategy to dodge defeat in the vote in the Rajya Sabha by supporting the Congress-sponsored motion has landed it in another embarrassing situation. The Opposition parties have made it clear that they would continue to badger the government on the issue till it took measures that satisfied them.

Prime Minister Atal Bihari Vajpayee's intervention in the debate is expected on Monday. His response may trigger another bout of bitterness between the ruling party and the Opposition.

Had the government been in a mood to get rid of Modi it would not have allowed the acrimony to escalate to this scale, Opposition members said.

THE TELEGRAPH

4 MAY 2002

4 MAY 2002

Use of Article 355

By K.K. Katyal

NEW DELHI, MAY 3. Come to think of it, Article 355 of the Constitution, one of the three important emergency provisions — and a less drastic one — has never been used by any Central Government so far. It enjoins on "the Union to protect every State against external aggression and internal disturbances and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution".

Its use, for the first time, is on the cards now that the Government has accepted the Opposition plea on the subject in the context of the situation in Gujarat.

The other two emergency provisions have been used in the past — and had acquired considerable notoriety. For instance, the powers under Article 356, to dismiss the Government of a State and to take over its administration, had been exercised nearly 110 times, although they were meant to be used sparingly.

And the other extreme, drastic step — the proclamation of Emergency under Article 352 — was taken by Indira Gandhi in June 1975, with disastrous consequences for the country and for herself.

There is no valid explanation as to why the powers under the less drastic provision — Article 355 — have never been exercised. Those who had opposed its use relied on a flimsy technicality — that the Central forces can go to the assistance of any part of a State only on receipt of a request from the District Magistrate or that it was virtually an enabling provision or a first step towards Emergency.

Unlike the other two provisions, Article 355 has not undergone any amendment. No change in it was suggested by the Sarkaria Commission on Centre-State relations. The only point in the Commission's recommendation that could have a bearing on its use is this one — It is entirely for the Union

POLITICAL IMBROGLIO

to decide, suo motu, whether the situation in a State calls for deployment of the Central forces, though "it is desirable to consult the State concerned, whenever feasible, before deploying its armed forces, otherwise than at the request of the State".

During the debates in the Constituent Assembly, B.R. Ambedkar, the then Union Law Minister and the chief architect of the Constitution, based the rationale of this provision on the need for Central action without resorting to extreme steps like the imposition of the Central rule. He explained its purpose thus: "It shall be the duty of the Union to protect every unit and also to maintain the Constitution." His elaboration: "So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution.

They also occur in the Australian Constitution, which, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion.

All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall be the duty of the Union to maintain the Constitution as enacted by this law."

In reply to queries, he clarified that this power was not meant to be used to intervene in provincial affairs "for the sake of good government of the provinces".

It was meant to be exercised "only when the Government is not carried on in consonance with the provisions laid down for the Constitutional government of the provinces".

How the Centre will make use of these powers in Gujarat is not clear. The action will need to be credible so as not to expose the Union Government to the charge that it had accepted the Opposition plea on Article 355 merely to get out of a difficult situation in the Rajya Sabha, where the ruling side is heavily outnumbered.

Poll candidates must bare all, rules SC

By Rakesh Bhatnagar
Times News Network

NEW DELHI: In a major judgment aimed at curbing the criminalisation of politics and ensuring transparency, the supreme court on Thursday ruled that candidates for the Lok Sabha or legislative assemblies would have to disclose their antecedents, assets and educational qualifications, if any, to help the electorate in making the right choice.

"The little man may think over before making his choice of electing law breakers as law makers," said the bench comprising Justices M.B. Shah, Bisheshwar Prasad Singh and H. K. Sema while asking the election commission to pass necessary orders in this regard within two months. The court said that the candidates would be required to give details on five counts. These are:

▶ Whether the candidate has been convicted, acquitted or discharged of any criminal offence in the past. If any, whether he was punished with imprisonment or fine.

▶ Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more; and details in case a charge has been framed or its cognisance is taken by the court of law.

▶ The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and dependents.

▶ Liabilities, if any, particularly those owing to any public financial institution or government dues.

▶ The educational qualifications of the candidate.

The judgment is a fallout of the Centre's appeal in a petition filed by the Association for Democratic Reforms and the People's Union for Civil Liberties.

Genesis of 355

Constituent Assembly and Gujarat

IN the wake of the continuing carnage in Gujarat, many experts have argued that the NDA government is empowered, indeed obliged, to act against the Narendra Modi government under the provisions of Article 355 of the Constitution. The Article refers to the duty of the Union government to protect every state "against aggression and internal disturbances and to ensure that the government of every state is carried out in accordance with the provisions of this Constitution". Reproduced below are relevant extracts from the Constituent Assembly debate that followed the introduction of the Article — then referred to as 277-A — by Bhimrao Ambedkar.

Bhimrao Ambedkar: I would like to explain why it is that the drafting committee feels that Article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the provinces, nonetheless is a federal Constitution. This means barring the provisions which permit the Centre to override any legislation that may be passed by the provinces, the provinces have a plenary authority to make any law for the peace, order and good government of that province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of Articles 278 and 278-A (Article 356) it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that Articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce Article 277-A. As members will see, Article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution.

So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American constitution. They also occur in the Australian constitution, where the constitution, in express terms, provides that it shall be the duty of the Central government to protect the units or the states from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law...

H V Kamath: Now coming to Article 277-A, we have laid according to this Article certain duties upon the Union government. Firstly, it should defend every constituent unit against any external aggression. Secondly, it should protect the state against internal disturbance. Lastly, the duty is laid upon the Union government to see that the government of every state is carried on in accordance with the provisions of this Constitution. As regards the last, I am wholeheartedly in agreement with that provision that the Union government should make it a point to see that every state honours and observes the Constitution in letter as well as in spirit. Also I have no quarrel with the provision regarding the defence of every constituent unit against external aggression. In my humble judgment, however, there is likely to be a difference of opinion as regards the middle provision of protecting the state against internal disturbance.

The crucial point to my mind in this connection is what is internal disturbance and what is not. Will any petty riot or a general melee or imbroglio in any state necessitate the president's or the Union government's intervention in the internal affairs of that state? It is dishonest on our part to say in one Article that public order shall be the responsibility of the state and then in another to confer powers upon the Union government to intervene in the internal affairs of the state on the slightest pretext of any internal disturbance. Therefore, with a view to removing this difficulty, I have moved my amendment. It seeks to substitute "internal insurrection or chaos" for "internal disturbance".

"Disturbance" is a very wide and elastic term. A disturbance of the human organism may range from a little pain in the finger up to hyperpyrexia or coma. So also a disturbance within a state may range from two people coming to blows to a full-fledged insurrection leading perhaps to chaotic conditions. Now, this Article seeks to divest, in howsoever small or large a measure, the state government of powers conferred upon it by the seventh schedule. If this Article 277-A is adopted without much consideration by this House, I foresee the destruction of provincial autonomy, the subversion of provincial autonomy by the Union government, on the pretext of averting or quelling internal disturbance.

If it is our aim to promote provincial autonomy — no doubt the inevitability of gradualness comes in here — let us be straight about it and let us provide as an interim measure, as a provision during the dangerous and critical times that we are living in, let us amend this Article by saying that only in the event of an insurrection or chaos shall the Union government be empowered to intervene in the internal affairs of the state...

Thakur Das Bhargava: I am very glad that Article 277-A is being enacted. This was a great lacuna in the whole Constitution. I cannot understand how the provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing by itself. Supposing the Constitution fails, how can a state guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a province by itself be able to meet the situation when the use of army and other forces are required by the state? It is, therefore, but proper that in regard to provincial autonomy also we must realise that the Centre has got a duty to discharge...

Pt Kunzru: Is it the purpose of Articles 278 and 278-A to enable the Central government to intervene in provincial affairs for the sake of good government of the provinces?

Dr Ambedkar: No, no. The Centre is not given that authority.

Pt Kunzru: Or only when there is such mis-government in the province as to endanger the public peace?

Dr Ambedkar: Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces.

THE TIMES OF INDIA

2 MAY 2002

Results of Constitution review

By Subhash C. Kashyap

Several of the recommendations now forming part of the NCRWC report went directly counter to the clear decisions of the Commission on which the draft was based.

NOW THAT the entire two-volume report of the National Commission to Review the Working of the Constitution (NCRWC) has been made public through the Law Ministry website, it is time to take stock of the achievements and failures of the Commission. Hopefully, the report will be printed soon, tabled in the two Houses of Parliament and copies made available to Members of Parliament and the public.

As the Commission reports, its appointment by the President in February 2000 was preceded by "a persistent demand in civil society" that "the working of the Constitution be subjected to a comprehensive review". The ball was set rolling by two articles in *The Times of India* in December 1990 and June 1991, inter alia, suggesting the appointment of a Constitution Commission. A national committee headed by Karan Singh, a seminar jointly organised by 15 national organisations and an India International Centre project on the Working of the Constitution in 1992-93 also recommended setting up of a Review Commission.

As its name indicated, the brief of the NCRWC was to review the working of the Constitution and not to rewrite or review its provisions. A great deal of misunderstanding was caused simply by the Commission being wrongly called "Constitution Review Commission". The Commission's terms of reference excluded any tinkering with the parliamentary system or the basic structure of the Constitution. It is another matter that despite being repeatedly reminded by some members, the Commission may not have strictly kept these parameters in view.

To assess whether the objectives of our great founding fathers, as enshrined in the Constitution, had been fulfilled during 1950-2000, the Commission was expected to act independently and objectively, without fear or favour and in the spirit of serving the best interests of the country and thereby helping the Government and Parliament consider the desirable reforms. It was necessary to examine dispassionately the working of the chief organs of the state — the Legislature, the Executive and the Judiciary.

The composition of the 11-member Commission, however, was heavily weighted in favour of the Judiciary with as many as four retired judges. The sitting and a retired Attorney-General were also members. A journalist, a former Lok Sabha Speaker and sitting MP, two retired IAS officers and this writer completed the picture. In the context of its composition it was not surprising that several Commission members seemed anxious not to displease, in any way, the judges' constituency in particular and the fraternity of the legal profession generally.

Originally, the Government had stipulated that the Commission would complete its work within one year. However, as is usual with many such commissions, its term had to be extended thrice and actually it covered a period of over two years and one month. The minutes of the meetings of the Commission included in Volume II of its report are very revealing and an analysis thereof may be a sad commentary on how a historic opportunity was nearly wasted. During the 25-month tenure of the Commission, in the first 21 months a total of 12 meetings were held and at these meetings attention was focussed only on administrative and procedural matters such as constituting panels of expert advisers and committees, identifying resource persons, entrusting preparation of consultation papers on payment to NGOs/institutions, holding regional seminars, laying down time-frames (which were never adhered to) and reviewing the progress on consultation papers and considering their release for eliciting public opinion.

It was only during a one-and-a-half month period (November 24, 2001-January 8, 2002) that members of the Commission had some opportunity of expressing their views on the working of the Constitution and the three organs of the state. The only substantive discussion on various areas took place at the 13th, 14th and 15th meetings of the Commission. Thereafter, the task of drafting the report was entrusted to the Drafting and Editorial Committee which submitted the full two-volume report on February 15, 2002.

While the major portion of the final report of the Commission remains the same as it was in the Draft Report, the two meetings held in February-March 2002 were in the main devoted to going back on some of the unanimously agreed earlier recommendations of the Commission as contained in the unanimous report of the Drafting and Editorial Committee. At the end of it all, before the report was submitted to the Government on March 31, 2002, one eminent member (a former Speaker of the Lok Sabha) had resigned and as many as four other members including the Chairman of the Drafting and Editorial Committee were constrained to append to the report their separate notes.

As the note of one who in the words of the Commission's Chairperson was "the principal author" of the entire report stated, while there was some positive outcome of the Commission's exercise insofar as "a number of very significant suggestions" were approved unanimously and "important recommendations made", several of the recommendations now forming part of the report went directly counter to the clear decisions of the Commission on which the draft was based.

B. P. Jeevan Reddy (former Law Commission Chairman) in his separate note took exception to an earlier decision of the Commission in the matter of appointment of judges being subsequently changed. He also regretted the dropping of his suggestions in regard to the liability of state in torts. The journalist member of the Commission, C.R. Irani (editor-in-chief, *Statesman*) in his note, inter alia, referred to voting in the Commission having been resorted to only on the question of foreign-born citizens occupying high public office. He expressed himself strongly against any change in Articles 29 and 30 of the Constitution. The note by Sumitra Kulkarni, a former IAS. officer and Rajya Sabha member (and grand-daughter of Mahatma Gandhi) lamented that some members of the Commission remained fence-sitters, important issues were evaded, the Commission became a platform for divisiveness and no effort was made to promote public debate.

Unfortunately, in some vital matters, certain important recommendations have not found place in the final report simply because one of the members had some reservations. Some highly controversial matters of doubtful legitimacy have found place in the final report because of the insistence of the one member. Also, while in some matters decisions were taken by the majority, in others unanimity was insisted upon. It would have been better not to focus on the wish-list or the demands of some individuals or groups and to think of the interests of the nation at large.

The note of the Chairman of the Drafting and Editorial Committee makes a special mention of the chapter on the Judiciary being "seriously flawed and distorted" and the much needed judicial reform issues not having been even touched or deleted in the final report e.g. in the matter of the appointment of judges.

(The writer was a member of the NCRWC and also Chairman of its Drafting and Editorial Committee.)

'No' to quota for SCs/STs in higher judiciary

By J. Venkatesan

NEW DELHI, APRIL 18. The Centre has rejected the proposal of the Parliamentary Committee on Welfare of the Scheduled Castes and the Scheduled Tribes to provide for quota for these communities and women in the higher judiciary.

According to Law Ministry sources, the Centre feels that appointment of judges to the High Courts and the

Supreme Court is governed by Articles 124 and 217 of the Constitution, which do not provide for reservation for any caste or class of persons.

As a result, the Government is not maintaining a list of judges separately on caste or class basis.

The Centre is of the view that amending the provisions of the Constitution to provide for quota for judges belonging to the SC/ST communities will send wrong signals to the judiciary and hence rejected the committee's recommendations.

But the Centre recently wrote to the High Court Chief Justices and the Chief Ministers requesting them to locate suitable persons from the Bar belonging to the SCs/STs, Other Backward Classes and the Minorities and Women for appointment as judges so that their representation in higher judiciary could be increased.

In its recommendations to the Government, the committee had expressed serious concern over the "dismal representation of SCs/STs in the higher judiciary".

The committee had said that out of about 490 High Court Judges only about 20 were from the SCs/STs and only one Supreme Court judge belonged to the SC. Some 157 posts of High Court judges were vacant.

Voicing concern over the "inaction" of the States in increasing the representation, the committee recommended that the Centre take "concrete" steps, if need be, to amend the Constitution.

It said that there was no legal or constitutional bar for providing reservation in the judiciary.

"What is apparently lacking is political will and sincerity to do the needful. The provision of Article 15 (4), as interpreted by the Supreme Court, should be applied to the appointment of Supreme Court and High Court judges without any further loss of time."

THE HINDU

MONDAY, APRIL 8, 2002

A BASIS FOR REFORM

THE FINAL REPORT submitted by the National Commission to Review the Working of the Constitution (NCRWC) is a sweeping document that contains a formidable array of recommendations which, when read together, have far-reaching implications for the country's socio-political life. Whether it is on maintaining the delicate balance in Centre-State relations, reforming the electoral process, breathing more life and meaning into devolution and decentralisation or enlarging the concept and role of fundamental rights, the NCRWC's recommendations are specific and precise. Unlike the working papers earlier released by the Commission — which contained multiple and conflicting recommendations and which were in the nature of an open-ended exercise aimed at eliciting further opinion — the final report is a statement on exactly where the NCRWC stands on these and a number of other issues. While there is bound to be debate, possibly even strong disagreement, over the inclusion of a particular suggestion or the omission of another, the recommendations put out by the Justice M. Venkatachaliah-headed Commission are consistent with the basic values enshrined in the Constitution — republicanism, federalism, the rule of law and respect for minority rights.

At first glance, the fact that as many as 58 recommendations involve amendments to the Constitution may suggest that the NCRWC's final report is an instrument to introduce radical revisions to the existing Constitution. But if one were to cast a more diligent eye on the document, it will become clear that a very large number of these amendments relate to one specific area: decentralisation and devolution. Most of the constitutional amendments recommended in this connection are aimed at plugging the gaps in the implementation of the 73rd and 74th constitutional amendments on panchayati raj and municipalities. For the better part, the NCRWC's final report recommends legislative measures and steps for executive action. Read as a whole, the final report is a programme for political, social and administrative reform; much more, at any rate, in both scope and purpose than a mere wish list of amendments seeking to modify the Constitution.

Faced with the increase in fuzzy and indecisive electoral verdicts, the NCRWC has recommended the informal staging of an election to elect a leader of the House (Parliament or Legislative Assembly as the case may be) in situations where no party or pre-poll alliance succeeds in getting a clear majority. Apart from insuring the office of the President and the Governor from unnecessary controversy, this is aimed at facilitating Government formation. Other suggestions are aimed at strengthening governmental stability, including the one for a constructive vote of no confidence — in other words, one designed not merely to bring down elected Governments but also put alternatives in their place. It will be no surprise if these and some other suggestions are greeted by criticism in some quarters, but the NCRWC's final report has taken care to steer clear of some potentially choppy political waters. The Commission has not committed itself on the controversial question of a foreign-born citizen occupying high constitutional office beyond observing that it is a subject which should be "examined in depth through a political process after a national dialogue". It has chosen to be also somewhat equivocal on the question of drastically altering the existing electoral system with the introduction of a run-off contest, a mechanism designed to ensure that all elected candidates win with a majority of over 50 per cent. Recent Indian history is cluttered with reports which have not been implemented and recommendations which have gone unheeded. The NCRWC's report touches on many important issues and will always be a talking point in discussions on socio-political reform. But it remains to be seen whether it will be implemented or go the same way as many of its unimplemented predecessors.

THE HINDU

SC allows judgment review

Press Trust of India

NEW DELHI, April 10. — The Supreme Court today laid down a mechanism for a second review of its judgment under a curative writ with certain conditions. It, however, reaffirmed that its final judgment could not be "assailed" under Article 32 of the Constitution.

The judgment came on a bunch of writ petitions which had raised the question whether a Supreme Court judgment could be challenged by a writ under Article 32.

"We think a petitioner is entitled to relief ex debito justice (in the interest of justice) if he establishes violation of principles of natural justice in that he was not a party to the lis (petition) but the judgment adversely affected his interest or, if he was a party, he was not served with notice of the proceedings," a five-judge Constitution Bench, headed by Chief Justice Mr SP Bharucha said.

The court said the time has come when a procedure for such a remedy should be laid down in the law. The petition under curative writ would lie where a judge failed to disclose his connection with the subject-matter or the parties gave scope for an apprehension of bias and the judgement adversely affected the petitioner, the Bench said.

The other judges on the Bench were Mr Justice SSM Quadri, Mr Justice UC Banerjee, Mr Justice SN Variava and Mr Justice Shivaraj V Patil.

Laying down the mechanism for proceedings under curative writ, the court said the petitioner "shall aver specifically that the grounds mentioned in a petition had been taken in the review and that it was dismissed by circulation". The curative petition "shall" contain a certification by a senior advocate with regard to fulfilment of conditions laid down by the court, the Bench said.

The court reaffirmed that under Article 32 a final order of the court could not be "assailed". The Bench said: "To cure a gross miscarriage of justice, this court may reconsider its judgments in exercise of its inherent power."

THE STATESMAN

ERRORS OF COMMISSION

The law may be an ass, but it still remains too important to be left only to lawyers. The eminent gentlemen, practising lawmen or mere dabblers who comprised the Constitution review panel, had the option to prove this wrong. They did not. If the country expected a fresh insight into the scissor-and-paste tome, known as the Constitution of India, it will not find any. After two years of mindless toil, even clichés — foreign-borns in high office, uniform civil code *etc.* — do not find a mention. That should not come as a surprise. If businessmen were asked to chart the course of Indian reforms, all one would have got are low taxes and baskets of protection. The truth is that members of any discipline can hardly sit in judgment on their own profession. Invariably, they suffer from boxed vision. This is even more true of the legal profession. In no other subject is the gulf between the discipline as an inquiry into reason and its application so seemingly unbridgeable.

If the country expected a fresh insight into the Constitution in the review commission's recommendations, it will not find any

Ideally, such a national commission should have included stake-holders in society with the lawmen merely providing secretarial service. It has not. An opportunity thus has been lost to review the working of the Constitution and initiate meaningful debates. Some of the problems of the Constitution are generic. A patchwork established 300 years back to maintain harmony in distant England will not work in India. The other problems are native Indian. The Constitution created the finance commission as the sole instrument to divide funds between the Centre and the states. Yet, the money is largely allocated through the planning commission, a body unmentioned in the opus. The Constitution commits the country to socialism. But the cabinet boasts of a disinvestment ministry.

But by far the most important issue is the mindless adaptation of eccentric English notions. In 1649, the English got rid of their king. In 1660, they decided to bring him back but not quite as a regent deriving authority from divine descent. Thus was born the extraordinary notion of a hereditary office in a democracy. As India, a republic, could not have royalty, an office of the president was created. The English also created the House of Lords, with *zamindars* as members so that the Crown could have its own house. So Indians had to have their upper house, but as they could not accept hereditary rights, bizarre rules of election were invented. Today the Rajya Sabha is an *ashrama* for those rejected by the people. The whip was conceived of to protect the republicans from poaching by the Crown. The idea is replicated with the result that political parties with leaders unapproved by the larger public have a say over those voted in by the people. This aberration has received a further fillip with the anti-defection law, which sanctifies the idea of the whip with penalties for disobedience. In privileges and contempt are ideas that shelter interest groups against outside scrutiny as the hapless Arundhati Roy found out.

It is not enough to say that truth be recognized as a defence. The question surely is whether anyone, however exalted, should have recourse to laws which others in society do not enjoy. But law is both letter and spirit. And if while retaining the letter one were to be a little generous with the spirit, one would have been spared the toil and the cost of a pointless commission.

THE TELEGRAPH

The NCRWC and its critics

By Mukund Padmanabhan

There are at least two things that those who went into paroxysms of rage over the setting up of the National Commission to Review the Working of the Constitution (NCRWC) are obliged to do. Read its final report. And make an honest appraisal of it.

It is quite astonishing to recall the (often simulated) anxiety and the (often pious) indignation which greeted the setting up of the NCRWC. The basis has been laid to saffronise the Constitution, we were told. This is a mechanism to destroy the India that we know, we were warned. When we were not being served up with such funereal prophecies, we were told that the NCRWC was but a cynical cover to achieve one limited political objective: prevent Sonia Gandhi from becoming Prime Minister.

Consider what happened instead. The NCRWC has refused to recommend the barring of foreign-born citizens from high constitutional office. Oddly enough, the most vocal member in favour of this proposal in the body (P.A. Sangma) quit in disgust because he was unable to prevail upon the others.

As for saffronising the Constitution, the NCRWC's final report speaks for itself. You might disagree with a suggestion here, take exception to a suggestion there. But read as a whole, the document is an exceptional piece of political correctness.

Strengthening the federal character of the nation-state, devolving more power to panchayats and municipalities, expanding the definition of fundamental rights, reforming political parties, seeking additional measures for the betterment of the north-eastern States and for the scheduled castes and tribes.

On the whole, this is a document that should please the very people who were so quick to denounce the NCRWC as a handmaiden of the BJP-led Government — a mere tool to constitutionally formalise its majoritarian designs. Viewed from an ideological perspective, it is a party such as the BJP that should be the most uncomfortable with the body of its recommendations.

NEWS ANALYSIS

The NCRWC's critics had not only made a bad error, but have been unfair and unkind about the men who manned the body. It ought to have been clear from the very beginning that a body headed by someone as eminent as Justice M.N. Venkatachaliah and had, among its members, men such as Justices B.P. Jeevan Reddy and R.S. Sarkaria, would not be a party to subverting the Constitution for the ends of one Government or the other.

It is ironic that while the Constitution of the NCRWC was attended by so much politics, the actual work undertaken by the body went virtually unnoticed.

Many of those who painted the commission in the darkest terms hardly bothered to even respond to its suggestions. The consultation papers put out over the last year by the body were largely unread and not commented upon.

There is only one expression that describes the attitude of crying wolf and then ignoring the wolf when it actually shows up: politics.

Most of the NCRWC's report deals with making changes in existing legislation and evolving new procedures and systems for taking executive action.

The actual Constitutional amendments it has suggested, if those relating to devolution of power to panchayats and municipalities are discounted, are very few. Much fewer in fact than many of the sweeping Constitutional amendments that have been passed since India became a republic.

The NCRWC document is a basis for wide ranging socio-political reform.

It will be a misfortune if the narrow politics which resulted in condemning the setting up of the body does not spill over when it comes to assessing its recommendations.

Every suggestion in a document of this size and nature cannot please everyone.

But there is much in this report which deserves to be examined and deserves to be implemented.

Divided on foreign-born citizens issue

By Harish Khare

NEW DELHI, APRIL 4. Though the National Commission to Review the Working of the Constitution, headed by Justice M.N. Venkatachaliah, has refused to form an opinion on the eligibility of "foreign-born citizens" (read Sonia Gandhi) to hold high constitutional offices, the controversy is far from settled. At least, those who were keen on using the panel to debar "foreign-born citizens" are not prepared to let the matter rest.

In its final report, the Commission was content to reach this conclusion: "The issue of eligibility of non-Indian born citizens or those whose parents or grandparents were citizens of India to hold high offices in the realm such as the President, the Vice-President, the Prime Minister and the Chief Justice of India should be examined in depth through a political process after a national dialogue."

The Commission was deeply divided on the issue, with as many as five members keen on a different formulation. In fact, this was the only question that had to be settled by a show of hands among the members. One of the dissenting members, C.R. Irani, said he had written a dissent. Mr. Irani, who is the editor of *The Statesman*, opted to inform the writer of a "letter to the editor" in his paper, that he had "appended an additional note" to the final report.

In his "dissent", Mr. Irani wrote: "On the occasions on which this matter was discussed in my presence, I could not shake off the impression that we, in the Commission, feared that any endorsement of the view canvassed by our colleague, Purno Sangma, although on merit, would be interpreted as being directed against one individual."

Mr. Irani wanted to impress upon his fellow-members in the Commission that "our decisions ought not to be influenced by possible or even probable reactions." He urged the Commission that "we do not need to wait for a Fujimori case to arise before deciding that the safeguards in the American Constitution deserve a fuller, more public debate."

Another member, Subash Kashyap, in his "dissent" noted: "Some highly controversial matters of doubtful legitimacy have found place in the final report because of the insistence of one member and the fear of a dissent from him while a matter very dear to one of the members and which as many as five members supported couldn't find place among the positive recommendations and this led to the resignation of the member concerned." (Para 11).

The final report has belied, for now, the apprehensions of the NDA Government's critics that it had constituted the panel primarily to "fix" Ms. Gandhi. However, the anti-Sonia voices are not likely to give up so easily, and would use the "dissent" of five members to keep the pot of her "eligibility" boiling.

Opportunity Lost

When India gave itself a written constitution more than half a century ago, there were many who believed that the newly-independent country was destined never to fulfil the ambitious promises contained in that noble document. Fifty-two years on, even the detractors would agree that their fears have proved largely unfounded. Indian society might no longer cherish the socialist utopia, but it has successfully followed the constitutional roadmap in other crucial ways. To begin with, barring a brief 18-month aberration, the polity has resolutely stuck to the blueprint of a Westminster-style republican democracy. In the heat of partisan polemic, and cynicism, it often tends to be forgotten that this in itself is no mean achievement for a country of a billion-plus people, divided into every conceivable marker of identity known to humanity. Yet, it is just as true that the constitutional vision of our forebears needs revision and correction in many important respects. This is no reflection on the constitution itself. It is more the expression of a self-evident truth: A vision statement relevant for a different era, particularly in a country lacking in prior modern political institutions, must necessarily undergo a change in the light of concrete historical experience. Against those who argue that 50 years is too short a time in the life of a nation, it bears recall that the Indian constitution was something of an open-ended experiment, which requires updating in the light of our evolution as a nation-state. Therefore, the reason why the constitutional review, announced two years ago by the NDA government, attracted so much initial hostility and criticism had less to do with the principle behind it and more to do with the intent and motivations of a section of the BJP.

However, as the review committee, headed by former chief justice of the Supreme Court M N Venkatachaliah, submits its report to the government, there is an all-round sense of disappointment about its deliberations. From reports appearing in the media, it is clear that instead of providing a vision statement for the future, the review panel has gone in for minor tinkering. As regards our democracy, for instance, the single most important question has been whether the first-past-the-post principle, suited to a polity with a stable two-party system, has not outlived its relevance in a fractured and regionalised polity where multi-party elections have long emerged as a norm. But instead of grasping the nettle and exploring alternatives, the commission has chosen to skirt the issue, occupying itself with procedural detail such as the manner of determining the leader of the majority in the legislature. Anybody familiar with the recent history of political discourse in the country will agree that the principle of secularism is easily the most contentious issue facing the republic. While the basic principle remains unambiguous, there is much controversy about the specifics: For instance, the desirability or otherwise of adopting a uniform civil code in a multi-religious, multi-cultural society. But if one presumed that a constitutional review panel is perhaps the ideal forum for grappling with complex questions such as those, then the Venkatachaliah panel has not obliged. What we have at the end of its two-year-long tenure, is a long and unimaginative list of piece-meal reforms which fail to address the most basic issues facing our polity in the new millennium. The best one can say for its scholarly labours is that it is a huge opportunity lost.

3 APR ... THE TIMES OF INDIA

GOVT OPEN TO DEBATE ON PROPOSALS

Statute panel for more basic rights

Statesman News Service and Agencies

NEW DELHI, April 2. — In its final report to the Centre, the National Commission for Review of the Working of the Constitution has called for several new Fundamental Rights — including the Right to Expression, of which the Right to Freedom of the Press would form a part — to be incorporated. It has also made major recommendations relating to the functioning of Parliament and the Judiciary.

The report also wants Article 21 of the Constitution — Right to Life and Liberty — to be strengthened by ensuring a Right to Compensation in case of unfair deprivation of liberty.

The 1,976-page report was submitted on Sunday by Commission chairperson and former Chief Justice of India, Mr Justice MN Venkatachaliah, to the Union law minister, Mr Arun Jaitley, who had accepted it on behalf of the Prime Minister.

Speaking to reporters, Mr Arun Jaitley said the Cabinet today decided to make the Commission report public so that the people can discuss and debate it. Making another key recommendation, the Commission said truth should be allowed to be made a defence in a contempt of Court case, Mr Jaitley said.

RECOMMENDATIONS

- Right to Expression, including Right to Freedom of the Press
- Right to Compensation
- Right against Torture
- Fundamental Duties on the promotion of moral values
- [illegible] Judicial [illegible] to deal with judicial appointments

Details are available at http://lawmin.nic.in.legal.htm and http://lawmin.nic.in.

It is still not clear if the Centre will accept any or all of the recommendations, with Mr Jaitley calling the matter "still premature". "The government has decided the report should be a launching pad for debate," he said, adding the recommendations concerned 18 different departments besides the state governments, Legislatures, the Election Commission and judicial institutions.

On the controversial issue of a person of foreign origin holding Constitutional office, the Commission had called for a debate among political institutions. Member Mr PA Sangma, former Lok Sabha Speaker, had resigned from the Commission last month when his call for a thorough discussion of the subject among panel members was not accepted. The issue assumes particular significance in the current national context as the leader of the Opposition Mrs Sonia Gandhi was born in Italy.

The Commission, Mr Jaitley said, has further recommended setting up of a National Judicial Commission to deal with judicial appointments, and to examine how in some cases areas of judicial discipline appeared to be breached. It has also suggested increasing the retirement age of judges of both the Supreme Court and the High Courts.

The report has suggested bolstering provisions of Article 14 of the Constitution relating to Equality before the Law, besides recommending the incorporation of several new Fundamental Rights, the law minister informed.

Certain Fundamental Rights have already been expanded by virtue of judicial interpretation, he said, adding the Commission has sought the inclusion of a Right against Torture and expansion of the scope of the rights to education. The Commission has also sought the addition of two new Fundamental Duties.

"There are far-reaching suggestions relating to electoral reforms, the working of Parliament and the Judiciary," he said, observing that changes have also been suggested to the system of social justice, including legal aid and access to justice, besides child labour.

On Fundamental Duties, Mr Jaitley said the report has also taken note of the Justice Verma Committee recommendations on the issue, including that of making industrial organisations provide education to children of their employees and on promoting moral values.

No-confidence verdict on Gujarat govt

FROM OUR SPECIAL CORRESPONDENT

New Delhi, April 1: The National Human Rights Commission today virtually expressed lack of confidence in the Gujarat government, asking the Modi administration to hand over specific massacre cases to the CBI and set up special courts to try the suspects.

In an indictment that was much more scathing than its interim verdict, the commission questioned the functioning of both the Central and state intelligence agencies.

"We express concern over an extraordinary lack of appreciation of the potential dangers of the situation both by the Central and state intelligence agencies, given the history of communal violence in Gujarat," the commission, headed by Justice J.S. Verma, said in its report.

The commission expressed concern over continuing clashes in Gujarat, where two more people died today. The army was called out tonight at Khanpur in Ahmedabad after a mob tried to attack some houses.

The panel report said the special courts should hold daily hearings and the judges should be "handpicked" by the chief justice of Gujarat High Court.

Questioning the Gujarat government's stand that the Godhra massacre was "premeditated", the commission said the state did not clarify who was responsible for the incident.

The report has been sent to the Centre and the state government for action.

"The tragic events that occurred in Gujarat had serious implications for the country as a whole, affecting both its sense of self-esteem and the esteem in which it is held in the comity of nations," the report said.

Delving deeper into the fallout of the riots, the panel cautioned: "Grave questions arise of fidelity to the Constitution and to treaty obligations. There are obvious implications in respect of protection of civil and political rights, as well as of economic, social and cultural rights in Gujarat and also the country more widely; there are implications for trade, investment, tourism and employment."

The report blamed the state government for failing to uphold the fundamental rights guaranteed in the Constitution.

"Unless rebutted by the state government, the adverse inference arising against it would render it accountable. The burden is, therefore, now on the state government to rebut this presumption," the report said.

The commission said it had received several complaints that even first information reports were not properly written, registered and lodged.

The panel said the investigations were "influenced" by players with extraneous considerations. It has recommended a CBI probe into incidents at Godhra , Gulbarga Society, Naroda, Sardarpura in Mehsana and Vadodara's Best Bakery.

It said the victims should be protected from further trauma and the destroyed places of worship should be rebuilt.

Laloo against 'election' of PM, CMs

By Our Staff Correspondent

PATNA, APRIL 1. The RJD president, Laloo Prasad Yadav, today opposed the recommendation of the Constitution Review Commission that the Prime Minister and Chief Ministers be chosen by the Lok Sabha and respective Assemblies and described it as an anti-democratic step.

Mr.Yadav alleged that the BJP's objective was to corner the AICC president, Sonia Gandhi, by amending the Constitution for its own benefit. There was nothing wrong with the Constitution. If at all the system had to be changed, the Prime Minister should be elected directly and a similar approach could be adopted for the Chief Ministers as well. But the "via media" suggested by the Commission was not at all acceptable.

The recommendation, if accepted, would lead to misuse of the system by vested interests and harm people's mandate. An indirect election allowed for cross-voting, a bitter taste of which the BJP had in the recent Lok Sabha election.

The RJD leader feared that a man with money could become a Prime Minister and make a mockery of democracy. Moreover, the party with a majority too might find the proposed arrangement to its disadvantage, as the other opposing it would be partaking in the decision-making.

Mr.Yadav however favoured dissolution of the Upper House and do away with the bicarmel system at the State level.

Our New Delhi Special Correspondent reports:

The Congress has refused to react to the recommendations made by the Commission. The party spokesman, Anand Sharma, said the Congress had already rejected the setting up of the Commission, which in was "aimed at bypassing Parliament".

Mr. Sharma said his party was yet to receive a copy of the recommendations. While the report had suggested certain key changes in the electoral laws it had left open the controversial issue of barring people of foreign origin from occupying high constitutional positions.

Commission:

(Continued from page 1)

Mr Justice Venkatachaliah also refused to comment on suggestions to prohibit foreigners from holding high office, as was pushed for by former Lok Sabha Speaker Mr PA Sangma, who had put in his papers three weeks ago after this view was rejected by the Commission.

The Commission has steered clear of controversial issues such as Article 370 — which provides for a special status for Jammu and Kashmir — and the demand for a Uniform Civil Code. It devoted a "significant part" of the 1,976-page report to socio-economic issues instead. The Commission has, however, dealt with Article 356 — which empowers the Centre to impose President's rule in a state — and reportedly recommended some parameters to curb its misuse.

The suggestion for a National Judicial Commission to deal with all aspects of the judiciary — including promotion, transfer and accountability of judges — has also found favour with the Commission. "(The panel) has recommended the setting up of a multi-member civil society which shall exercise superintendence over existing institutions to ensure fair distribution of national wealth (among) all segments of society," an official said. The proposed body would independently review the government's performance and submit report annually. Unlike the Comptroller and Auditor-General of India, it will not just look into accounting lapses but also take a broader view of government performance.

Mr Arun Jaitley said the Commission's two-volume report covering 249 recommendations would be examined by the government and subsequently debated at different fora. Asked if there were any dissenting notes, Mr Justice Venkatachaliah said: "The exercise would have been meaningless had there been no dissent... there are one or two areas where there are differences of opinion".

The Commission was constituted by the government in February 2000 but could start deliberations only in June. Headed by Justice Mr Venkatachaliah, the panel included Attorney-General Mr Soli J Sorabjee, Editor-in-Chief and Managing Director of The Statesman Mr CR Irani, Mr Justice RS Sarkaria, Mr Justice Kottapalli Punnayya, Dr Abid Hussain, Mr K Parasaran and Mr Subhash C Kashyap.

Statute review panel seeks changes in electoral laws

PRESS TRUST OF INDIA
NEW DELHI, MARCH 31

SEEKING major changes in the electoral laws and introduction of certain new fundamental rights, the Constitution Review Commission today submitted its recommendations to the Government leaving it to political parties to resolve the controversial issue of barring people of foreign origin from occupying high constituional posts.

The voluminous 1976-page report containing 249 recommendations was submitted to Union Law and Justice Minister Arun Jaitley by Justice M N Venkatachaliah, chairman of the National Commission to review the working of the Constitution, at a function here this evening.

The issue of foreign origin people occupying the highest constitutional positions was skirted by the panel which said it was for the political parties to have dialogue and evolve a consensus on the contentious issue, Commission sources said.

Former Lok Sabha Speaker and Nationalist Congress Party (NCP) leader P A Sangma had resigned as a member of the Commission after his suggestions to bar foreign origin people from holding top constitutional posts was not accepted.

Sangma, along with Sharad Pawar, Tariq Anwar and some other leaders, had left the Congress on the issue of Sonia Gandhi's foreign origin and her leadership of the party that positions her to occupy a high constitutional post.

Asked to comment on the issue of foreign origin, Justice Venkatachaliah said "it is already in your knowledge. I don't want to comment. Sangma took the issue and had gone to the press. The outcome is what Sangma had said. We have not contradicted him."

Justice Venkatachaliah said the most important part of the report related to electoral reforms and laws relating to the conduct of political parties.

He said the Commission had recommended inclusion of certain new fundamental rights, including the right to privacy, right against torture and right to education.

"In fact, India is signatory to a number of international conventions that make it obligatory for the country to enact domestic laws in conformity with those conventions," he said.

Justice Venkatachaliah said the main theme of the entire exercise was about development in relation to forces of global change.

The Commission chairman said decentralisation, Centre-state relations and pace of socio-economic change were other important spheres that had engaged the Commission.

On the issue of making the recommendations public, he said "there are some sensitive recommendations. Now that I have submitted the report, it is for Government to decide to put it in the public domain."

Asked if there were any dissenting notes, Justice Venkatchaliah said "the exercise would have been meaningless had there been no dissent. There are one or two areas where there are differences of opinion."

After receiving the report on the Commission's last working day, Jaitley said the Government would study it and make its recommendations public shortly.

"Parliament session is on. It is only a mid-term break. After studying the report and discussing it with Parliamentarians and states, we will make the recommendations public," the Law Minister said.

Asked how long the Government would take to examine the report, he shot back "we are yet to read even the first page."

House to elect PM or CM: Statute panel

FROM R. VENKATARAMAN

New Delhi, March 31: The Constitution review commission submitted its report today, recommending sweeping electoral reforms and throwing out the suggestion to bar persons of foreign origin from holding high office.

In the two-volume report handed to law minister Arun Jaitley — the Prime Minister could not be present because of a bereavement — the National Commission to Review the Working of the Constitution said that after a parliamentary or an Assembly poll, the leader of the House should be elected by its members.

Such a suggestion was made by A.B. Vajpayee after his 13-day government collapsed in 1996.

But some other proposals close to the heart of sections of the BJP were rejected by the commission, dispelling fears that the party's so-called hidden agenda would find a place in its recommendations.

The commission, headed by former chief justice M.N. Venkatachaliah, has suggested a radical reform in a much-debated law that enables the Centre to dismiss an elected state legislature. Article 356 can be applied only when serious "subversion" of the Constitution takes place to the extent of leading to "secession", the commission said in its recommendations that number 230.

It held that the three basics of the Constitution, "parliamentary democracy, rule of law and secularism", cannot be altered or tampered with.

Justice Venkatachaliah said the most important part of the report related to electoral reforms and laws relating to the conduct of political parties.

The commission suggests abolition of the existing method of a Governor or the President inviting the leader of the single largest party or group to be sworn in as chief minister or Prime Minister.

Explaining the recommendation, an official said that, after an election, the House is to be convened by a pro tem Speaker and the leader of the House elected by majority. The "leader of the House is not to be chosen at Raj Bhavan (or Rashtrapati Bhavan) or after a headcount", the official said. "This would avoid horse-trading and purchase of MLAs and MPs," he added.

The commission rejected a paper calling for banning persons of foreign origin (read Sonia Gandhi) from occupying high constitutional positions. On three other issues sections of the ruling party have been pursuing, it is silent (See chart). It has recommended that the right to religion be made a non-suspendable right.

Education has been made a fundamental right.

Asked to comment on the foreign origin controversy, Venkatachaliah said: "It is already in your knowledge. (P.A.) Sangma took up the issue and had gone to the press. The outcome is what Sangma had said. We have not contradicted him."

Sangma, who had quit the Congress on this issue, resigned from the commission after his paper proposing the ban was rejected.

The commission has suggested that political parties submit a dossier of sorts on an election candidate to the Election Commission, which can reject it and ask the party to nominate another person.

It suggests an amendment to the anti-defection law to incorporate the concept of "block method". The current law allows recognition as a separate entity if one-third members (MPs or MLAs) of a party break away.

Under the recommended system, every political party will be treated as "one block" and irrespective of the voting pattern of its individual legislators on a motion, only the majority block will count. For instance, if the Congress has 100 members and 60 vote against a motion and 40 for it, all 100 votes will be deemed to have gone against the motion.

If the commission's recommendation is accepted, truth will be made a defence in any contempt of court proceeding. Under existing law, a contempner cannot defend himself even if he has proof of a judge's misconduct.

The review commission is also set to recommend a national judicial commission to appoint judges to the high courts and the Supreme Court and hear complaints against judges.

THE MISSING 'HIDDEN AGENDA'

- No bar on persons of foreign origin (read Sonia Gandhi) occupying constitutional office
- No dilution of Article 370, which gives special status to J&K
- Nothing on common civil code
- No ban on cow slaughter
- Right to religion to be a non-suspendable right

OTHER SUGGESTIONS

- Leader of the House should be elected on the floor and sworn in as Prime Minister or chief minister. The existing method of swearing in a person first and then testing the strength should be done away with
- Anti-defection law should be replaced with block method
- Parties should give candidates' CV so that poll panel can reject those with criminal record

1 APR 2002 THE TELEGRAPH

CHANGES MOOTED IN PROCEDURE TO FORM GOVTS

Statute panel submits report

Statesman News Service

NEW DELHI, March 31. — There may be fewer instances of hung Assemblies or Parliament if this recommendation of the National Commission to Review the Working of the Constitution gets through: In its final report, submitted to the government today, the Commission has recommended reversing the procedure for forming the government.

Instead of the Governor or the President identifying the largest party after elections and inviting its leader to form the government, the Commission has recommended that a session of the Assembly concerned or the Lok Sabha be convened to enable the legislators to elect their leader, who would subsequently form the government. The leader's following in the House would be considered later, a government official said, quoting from the Commission's report.

The Commission is also reported to have recommended incorporating a provision in the Constitution to limit the maximum period of preventive detention to six months, with a view to protecting the rights of a citizen. Incidentally, provisions of the Prevention of Terrorism Act (Pota) stipulate preventive detention of a period of one year. The panel has also explicitly suggested making Freedom of the Press a part of the Fundamental Rights of citizens.

The Commission chairperson and former Chief Justice of India, Mr Justice MN Venkatachaliah, refused to divulge details of the report, saying it was the government's prerogative. He, however, added that the Commission had made "crucial" and "sensitive" recommendations on electoral reform— including that of laws relating to conduct of political parties — and sought to bring the range of Fundamental Rights in line with international covenants. "The area of non-suspendable rights have been enlarged," he said. The report was submitted to law minister Mr Jaitley, who accepted it on behalf of the Prime Minister.

Editor-in-Chief of The Statesman and member of the Constitution Review Committee Mr CR Irani (extreme left), Mr Justice MN Venkatachalaiah, law minister Mr Arun Jaitley and Attorney-General Mr Soli J Sorabjee after submission of the report in New Delhi on Sunday. — The Statesman

Turn to page 6

SC clears 'minor ambiguity' in Ayodhya order

Statesman News Service

NEW DELHI, March 14. — Today's Supreme Court (coram. Kirpal, Pattanaik, Khare, JJ) suo motu clarification — puja is banned everywhere on the 67.703 acres of land in Ayodhya and not only on the two revenue plots — may lead to an application for another clarification: whether puja should be stopped in all the temples, including the makeshift one, on the acquired land.

Sources said that an application in this regard may be filed tomorrow morning.

The VHP has threatened that its leaders will go on fast unto death if the puja at the makeshift temple is stopped. This, government sources said, may "create tension" and hence "the need for another clarification".

Earlier, today, the court re-emphasised that the order it had issued yesterday applied to the entire 67.703 acres currently under the charge of the Centre. But it had declined to hear the Attorney-General's question on whether puja should continue at the temples at the site.

Rectifying what it said was a "minor ambiguity" the Court scotched attempts to interpret its initial order as covering only two revenue plots in village Kot Ramchandra and not the entire acquired land which, according to that interpretation, encompassed over 100 revenue plots.

While the court referred only to media reports that had drawn attention to the ambiguity, last evening leaders of the VHP and the Ram Janambhoomi Nyas had taken the line that the judicial order pertained to only the two revenue plots that had been specifically mentioned in the formal directive.

The "minor ambiguity" arose from the order having only identified revenue plots Nos. 159 and 160 — although it had been categorical about the area of 67.703 acres on which "no religious activity of any kind by anyone either symbolic or actual including bhoomi puja or shila puja shall be permitted or take place."

This morning the court sought the presence of the Attorney-General saying it wished to clarify the ambiguity. It accepted Mr Soli Sorabjee's suggestion that the matter be dealt with at 2 p.m. to facilitate the presence of all the parties concerned in the court.

It then removed any doubts that the "no puja directive" applied to the entire 67.703 acres acquired by the Central government under the Acquisition of Certain Areas at Ayodhya Act, 1993.

Reacting to the clarification, the Attorney-General pointed out that there were 14 temples on that land where puja was being conducted for several years and the court order should not be seen as restraining those continuing religious activities in the temple town.

The court, however, said: "We are giving this order (today's) only to clarify the minor ambiguity. We are not hearing anything else on this issue." It advised the Attorney-General to move a proper application along with a proper affidavit if he wanted a clarification regarding those temples.

THE STATESMAN

15 MAR 2002

Apex court rejects Centre's prayer for symbolic puja

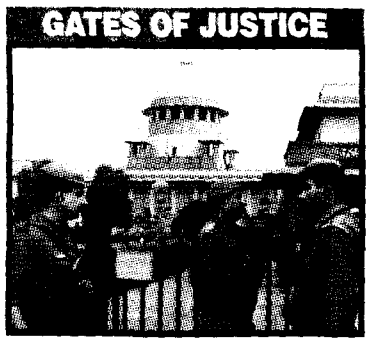
'As of today, the acquired land is untouchable land'

Sorabjee says no one gave him instructions

By Rakesh Bhatnagar
Times News Network

NEW DELHI: The supreme court has said an emphatic "no" to any religious activity, including to a 'bhoomi puja' by the Vishwa Hindu Parishad (VHP) on the government-acquired 67.703 acres of land adjacent to the demolished mosque area in Ayodhya. This was despite the Centre's plea that a "symbolic bhoomi puja" be permitted there.

On Wednesday, a bench comprising Justice B.N. Kirpal, Justice G.B. Pattanaik and Justice V.N. Khare referred to a larger bench the writ petition filed by Mohammad Aslam alias Bhure seeking directions to prevent the proposed 'bhoomi puja', the ritual planned prior to the construction of the Ram temple in Ayodhya.



In its interim order, the bench said, "..no religious activity of any kind by anyone, either symbolic or actual, including bhoomi pujan or shila puja, shall be permitted or allowed to take place".

The bench further said, "No part of the aforesaid land shall be handed over by the government to anyone and the same shall be retained by it until the disposal of the writ petition, nor shall any part of this land be permitted to be occupied or used for any religious purpose or in connection therewith".

During the 90-minute hearing in a crowded courtroom, about 44 lawyers including Sidhartha Shankar Ray, Anil B. Divan, R.K. Anand, Rajeev Dhawan, R.N. Trivedi, Ezaz Maqbool, Kirit Raval and O.P. Sharma represented different petitioners affected by the Ayodhya developments.

The court issued notices on various petitions and intervention applications and admitted Mr Bhure's petition for hearing.

VHP counsel Rama Jois, former chief justice of the Karnataka and Punjab and Haryana high courts, said the 1994 status quo order applied only to the disputed land of 2.77 acres and there was no restriction on performing any puja on the undisputed or non-disputed land adjoining the disputed land.

The judges said that a plain reading of the 1994 judgment led to the prima facie view that until the title suits were decided, religious activities on the 67 acres of acquired land were prohibited.

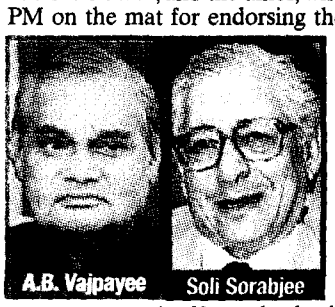
Keeping in mind the present situation, the bench said, "Even as an interim measure we cannot allow the government to allow any puja on the 67 acres of acquired land". The bench added, "As of today, it (acquired land) is untouchable land." On the court's query as to how the bhoomi puja could be allowed in view of the 1994 status quo, A-G Soli J. Sorabjee said that the Centre's stand was the correct interpretation of that judgment.

▶ See Edit: Judgment Day, Page 8

By Smita Gupta
Times News Network

NEW DELHI: Prime Minister Atal Behari Vajpayee's bid to please the temple votaries through the attorney general's pleadings before the supreme court to allow a symbolic puja and simultaneously to assuage the NDA allies by committing the government to upholding the court verdict ran into rough weather on Wednesday. But at the end of the day, the government appeared to have successfully walked the tightrope.

The VHP and the BJP admitted the Centre had "done its best", and the allies, who had earlier put the PM on the mat for endorsing the VHP line through Soli Sorabjee's submissions to the apex court, later upheld the government's decision to abide by the court order and maintain the status quo in Ayodhya.



The PMO appeared to have reason to pat itself on the back. Officials said the court order meant that the government could not through executive action either permit a puja or hand in the acquired land for temple construction, and thus could no longer be blackmailed or coerced by the VHP\RJN.

However, the Centre clearly did not anticipate that its stand before the apex court would draw flak from its angry allies and would need some smooth talking.

Then the damage-control exercise began. The PMO and the BJP alike sought to distance the government from Mr Sorabjee's pleadings. First, they pointed out that there was no written submission to the court and withdrew a draft of a statement the PM was to make on the ground that it had wrongly attributed the puja details to Mr Sorabjee.

Simultaneously, Mr Sorabjee was paraded before the agitated allies in the PM's chamber where the attorney-general said the government had not given him any brief, that his response was based on his understanding of the legal position, and the details of the ceremony were "off-the-cuff" suggestions.

Court questions VHP's locus standi

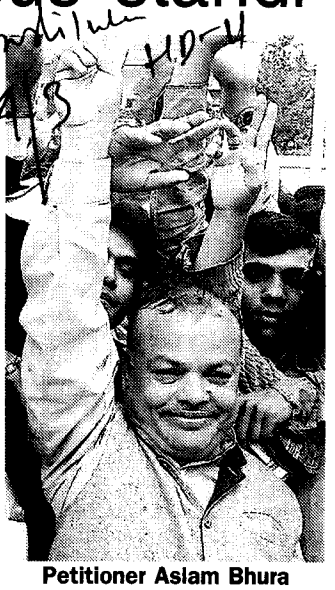
By J. Venkatesan

NEW DELHI, MARCH 13. The Supreme Court today questioned the locus standi of the Vishwa Hindu Parishad in the Ayodhya land dispute and the basis on which it was announcing its plans for the performance of the 'bhoomi puja' on March 15.

A three-Judge Bench headed by Justice B.N. Kirpal, while declining permission to the Centre and the VHP to perform any form of religious activity in the undisputed site, asked the former Chief Justice of the Karnataka High Court and senior counsel, Rama Jois, whether the VHP was a registered organisation or a trust.

Referring to the repeated "threats" and "announcements" being made by the VHP on temple construction in Ayodhya, the Bench told counsel, "today you are saying March 15, tomorrow, you will say some other programme on April 15". Mr. Jois said the VHP was registered under the Societies Registration Act and the undisputed land was acquired by the Centre from Ram Janmabhoomi Nyas, which was a registered trust.

He said the 'status quo' order did not apply to the 67 acres of undisputed acquired land, of which 43 acres was owned by the Ram Janmabhoomi Nyas. Hence, symbolic puja could be performed there.Mr. Jois submitted that all the trustees of the Nyas, who started the movement 40 years ago, were over 75 years of age now and their last desire in life was to see the performance of a small puja there. They felt that the temple would not be constructed during their life-time as it might take some more time for the disposal of the title suits by the Allahabad High Court.



Petitioner Aslam Bhura coming out of the Supreme Court in New Delhi on Wednesday after the Court rejected the Government proposal to allow a symbolic puja in Ayodhya. Mr. Bhura had sought maintenance of status quo on the acquired land there. — PTI

COURT IS SUPREME

A verdict of the Supreme Court has a ring of finality about it. Implicit within any judgment from the apex court is the assumption that its orders will be obeyed by all Indian citizens and that the government of the day will exercise its authority to implement the court's orders. Thus it is reasonable to conclude that peace will prevail in Ayodhya on the Ides of March. The Supreme Court has decreed that *status quo* should be maintained on the 67.70 acres of land which are part of the Babri Masjid and Ramjanmabhoomi complex. The apex court has disallowed any "religious activity of any kind by anyone either symbolic or actual including *bhumi puja* or *shila* puja". This order came despite the Central government's plea through the attorney-general, Mr Soli Sorabjee, that the court should allow a symbolic puja after imposing stringent conditions and restrictions. The court turned down the plea and made the significant observation, *obiter dicta*, that the permission given for the symbolic puja at the disputed site in 1992 had resulted in the demolition of the disputed structure despite assurances given by the government. It would not be unfair to read in this observation a profound mistrust on the part of the apex court about the real intentions of the Vishwa Hindu Parishad and the Ramjanmabhoomi Nyas. To further safeguard the status quo, the court has also ordered that no part of this land which the government had acquired can be handed over by the government to anyone. The Supreme Court has not only defused the situation but has also saved India's secular face.

This very role of the highest court of the country — laudable in this particular instance — draws attention to certain alarming features of Indian society and polity. These point to the immaturity of civil society and to the vulnerability of its institutions. The judiciary alone cannot be seen to be responsible for resolving problems affecting the secular fabric of Indian society. In fact, the judiciary should be the last resort. In India, it is often made the first resort because there is a suspicion about the effectiveness and, even at times, the motives of the executive and the other organs of civil society. One extreme example of this immaturity is the demand that the VHP should provide a written assurance that it would abide by the court's decision even if this went against the position of the VHP. In a mature civil society no such assurance would be required; it would be taken for granted that the court's verdict would always be honoured. It is to be welcomed that better sense seems to be prevailing and no body is seriously talking any more about defying the court's judgment. The prime minister, Mr A.B. Vajpayee, has announced that his government will uphold the court's judgment. He must ensure that there is no violence in Ayodhya on March 15. He would be unfair to himself and to the nation if he fails to keep his promise.

THE TELEGRAPH

SC to hear Ayodhya petitions today

By J. Venkatesan

NEW DELHI, MARCH 12. The Supreme Court is to hear on Wednesday petitions seeking directions on the controversial move by the Vishwa Hindu Parishad (VHP) to go ahead with its reported 'symbolic bhoomi puja' on March 15 for the construction of a Ram temple at Ayodhya.

A three-Judge Bench, comprising Justice B.N. Kirpal, Justice G.B. Pattanaik and Justice V.N. Khare, will hear a petition filed by Mohd. Aslam alias Bhure for a direction to restrain the 'kar sevaks' from reaching Ayodhya and for handing over 67 acres of land in the possession of the Centre to the Army.

An intervention application filed by the United Lawyers Front for permission to entrust to a 'secular committee' the task of constructing both a temple and a mosque simultaneously in the land acquired by the Centre has also been listed for tomorrow.

Another petition, filed on Monday by Shailendra Bhardwaj, an advocate, on behalf of a Delhi businessman, Ravinder Gupta, that he be allowed to go to Ayodhya as he was a 'Sanatan Dharmi' and a regular pilgrim to that holy city, is also to be mentioned before the Bench along with the other petitions. In his petition, Mr. Gupta said he was deeply hurt by the restrictions imposed on his free movement to Ayodhya as it amounted to denial to perform his religious obligations.

Under the pretext of preventing the VHP agitation, the State could not do away with the rights of citizens and the Government should find a way to ensure that genuine pilgrims were able to freely visit the religious town of Ayodhya.

The All-India Muslim Personal Law Board is also likely to mention its application seeking to restrain the VHP from performing the "bhoomi puja" near the 'disputed site' in Ayodhya.

The apex court, in its 1994 judgment upholding the acquisition of land by the Centre, had observed, "the moderate Hindu has little taste for the tearing down of the place of worship of another to replace it with a temple. It is our fervent hope that moderate opinion shall find expression and that communal brotherhood shall bring to the dispute an amicable solution long before the courts resolve it."

But as negotiations have failed to break the deadlock so far, the role of the Supreme Court, as sought for by the parties concerned, has come into the fore again.

UP Governor had no option: PM

By Our Special Correspondent

NEW DELHI, MARCH 8. The Uttar Pradesh Governor, Vishnu Kant Shastri's decision to recommend President's rule in the State was defended by the Prime Minister, Atal Behari Vajpayee, who told the Lok Sabha today that "he (Mr. Shastri) had no other option."

Mr. Vajpayee's remarks came during an impromptu discussion on the issue during zero hour. He intervened as the Opposition repeatedly

President's rule imposed in U.P.: Page 11

cited the President's decision in 1996 to allow him to prove his majority on the floor of the House, despite his being well short of a majority.

Mr. Vajpayee said the House would have to decide whether inviting the single-largest party to form the government should become a convention. Those citing the 1996 example had criticised the President and even "bad-mouthed" him, he alleged.

Turning the tables on the agitated members of the Samajwadi Party — who repeatedly interrupted him — by pointing out that the "numbers did not suit them," in Uttar Pradesh, Mr. Vajpayee said "if the numbers do not add up for my friends in the SP, I cannot help it." He pointed to the differences between the SP and the Congress, saying the main opposition party had not extended its support to the SP.

A majority of the MLAs in the State were against supporting the SP. And in such a situation, inviting it to form a government would open the floodgates for horse-trading, he said. "What is the Governor supposed to do..., provide an opportunity for horse-trading?"

Earlier, angry Opposition MPs, belonging to the SP, Congress and the Left demanded that the House reject Mr. Shastri's recommendation. They also wanted a debate on the Governor's conduct of ignoring the SP claims. The members had given a spate of adjournment notices on the issue but the Deputy Speaker, P. M. Sayeed, merely allowed them to raise it. The House had to be adjourned during question hour.

THE HINDU

9 MAR 2002

THURSDAY, MARCH 7, 2002

THE CONVICTION OF ARUNDHATI ROY

THERE IS SOMETHING terribly amiss about a law and a legal environment which imposes unreasonable restrictions on the freedom of speech and punishes people for nothing more than speaking their mind. The conviction of Arundhati Roy by the Supreme Court for criminal contempt is an unfortunate and disturbing development and should worry all those who believe that the law of criminal contempt, an extraordinary legal provision which vests extraordinary powers with the courts, should be used only in the most sparing and fastidious manner. The principal objective of The Contempt of Court Act, 1971, is to protect the authority and dignity of the court. The provisions of the Act are not intended to suppress criticism (even if expressed trenchantly) of court judgments, discourage frank and free expression about the state of the judicial system or, as in the case here, to bring 'errant' writers to book.

The Supreme Court appears to believe that its (ostensibly nominal) sentencing of the Booker Prize winning author — to a one-day "symbolic imprisonment" and a fine of Rs. 2,000 — is a pointer to its magnanimity. But, in a larger sense, it is only another disturbing instance of the increasing tendency within the Judiciary to interpret the law of criminal contempt in an extremely rigid and inflexible manner. In criticising the Supreme Court's judgment on the Narmada dam issue and in defending herself in an affidavit (filed in reply to a contempt petition against her and others for raising slogans during a demonstration in December 2000), Ms. Roy has admittedly been unsparing in her criticism of the apex court. However, in matters of criminal contempt, it is extremely important that judicial sensitivities do not get the better of judicial restraint. Moreover, at the end of the day, the litmus test for declaring someone guilty of criminal contempt is whether a conviction actually serves to preserve the dignity and authority of the Judiciary. In holding an otherwise law- abiding citizen such as Ms. Roy guilty, whose 'offensive' words and actions stemmed from a clear commitment to a social and environmental cause, there is a real risk that public confidence in the Judiciary is likely to be eroded rather than enhanced.

It is pertinent to note that the original contempt petition filed against Ms. Roy was declared grossly defective and duly dismissed. Her conviction stemmed from a second and *suo motu* contempt proceeding after the Court found a few paragraphs in her affidavit (filed in reply to the original contempt petition) "scandalising" and "lowering of its dignity". It may be true that matters would not have come to such a pass if Ms. Roy, in the course of her long and passionate reply, had refrained from making a couple of questionable references or had chosen to retract them when given an opportunity to do so. But the overall progression of the contempt case, which began with a defective petition and ended with an unfortunate conviction, raises issues which go beyond the three 'offending' paragraphs in her affidavit. They concern the worrying ease with which Indian courts invoke criminal contempt even as the courts in some other democratic countries have virtually given up this power. For instance, in Britain, the law is virtually a dead letter and in the United States, it is invoked only in the extraordinary circumstance that there is a clear and present danger to justice. The lack of settled criteria to assess what "scandalises" the court, the provision that even truth is not a defence against criminal contempt and the fact that the judge and the prosecutor are the very same in such proceedings have complex ramifications. Together, they demand that the Judiciary observe a tremendous amount of restraint when invoking criminal contempt. It is unfortunate that the Supreme Court has failed to do this in the case of Arundhati Roy.

Governor recommends President's rule in UP

HT Correspondent
Lucknow/New Delhi, March 6

GOVERNOR VISHNU Kant Shastri today recommended President's Rule in Uttar Pradesh. He conveyed his decision to Delhi after the Congress failed to make up its mind on Government formation in the State.

The Congress, with 25 MLAs in the hung House, had sought time till today to apprise Governor Shastri of its decision, but did not meet him today.

Shastri had indicated yesterday that he wouldn't necessarily call the single largest party to form the Government, but his efforts would be to invite a stable combination.

With his February 6 deadline for major parties to submit their views, the Governor spent the morning waiting for the Congress delegation and drafting his report, explaining why President's Rule should be imposed in the State.

The Congress delegation did not show up. Instead, State Congress Chief Prakash Jaiswal and other senior leaders, including Pramod Tiwari, Waseem Ahmad and Vivek Bansal, visited riot-hit Aligarh, where they were arrested.

For much of the afternoon, the Governor made enquiries about Samajwadi Party MLA Manzoor Ahmed's murder outside the Raj Bhawan. In the evening, he was closeted with top officials, giving final touches to his report, which he dispatched late tonight to the President.

Samajwadi MLA shot dead

In a daring daylight murder, Samajwadi Party MLA from Bareilly, Manzoor Ahmed, was shot dead by a youth at the main gate of the Governor House in Lucknow on Wednesday during a party demonstration, in full view of the heavy police contingent.

Angry SP members beat up the assailant, Abhishek Singh, severely. Police bosses were also manhandled when they tried to rescue him. The motive for the murder is yet to be established.

HTC, Lucknow

Supreme Court vs Roy

New Delhi, March 6 (PTI): The Supreme Court today, while ordering that Booker Prize winner Arundhati Roy be sent to jail for a day for contempt of court, observed that no person can flout laws of respecting courts under the cloak of freedom of speech.

This observation was made in a 76-page judgment holding Roy guilty of contempt of court.

Following are the highlights of the judgment:

■ When the court exercises contempt power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and the administration of justice.

■ The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice.

■ No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedoms of speech and expression guaranteed by the Constitution with reasonable restrictions.

■ Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary.

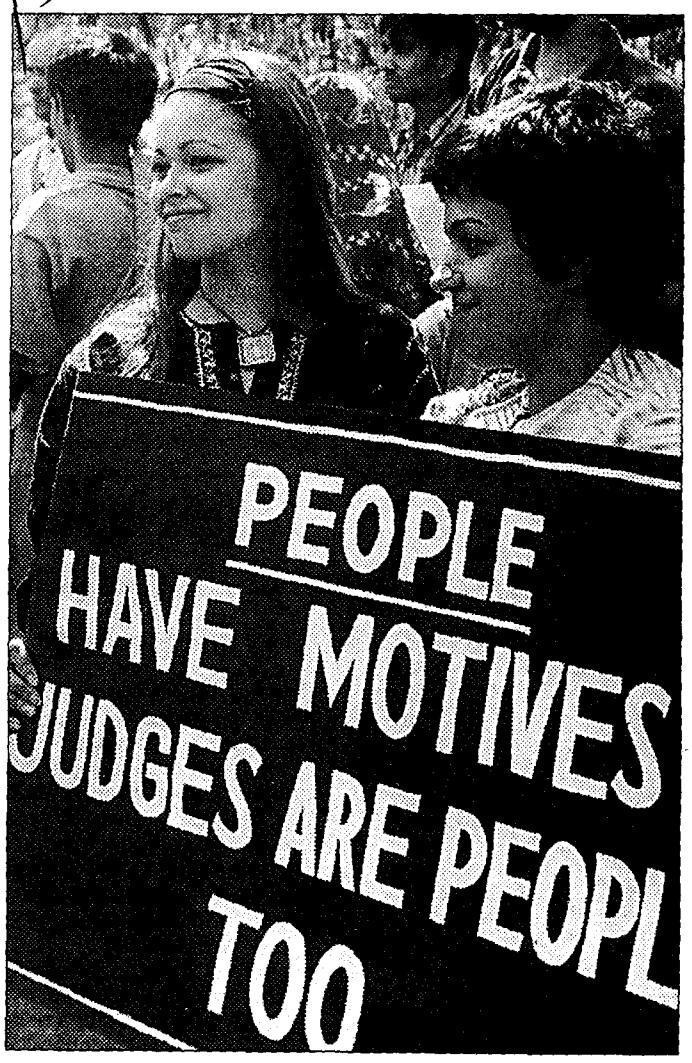
■ The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of common man in the institution of judiciary and democratic set up is likely to be eroded which, if not checked, is sure to be disastrous for society itself.

■ During the whole of the proceeding she has not shown any repentance or remorse and persistently and consistently tried to justify the action which, prima-facie, was found to be contemptuous.

■ To frustrate the present proceedings, the respondent (Roy) has resorted to all legal tactics and pretences.

■ She had accused courts of harassing her as if the judiciary were carrying out a personal vendetta against her. She had brought in the matters which were not only not pertinent to the issues to be decided but has drawn uninformed comparisons to make statements about this court which do not appear to be protected by law relating to fair criticism.

■ Fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest.



Supporters of Arundhati Roy outside the Supreme Court. (PTI)

■ To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for the comment, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved.

■ All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism, which, if not checked, would destroy the institution itself.

■ She (Roy) has not claimed to have made any study regarding the working of this court or judiciary in the country and claims to have made the offending imputations in her proclaimed right of freedom of speech and expression as a writer.

■ Under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizens under Article 19 (1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits either under the law of defamation or contempt of court or the other constitutional limitations under Article 19 (2).

■ If a citizen, therefore, in the garb of exercising the right of free expression under Article 19 (1), tries to scandalise the court or undermines the dignity of the court, then the court would be entitled to exercise power under Article 129 or Article 215 as the case may be.

■ ...when it is stated that the court displays a disturbing willingness to issue notice on an absurd despicable, entirely unsubstantiated petition, it amounts to a destructive attack on the reputation and the credibility of the institution and it undermines the public confidence in the judiciary as a whole and by no stretch of imagination can be held to be a fair criticism of the court's proceedings.

■ But in view of the utterances made by the contemnor (Roy) in her showcauses filed and not a word of remorse till the conclusion of the hearing, it is difficult for us either to shrug off or to hold the accusations made as comments of outspoken ordinary man and permit the wrong-headed to err therein.

■ She has attributed motives to the court of silencing criticism and muzzling dissent by harassing and intimidating those who disagree with it.

■ In her affidavits, she has not shown any repentance. She wanted to become a champion to the cause of writers by asserting that persons like her can allege anything they desire and accuse any persons or institution without any circumspection, limitation or restraint.

Governing Misrule

For those still concerned about standards of propriety in our public life, the imminent departure of Prabhat Kumar from the office of Jharkhand governor will come as some relief. The simple truth is that Mr Kumar should not have occupied that high constitutional office in the first place. This is not just because of recent media reports about his conduct as Union cabinet secretary when he allegedly allowed himself to host parties the financial tabs for which were picked up by a "friendly" corporate sponsor, since implicated in a bribery scandal. Well before that unfortunate indiscretion, Mr Kumar had come in for adverse media attention for his role in the Babri Masjid demolition case. At the time of the demolition, Mr Kumar was principal secretary (home) to the Uttar Pradesh government. Since many accused in the case have since gone on to occupy important ministerial positions, it might be argued that the relatively minor part played by Mr Kumar in the controversy should be condoned. But that would be to make a category mistake. Even if one accepts the questionable contention that cases registered against top BJP leaders in the wake of the Babri demolition were political in nature and therefore not worthy of being taken seriously, the same logic cannot be extended to the administrative services and the police. For better or for worse, in cases involving political representatives, there is at least the extenuating fig leaf of popular mandate to justify a differential application of a legal principle. There is also merit in the suggestion that cases against politicians are sometimes motivated by the spirit of retribution. But neither of these conditions holds for the non-political class, particularly the bureaucracy of which we must necessarily expect higher standards of behaviour in a modern democracy.

Yet, the political culture in India is increasingly incapable of appreciating such distinctions. To be fair, the process was initiated by Indira Gandhi and gained momentum during successive Congress regimes. But the present dispensation has done nothing to arrest it. If anything, the situation has become worse. According to one head-count, as many as 11 among the current crop of governors — several of whom appointed by the NDA coalition — are retired IAS/IPS officers. This might in itself not be a matter for concern since there is no evidence to suggest that one-time administrators make for bad governors. The real issue is that these post-retirement sinecures are often handed out as rewards for 'services' rendered by civil servants during their careers. In other words, the present practice is an open invitation to the so-called steel frame to tailor its loyalties to suit its political masters, rather than any higher principle such as the rule of law or the constitution. Little wonder, the installation of a new government today is invariably an occasion for a widespread bureaucratic reshuffle in which those "close" to the regime are granted plum assignments while others are shunted off to punishment postings. In the specific case of politicisation of the governor's office, there is a further irony. After all, the NDA government prides itself on its federalism and commitment to improving Centre-state relations. The unsavoury case of Mr Kumar's fall from grace might serve some useful purpose if the present government views it as a warning against a cynical perpetuation of the Congress culture.

Prabhat successor yet to be decided

Mohan Sahay and Sanjay Singh in New Delhi

Jan.31 — Even the last act of Mr Prabhat Kumar in resigning as the Governor of Jharkhand was not without controversy. After having failed to meet the President, Mr KR Narayanan, he sent an official, attached to the Governor's office, to Rashtrapati Bhavan tonight to carry his resignation letter.

Mr Narayanan, who received the resignation letter late tonight, forwarded the same to the Centre, official sources said. Technically, Mr Kumar's resignation should have been accepted tonight itself but, in absence of any communication from the Centre on an alternative arrangement in the Ranchi Raj Bhavan, Mr Kumar could not be relieved immediately.

The Centre didn't act on time today to inform the President as to who would replace Mr Kumar or who should be appointed as the officiating Governor once he is relieved. The official communique on Mr Kumar being relieved was put on hold tonight by Rashtrapati Bhavan.

Mr Kumar tried to meet Mr Atal Behari Vajpayee but he did not get an appointment, according to PMO sources. Mr Kumar is anxious to seek protection from the government against any possible move by the CBI to frame him in the excise bribery case along with Mr Ashok Chaturvedi, industrialist, and Mr Someshwar Mishra, suspended chief excise commissioner of Delhi, both of whom were chargesheeted by the investigative agency.

Sources said the Ranchi High Court Chief Justice may be appointed as acting Governor till the government decides on an alternative. Mr UN Biswas, who retired today as additional director of CBI, will not be made the Jharkhand Governor, sources said. Mr Biswas, who brought Mr Laloo Prasad Yadav behind the bars on several occasions in the fodder scam, would be "rewarded" after a "suitable time gap". It is likely that he would be made the Governor of a North-eastern state in 6-8 months, sources said.

A section of Samata leaders was lobbying hard to make Mr Biswas the Bihar Governor and getting the incumbent, Mr Vinod Pande, transferred to Ranchi. But Mr LK Advani was not in favour of the move, sources said. Mr Laloo Yadav spoke to the Prime Minister yesterday, urging him not to appoint Mr Biswas as Governor.

More powers mooted for Governors

Jay Raina
New Delhi, January 31

THE NATIONAL Commission to Review the Working of the Constitution will recommend a clutch of measures to restore the dignity and independence of Governors of States. The report is likely to be presented before the Government on February 28.

The recommendations are expected to cover the selection of the Governor, his role and powers within the parameters of the Constitution's federal features.

The review commission's report card on the Governor's role and functions are being finalised at a time when the gubernatorial office is mired in controversy after the resignation of Jharkhand Governor Prabhat Kumar. This has opened a debate on the Governor's role as "a lynchpin of the prevailing constitutional apparatus".

The proposed recommendations include constitution of a committee to select a Governor and statutory provisions for his impeachment by the State Legislature besides changes in his powers with regard to the grant of assent to Bills as passed by the State Legislatures. The recommendations are expected to be largely based on the Sarkaria Commission's report, but the review panel may go beyond it in spelling out the precise nature of Governor's role and his functions.

As regards the selection and subsequent appointment of the Governor, the review commission is expected to suggest that the decision is taken by a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and the Chief Minister of the concerned State.

Members of the commission said the composition of the committee could be subjected to further discussions to arrive at a consensus, once the idea of the new selection process is accepted.

At present, Article 155 provides for the appointment of a Governor by the President by way of a warrant under his hand and seal. Article 156 says the Governor shall hold office during the pleasure of the President. The only qualifications prescribed for his appointment are that he should be an Indian citizen and must have completed the age of 35 years.

The review panel's Consultation Paper on the institution of Governors points out that even as the administration of the State in carried the name of the Governor, the people of the State or their representatives have no say in the matter of his appointment.

"While the President is elected by the representatives of the people through an Electoral College comprising MPs and members of the State Legislatures, the Governor is merely appointed by the President, which in actual terms means the Union Council of Ministers. Inasmuch as the Governor holds office during the President's pleasure, there is no security of his tenure," the paper explains.

As regards the Governor's powers to withhold assent of Bills passed by the State Legislatures, the review panel feels that such provisions are devoid of legitimacy against the backdrop of representative character of the Legislatures as personifications of the will of the people.

The review panel recommendations may include the Governor's powers with regard to the appointment of Chief Minister, testing the majority of the Government in office, dissolution of the Legislative Assembly among others.

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High office, low standards

No two ways about it — the Jharkhand governor has to go

FROM all indications, Jharkhand Governor Prabhat Kumar is on his way out. It is, of course, unfortunate that the high office of governor has been unnecessarily mired in the process and the blame for this will have to be laid at the door of the Union government. The Vajpayee dispensation, like many others in the past, has tended to regard gubernatorial appointments as a means of rewarding those who had served its interests rather than those who have served the country — a crucial distinction that good governance most certainly requires be made. But let us set this aspect aside for the moment and revisit the reason why Kumar's continuation in office has become untenable. It was this newspaper that had highlighted the close nexus between Kumar, in his earlier avatar as cabinet secretary, and the chairman and managing director of Flex industries, Ashok Chaturvedi, who had been caught last year bribing a chief excise commissioner. In the course of his interrogation, Chaturvedi revealed that he had paid for three parties Kumar had hosted.

Accepting hospitality running into several thousands violates important ethical principles enshrined in the code of conduct for civil servants the world over. The UK Civil Service Code puts it this way: "They (civil servants should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity". It is a point that the Committee on Standards in Public Life, set up by the British government in 1994, dwells upon at some length. The presumption — and an extremely reasonable one at that — is that once public officials place themselves under financial or social obligation to influences and persons outside the government, they will find it difficult to conduct themselves in the non-partisan manner that their jobs demand. This is precisely why USA's Ethics Reform Act, 1989, states baldly: "Employees (of the government) shall not use public office for private gain, and employees shall act impartially and not give preferential treatment to any private organisation or individual". Indian civil servants, incidentally, are barred from accepting costly gifts for similar reasons.

It has always been notoriously difficult to track corruption in high places and wily, old Chanakya knew this best of all when he observed in his *Arthashastra* that "just as it is impossible to know when a fish moving in water is drinking it, so it is impossible to find out when those in charge of the king's undertakings misappropriate money". It is, therefore, even more incumbent upon the government, once it has proof of inappropriate behaviour by such officials, to take action against them. Kumar had, in the last few weeks, been summoned to Delhi by both the home minister and the prime minister, indicating that the government was finding it increasingly difficult to justify his continuation in office. It is only right therefore that Kumar exits Jharkhand's Raj Bhavan and the curtains be brought down on a sorry episode.