

# Advani signals early polls

HT Correspondent  
Mumbai, December 30

DEPUTY PRIME Minister L.K. Advani said on Tuesday that the BJP was in favour of early polls to cash in on the feel-good factor generated by his party's victory in the recent Assembly elections.

Advani was speaking to the media after a meeting with Shiv Sena chief Bal Thackeray, who backed the BJP's proposal for early Lok Sabha elections. General elections are likely in late April or early May.

The Deputy Prime Minister said the BJP was confident that the NDA would return to power at the Centre. He said the BJP's victory in the Assembly polls in three states had changed the atmosphere in the whole country and not just in those states. The economy was in good shape and would help the NDA.

This was Advani's first clear statement of the government's intention of holding early elections after Prime Minister A.B. Vajpayee said at a BJP parliamentary party meeting that the Deputy Prime Minister would finalise the election schedule in consultation with party president M. Venkaiah Naidu.

Advani has now been entrusted with the mission of consulting the NDA allies and convincing them about the advantages of early elections. "This issue came up in the BJP parliamentary party meeting. But we de-



HAND IN HAND: L.K. Advani with Bal Thackeray in Mumbai.

cided on completing the winter session of Parliament first and then thinking about elections," Advani said.

"The BJP national executive committee is scheduled to meet in Hyderabad on January 11

and 12. The Prime Minister has asked me to consult the NDA allies on the issue and give him a feedback before the meeting. We will take the final decision at our executive committee meeting," Advani said.

## Alliance ring in Sonia's DMK call

HT Correspondent  
New Delhi, December 30

SONIA GANDHI on Tuesday rang up M. Karunanidhi, hailing his party's decision to quit the NDA. The DMK chief described the call as the possible first steps towards a new alliance for the Lok Sabha polls. Asked whether the alliance could be formed by January end, Karunanidhi said everything would depend on the election dates. AICC general secretary Ambika Soni said the talks were preliminary in nature.

In a related development, CPI(M) general secretary Harkishan Singh Surjeet met Sonia, but later denied having acted as the mediator between the Congress president and Karunanidhi. Surjeet said, "He (Karunanidhi) has been an old friend ... He has responded very well. This issue has to be pursued further." He said he would travel to Chennai "in four to five days". Surjeet is also slated to talk to Samajwadi Party chief Mulayam Singh Yadav. Other parties the Congress is eyeing include the BSP and the NCP.

Related report on Page 4

# BJP may skip Budget for April polls

Shekhar Iyer  
New Delhi, December 25

PRIME MINISTER A.B. Vajpayee will decide by the first week of January whether to call for parliamentary elections in April, the month favoured by many in the BJP.

Sources said three factors have had a role to play in the BJP's early-poll mindset. First, the improved public perception of the party following victories in three state elections. Second, the "confusion" in the Congress. And third, pressure from allies like the TDP and Shiv Sena for early polls.

As soon as he returns from the Saarc summit, Vajpayee will have a final round of consultations with party leaders. The BJP's national executive in Hyderabad on January 11 and 12 may give a formal call to cadres for the poll battle.



**Atal Bihari Vajpayee**  
*Timing is everything*

On Thursday, the Prime Minister asked partymen who had come to greet him on his 79th birthday to gear up for the polls. "One cannot rest after the victory in the recent polls as time is important," he said.

Elsewhere, top BJP sources emerging from a three-hour meeting of the party's key office-bearers said a government decision was likely around January 15 to enable the election process to be completed by mid-June.

Deputy Prime Minister L.K. Advani, in his address to the BJP leaders, said the outcome of the Assembly elections should be used "as a catalyst to boost the party".

Central BJP office-bearers agreed that the cadres gathering at the Hyderabad conclave would need a clear message on poll dates.

"There will be no uncertainty on the timing of the polls after our national executive," said BJP general secretary Pramod Mahajan.

BJP sources insisted that the government would not go in for a full-fledged Budget in case it wanted the elections to be held in April.

MONDAY, DECEMBER 1, 2003

## NEED FOR DEMOCRATIC RESTRAINT

THE ELECTION COMMISSION has a duty to ensure that there exists a level electoral battlefield. One of the important objectives of the Model Code of Conduct is to see that parties in power, whether at the Centre or in a State, do not misuse their official position for the purposes of an election campaign. Section VII (i) (b) of the Code prohibits the use of official aircraft, vehicles, machinery and personnel in the "furtherance of the interest of the party in power." In the light of this, nobody can quarrel with Chief Election Commissioner J. M. Lyngdoh's decision, in the context of the Assembly elections in five States, to issue show cause notices to the Congress president, Sonia Gandhi, and the Punjab Chief Minister, Amarinder Singh, for their alleged misuse of State Government aircraft. The question, however, is whether the process should be accompanied by a threat to de-recognise a party — a punishment that is incommensurate with the alleged transgression and therefore arbitrary.

Following complaints that Ms. Gandhi used a Chhattisgarh Government helicopter during the poll campaign, the Election Commission demanded an explanation from the Congress, asking it to show cause why its recognition as a national party should not be suspended or withdrawn. The ground for issuing such a threat is a provision (Clause 16A) in the Election Symbols (Reservation and Allotment) Order that gives the Commission the power to "suspend or withdraw recognition of a recognised political party for its failure to observe [the] Model Code of Conduct or follow the lawful directions and instructions of the Commission." However, the logic of threatening to de-recognise a political party for an alleged violation of a Code by its member, even if he or she happens to be its president, is dubious. Does anyone seriously believe that the national sta-

tus of the main Opposition party at the Centre will be summarily withdrawn if Mr. Lyngdoh is not satisfied with the response to his show cause notice?

The credibility of the Congress party's response to the show cause notice is another matter. The party has contested the allegations by saying that Ms. Gandhi's use of the helicopter had nothing to do with the poll campaign in Chhattisgarh or elsewhere. She used it to fly to Sriperumbudur for the opening of the Rajiv Gandhi memorial, an official function at which no speeches, political or otherwise, were made. It is up to the Election Commission to assess the validity of this explanation. However, there is but a thin line between the attempt to enforce rules in a strict manner and the use of powers to intimidate political parties and officials. Mr. Lyngdoh, who demits office in February 2004 must resist the temptation to go the T.N. Seshar way, even as it must be conceded that some of the initial activism of the Election Commission under Mr. Seshan's stewardship produced salutary results. The Chief Election Commissioner needs to reveal a firm, unwavering and scrupulously impartial hand. But he or she also needs to exercise restraint in both language and action. Some recent remarks by Mr. Lyngdoh against State administrations, including particular officials, have been sweeping and even harsh. There has never been any doubt about the integrity and independence of this Magsaysay award winner. But Mr. Lyngdoh must give no more room for misgivings that his words and deeds exceed the legal and constitutional role of his office. In addition to strictness and objectivity, the Election Commission's conduct must demonstrate the virtues of democratic restraint and humility in the face of an electoral process that, for all its weaknesses, must be counted as one of the wonders of the world.

THE HINDU

1 DEC 2003

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# Cong favoured in Delhi, Rajasthan

## BJP may wrest Madhya Pradesh, Chhattisgarh faces hung Assembly

Press Trust of India  
New Delhi, October 24

THE CONGRESS is all set to retain Delhi and Rajasthan but lose Madhya Pradesh to the BJP in the Assembly elections scheduled for December 1, according to an *India Today-Aaj Tak-MARG* opinion poll. Both the parties have an equal chance to win the election in Chhattisgarh.

The Congress is projected to win 110-120 of the 200 Assembly seats in Rajasthan, leaving 73-83 for the opposition BJP. But the Congress is likely to lose Madhya Pradesh, for Chief Minister Digvijay Singh is projected to get only 75-95 of the 230 seats while the BJP expected to win 115-135.

In Delhi, the Congress under Sheila Dikshit is projected to lead the Congress to another victory in the polls with 45-55 seats, leaving BJP with only 10-20 members in the 70-man House.

Chhattisgarh is expected to witness a neck-and-neck contest, with both the parties projected to get about 38-48 seats in the 90-member Assembly, says *India Today-MARG* poll.

Interestingly, BJP's chief ministerial candidate in Madhya Pradesh, Uma Bharti, is the only challenger ahead of the incumbent with a popularity rating of 33 per cent, two per cent above Digvijay Singh.

The poll covered 17,413 respondents spread across 115 Assembly constituencies in the four states.



**Sheila Dikshit**

Riding high with the voters; likely to win about 70% seats



**Ashok Gehlot**

Will sail through despite last year's drought and bad press



**Ajit Jogi**

Future depends on which way the tribal votes go



**Digvijay Singh**

A third term may elude the former Raja of Guna



**Uma Bharti**

Only challenger ahead of the incumbent in popularity rating



**Vasundhara Raje**

Not expected to topple Ashok Gehlot's apple cart

### HOW THEY MIGHT FARE

▲ Congress likely to win 45-55 of the 70 seats in Delhi Assembly

▲ Congress likely to retain Rajasthan, winning 110-120 of the 200 seats

▲ Chhattisgarh's 90 seats may be shared equally by Congress and BJP

▲ Madhya Pradesh may bid Digvijay goodbye, with BJP likely to win 115-135 of the 230 seats

BJP's chief ministerial candidate way behind with 13 per cent.

### BSP-Cong poll pact likely

The removal of P.S. Baraya as president of BSP's Madhya Pradesh unit has given rise to speculation that a tactical alliance might be in the offing between Mayawati and the Congress in the key Hindi belt state.

Baraya, who got the marching orders on Thursday, had strongly opposed any electoral pact with the Congress in Madhya Pradesh. He was also extremely critical of Digvijay.

Sources claimed the BSP has decided to have a tacit understanding with the Congress in MP on the lines of the hugely successful 1998 arrangement which saw Digvijay keep the chief minister's chair and the BSP winning 11 Assembly seats with a vote share of nearly 12 per cent. If the Congress does manage to clinch a deal with Mayawati, whose estrangement with the BJP led to the fall of her government in UP, the saffron brigade would find itself in a tight spot.

According to party insiders, Mayawati is inclined to field "weak candidates" in constituencies where the Congress-BJP contest is tough. For the past two days, the BSP chief is busy finalising the list for MP and is believed to have cleared the names for 100 constituencies.

Baraya has been replaced by P.P. Choudhry, a senior Dalit leader.

Jats and economically backward classes, the *India Today-MARG* poll showed.

Only 20 per cent rated the Rajasthan government's performance as poor; and 45 termed it as good.

Despite the tie between the Congress and the BJP in Chhattisgarh, Chief Minister Ajit Jogi tops the popularity chart in the state with 38 per cent votes, leaving

model CM in education.

In Rajasthan, Chief Minister Ashok Gehlot was 11 per cent ahead of BJP's Vasundhara Raje in popularity ratings.

Interestingly, 34 per cent of the respondents in Rajasthan disapproved the Gehlot government's action in arresting VHP leader Praveen Togadia and 41 per cent approved of reservations for

power being the second biggest problem in Madhya Pradesh and Rajasthan, according to the polls.

A whopping 73 per cent respondents blamed the Digvijay government for the poor roads and power failure and 61 per cent said they hadn't benefited from the state's Education Guarantee Scheme, belying the incumbent's claim of being the

Responding to a question on "Who will make the best chief minister", people in Delhi gave an impressive 48 per cent to incumbent Sheila Dikshit. Former Chief Minister Madan Lal Khurana got a meagre 20 per cent of the popularity votes.

Employment opportunities were the most important issue in all the four states, with potholed roads and lack

# PM prefers date by consensus

9-12/18  
S. Senthil Kumar

**RADHIKA RAMASESHAN**

**New Delhi, Aug. 11:** Prime Minister Atal Bihari Vajpayee has indicated that he does not favour general elections in November.

BJP sources close to him said Vajpayee prefers to wait for the outcome of the five Assembly polls and a consensus within the BJP as well as the NDA before considering the option of general elections in February.

Vajpayee's statement at yesterday's rally in Jaipur — that the Assembly elections by the end of the year and the Lok Sabha polls next year would be a test for all parties — "said it all", according to a source.

The statement prompted the BJP to put off a meeting of its MPs scheduled for August 23 and 24 in Jaipur. The meeting was to have made a decision on advancing the general elections.

The postponement was decided by BJP president M. Venka-

iah Naidu and other office-bearers today. "The idea of a November general election seems very remote. We will consult the PM before organising the next meeting," said an office-bearer.

BJP sources said while Vajpayee is open to February polls — discussed in recent conclaves, including the Indore and Raipur executives and the Mumbai *chintan bairhok* — November is not a date he had in mind.

The proposal for simultaneous Assembly and Parliament polls was aired by L.K. Advani.

"He (Vajpayee) decided to keep quiet and allow the idea to die a slow death just as he did when a section of the BJP wanted to take Kalyan Singh back. By saying nothing publicly, he said it all," a source said.

Vajpayee's reasons are: ■ It can induce a sense of "defeatism" in those contesting the Assembly polls in Madhya Pradesh, Rajasthan, Chhattis-

garh and Delhi, where the BJP's stakes are "huge". "The way the case was argued it seemed the BJP could win these polls only if the Lok Sabha elections were held simultaneously and the contest was converted into a Vajpayee-versus-Sonia Gandhi one," a source said.

■ A section not keen on joint November polls questioned the "political wisdom" of why Vajpayee was being made to carry the "burden" of the state elections. "The Congress is in power in these states and, logically, the BJP should ride to victory on the anti-incumbency sentiment. Wasn't that how the Congress came to power recently in Himachal Pradesh?" a source asked.

Vajpayee cited the 1998 example to his confidants and recalled how he had put his foot down when the then Delhi and Rajasthan chief ministers, M.L. Khurana and Bhairon Singh Shekhawat, wanted to shift the Assem-

bly elections (due in November) and hold them with the April parliamentary polls. "He did not want national and local issues to get mixed up," a source said.

His position was subsequently vindicated. The BJP emerged as the single largest party in 1998, lost the Assembly polls in Delhi, Madhya Pradesh and Rajasthan seven months later and, less than a year after, picked up a third of its Lok Sabha seats from these very states.

"If the BJP strategists feel anti-incumbency will not impact the Congress in these states, the Prime Minister is equally clear that he will not allow his image and standing, which remain intact even in the fourth year of power, to be put at stake there," a source said.

Vajpayee is also keen to avoid a confrontation with chief election commissioner J.M. Lyngdoh who does not favour simultaneous polls.

# BJP mulls dissolving House

WJG J. S. Election 5/1-7

STATESMAN NEWS SERVICE

**NEW DELHI/HYDERABAD,** Aug. 9. — With the Chief Election Commissioner, Mr JM Lyngdoh, today indicating that polls in five states will be held in November, the BJP is mulling dissolving the Lok Sabha and asking the Election Commission to hold general elections along with the Assembly polls. According to sources, they are prepared to force the issue.

Top BJP leaders are slated to meet soon to discuss various options. The party president, Mr M Venkaiah Naidu, met the RSS chief, Mr KS Sedarshan, at the RSS headquarters in Delhi yes-

terday. They are understood to have discussed the Sangh Parivar's preparedness for the poll and coordination among various parivar affiliates. In Hyderabad today, when Mr Lyngdoh was asked if the Commission was ready should the Lok Sabha polls be advanced, the CEC replied in the affirmative.

The BJP's eagerness to advance Lok Sabha elections to November comes after a private opinion survey that places the NDA ahead of the main Opposition and projects a likelihood of its retaining power in the event of an early election, BJP sources said.

The opinion poll conducted

throughout the country last month gives the Prime Minister, Mr Atal Behari Vajpayee, a popularity rating between 59 and 70 per cent compared to 29-40 per cent for the Congress president, Ms Sonia Gandhi, sources said.

When the Deputy Prime Minister, Mr LK Advani, recently spoke of the need for early polls (February), he was merely articulating the possibility discussed among top BJP leaders. The Prime Minister had reportedly authorised him to test the political waters, sources said. The survey concluded that "there is a feel good factor for the NDA" and suggested this was the best opportunity to go to the



Polis apart: Mr JM Lyngdoh

In Hyderabad today, Mr Lyngdoh continued his opposition to the proposal for simultaneous Lok Sabha and Assembly polls saying this would lead to "sub-standard elections" and inadequate police deployment which could give scope for "cheating and unfair polling."

"We have some notorious states, each needing about 400 companies of paramilitary forces (for polling duties). At no stage did the home ministry provide us 400 companies at a time," he said. "Where are these one million policemen (needed for polling duties in the event of simultaneous polls) going to come...?" Mr Lyngdoh said.

10 AUG 2003

THE STATESMAN

THURSDAY, AUGUST 7, 2003

## SHOOTING DOWN A TRIAL BALLOON

THE CHIEF ELECTION Commissioner, J.M. Lyngdoh, has done the right thing by shooting down a trial balloon floated by the Deputy Prime Minister, L. K. Advani, on 'synchronising' the conduct of Lok Sabha and Assembly elections. As Mr. Advani put it in a recent conversation with journalists, the National Democratic Alliance Government was doing some "loud thinking" on a proposal for simultaneous polls to the Lok Sabha and the State Assemblies. On detail, he was vague, deliberately or otherwise. As for rationale, the Deputy Prime Minister would have us believe that there are too many elections and that political parties, locked in a never-ending "election mode," find themselves obliged to give in to "populist" ideas and policies. Too many elections — three or more Assembly elections each year — were a distraction from the goal of good and sensible governance. Solution? Roll back "1971" when Indira Gandhi delinked general elections from Assembly polls by exercising a Prime Minister's constitutional prerogative to get the fourth Lok Sabha dissolved before it could complete its term. *Prima facie*, Mr. Advani might seem to have a point. However, the very processes of democratic competition and political rivalry in a federal or semi-federal polity, which are responsible for a surfeit of elections, render Mr. Advani's suggestion untenable. In fact, the trial balloon comes up immediately against constitutional constraints as well as political realities. The Constitution provides for early dissolution of an elected legislature, but it does not permit extension of a legislature's tenure at the whims and fancies of political parties. The language and intent of Article 83(2) and Article 172(1) are clear: five years and no more. A constitutional amendment would be needed to override this requirement. Since the life of neither the Lok Sabha nor a State Assembly can be extended to give effect to Mr. Advani's idea, the only viable way of achieving the objective will be for the Prime Minister and all the Chief Ministers to seek early and simultaneous dissolution of their respective legislatures. This will require an across the board compact among all the politi-

cal parties, especially between the Bharatiya Janata Party (BJP) and the Congress. This can be virtually ruled out. Surely, the Advani idea does not encompass the use of the knife of Article 356 to cut the elected terms of Assemblies to the required length to enable 'synchronisation'.

However, there could be a larger political agenda underlying the suggestion. For some time now, the Vice-President, Bhairon Singh Shekhawat, has been using his constitutional office to lobby for this agenda with far-going implications. What Mr. Advani would not say, the Vice-President has spelt out: the concept will work only if there is a fixed term for legislatures. The BJP establishment might have hoped that the National Commission to Review the Working of the Constitution would oblige it on this count, but the Justice Venkatachaliah panel pointedly declined to suggest either a fixed term or the device of a 'positive vote of no-confidence.' The debate revolves round two desirable objectives — governmental stability and political accountability. The Shekhawat-Advani idea seeks to ensure legislative stability without guaranteeing governmental durability or any kind of good governance. It is a remedy worse than the disease.

More than anything else, the idea reeks of anti-democratic impulses. The assumption is that the government of the day should feel free to push for 'hard-nosed' policies without having to worry about any kind of popular resistance or backlash. This is a plea for giving an open general licence to enforcers of the *status quo* and privilege. Electoral democracy, on the other hand, provides the people the only instrument by which they can insist on allocation of resources in their favour. In the immediate context, the BJP leadership may be keen on the idea because it believes that the 'Vajpayee factor' will work for it in a synchronised poll scenario; its Assembly candidates will be able to ride on the Prime Minister's coat tails. The ruling party is entitled to imagine the length of those coat tails, but there should be no question of allowing anyone to make the Constitution a plaything of political calculations.

Decision only after talks  
with all sides: Advani

# Parallel polls open for debate

OUR SPECIAL  
CORRESPONDENT

New Delhi, Aug. 5: Deputy Prime Minister L.K. Advani today said a final decision on synchronising Lok Sabha and Assembly polls will be taken only after holding "wider consultations" with the BJP, the National Democratic Alliance, the cabinet and the Opposition.

At the weekly BJP parliamentary party meeting, Advani was quoted by spokesperson V.K. Malhotra as saying: "The party and the cabinet will consider the proposal. Consultations will also be held with the NDA partners and other political parties before a final decision is taken."

Advani, who unveiled the proposal before the press last Saturday, told BJP MPs it was first mooted by Vice-President Bhairon Singh Shekhawat and followed up by him. The Constitution makers had been in favour of synchronised polls and the practice was followed till 1971, he said.

He also pointed out that if a ruling party was constantly kept in poll mode, it impacted the government's performance. Besides, simultaneous elections would reduce expenditure.

Although the BJP officially maintains the concept is an "academic one", sources said the possibility of holding parallel polls in November was "seriously" discussed by A.B. Vajpayee, Advani and M. Venkaiah Naidu on their way to Ayodhya for Ramchandradas Paramhans' funeral last Friday. Advani spoke to the

press the day after.

The discussions have now narrowed down to the possibility of advancing the Lok Sabha polls, scheduled for the second half of 2004, to November this year. The option of postponing Assembly polls has been ruled out by the Election Commission.

"It is not strictly according to Constitution. Saving expenses is important but it is the democratic aspect which is more important," chief election commissioner J.M. Lyngdoh told a TV channel. Of the five poll-bound states, one of the Assemblies has to meet in early December.

The BJP was initially keen on a February general election, mainly to avoid the spin-offs of another "populist" budget on the economy. But sources had all along been sceptical whether the poll panel would agree to have Assembly and general elections in a space of just four months.

The BJP has touted the electoral reforms it has legislated as one of the major "achievements" of the NDA government. The feeling in the party was that if the poll panel objected to the expenses involved in back-to-back elections, the party could cut a "sorry figure". Hence, the talk of having Lok Sabha and Assembly elections together.

"It is also the simplest way of overcoming other hurdles like bringing a constitutional amendment, extending the term of the five Assemblies etc. Rescheduling a Lok Sabha election is entirely the government's prerogative," the sources said.

■ See Page 6



POLL PANEL BEING SOUNDED: ADVANI

# Govt. for synchronising LS, Assembly polls

By Vinay Kumar

PUNE, AUG. 2. Setting his sights on the coming Assembly polls in four States, the Deputy Prime Minister, L.K. Advani, said today that the BJP-led Government at the Centre had been seriously thinking of "synchronising" the elections to the Assemblies with those to the Lok Sabha.

Mr. Advani said the Government had been "informally sounding" the Election Commission on the present thinking. "This is a process which has to be decided upon. There is loud thinking in the Government. But there is no formal interaction on the subject either in the party or the Government," he told reporters.

He said "synchronisation" between the Lok Sabha and Assembly polls could be achieved by rescheduling the elections.

According to Mr. Advani, the ruling party suffers from a "serious handicap" if it is "always in the election mode". Citing the experience of the past five years of the BJP rule, he said it had made "us conscious of the fact that the continuing election mode, in which the ruling party is, has become a serious handicap to good governance of the country".

He said several decisions of the Government — mainly economic and the budget — were often influenced by considerations of how the voter would react.

Mr. Advani's observation assumes significance as the BJP prepares to go to the polls in the four crucial States in October —

Delhi, Rajasthan, Madhya Pradesh and Chhattisgarh. These have been dubbed a sort of "mini general elections".

## 'To cut expenditure'

The Vice-President, Bhairon Singh Shekhawat, has already made a suggestion of holding simultaneous Assembly and Lok Sabha polls as the country could ill-afford to incur a massive expenditure on the poll exercise. Mr. Advani's observation comes in the middle of the monsoon session of Parliament, indicating that political parties

may stir up a debate on the issue. The coming electoral exercise in the four States is seen as a "make or mar" marathon for the two arch-rivals — BJP and Congress — in the run-up to the Lok Sabha polls which are just 15 months away.

If Mr. Advani's "loud thinking" is any indication, the BJP could opt for early polls, most probably in the first quarter of the next year. He indicated that "informal discussions" have been held with one of the major allies of the National Democratic Alliance on the possibility of holding simultaneous Lok Sabha and Assembly polls. Elections to two other crucial Assemblies — Maharashtra and Andhra Pradesh — are scheduled to be held in 2004.

He said that in the post-1971 period, Lok Sabha and Assembly polls had been delinked gradually and the country was now witnessing elections every alternate year. There had been mid-term polls in 1998 and 1999 for the Lok Sabha. On the fixed tenure for the Assemblies, he said it was not possible constitutionally. "Broadly, even in the midst of multiplicity of political parties, if the BJP and the Congress agree on a certain agenda, it can be implemented," he hinted.

Mr. Advani said certain important legislation relating to poll reforms would be introduced in the current session of Parliament. These included proxy voting by members of the armed forces and open voting for the Rajya Sabha.

Congress ready: Page 8

## 'He is poetic, I am prosaic'

PUNE, AUG. 2. If Atal Behari Vajpayee is poetic, L.K. Advani is prosaic.

"I am prosaic. I am essentially a journalist. I am used to writing prose," Mr. Advani said in an interaction with the students of the Symbiosis International Education Campus here when asked to share his attributes vis-a-vis the Prime Minister's poetic abilities.

Mr. Advani went on to praise Mr. Vajpayee as one of the best orators in Hindi. After the 1957 Lok Sabha elections, Prakashvir Shastri and Vajpayee were the best Hindi orators in Parliament he used to hear as a journalist, he said. — PTI

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ONE HINDU

SC upholds law for elected representatives

7-1 3/17 ✓ D. Bhattacharya (c)

# Legal sanctity for 2-child bar

R. VENKATARAMAN

New Delhi, July 30: In the strongest-ever endorsement of the two-child policy in public life, the Supreme Court today upheld a Haryana law barring people with more than two children entry into panchayats and zilla parishads.

It rejected an argument by Muslim panchayat members that the law violated Article 25 of the Constitution, guaranteeing right to "freedom of conscience and free profession, practice and propagation of religion". The law does not contravene Article 21 (right to life and liberty) and Article 14 (equality before law and equal application of the law), the court added.

A three-judge bench of Justices R.C. Lahoti, Ashok Bhan and Arun Kumar rejected hundreds of petitions from the state's *pradhans* and *uppradhans* against the legislation.

The petitioners had pointed out that the norm was not applicable to MLAs and MPs — the Centre had proposed such a legislation but nothing came of it because of lack of consensus — and argued that imposing it at the grassroots violated their fundamental rights.

The bench ruled that contesting an election was not a fundamental right, and "in our view, disqualification on the right to

## TWO-PLUS POLITICIANS



Laloo Prasad Yadav	9
Narasimha Rao	7
R.L. Jalappa*	7
Deve Gowda	6
Arjun Munda	3
Ramakrishna Hegde	3
Somnath Chatterjee	3

\*Congress MP

Graphic: RAJ

contest an election by having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather, it is a disqualification conceptually devised in national interest".

If the Centre decides to go ahead with its plan to amend the Representation of Peoples Act and bring the two-child norm into force for MLAs and MPs, today's judgment could be the touchstone of its legality. Laloo Prasad Yadav, with nine children, would be the most celebrated casualty of such a law.

The judges pointed out that India was the second most populous country and "the torrential increase of population" is one of the biggest hurdles to its progress.

Freedom under Article 25 "is subject to public order, morality and health", the judges said. "No religious scripture or authority has been brought to our notice which provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious."

"The Muslim law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages," the court said.

The judges made it clear the law could not be bypassed by giving away children in adoption. "If the person sought to be disqualified is responsible for or has given birth to children more than two who are living, merely because one or more of them are given in adoption, the disqualification is not wiped."

But there is one exception to the rule. If the person sought to be disqualified already had one child and, in the second pregnancy, has twins, the law would not apply.

After passing the law, the Haryana government had sacked hundreds of panchayat and zilla parishad members. The court upheld the notices.

# DESERVED INDICTMENT

EC's action against DM wholly justified

**T**HE Election Commission's action in promptly removing the District Magistrate of Nadia from the position of returning officer, 48 hours before the Nabadwip parliamentary by-election on Sunday, is a timely warning to state officials who fall head over heels to please the party in power. It lends credence to grave suspicions of similar irregularities having been committed during the blood-soaked panchayat elections that gave the Left Front a landslide victory but which went unnoticed because of the unashamedly partisan role of the State Election Commissioner Ajay Sinha. By contrast, the Chief Election Commissioner, JM Lyngdoh and his team have acted with commendable speed to the substantiated complaints received from Trinamul and Congress. Even if the DM's visit to the Krishnagar circuit house where the chief minister was resting after a round of campaigning was purely a "courtesy call" as claimed, an IAS officer of the DM's rank ought to have been aware of the compulsions of protocol. Officials in charge of conducting a parliamentary by-election, particularly the administrative head of the district, must be seen to be impartial in every respect. It is not enough to suggest that the chief minister did not discuss issues relating to the election with the DM; the latter should have stayed away from the venue altogether. The IAS association is now reduced to lamenting the fate of a young DM but as in other states, West Bengal presents a pathetic picture of IAS officers dancing to the tune of politicians. Virtue must be zealously guarded.

In this case, the IAS officer may not have any regrets at having served the cause of the ruling party. He has been transferred to an innocuous and largely decorative post of assistant resident commissioner in Delhi where he had reportedly sought a posting some time ago. Anil Biswas may make it sound as if the EC's action is of no consequence and that the CPI-M believes in the democratic process. That cannot hide his embarrassment because on the ground, the party's commitment to principles means an unqualified display of loyalty for which officers can expect to be rewarded. The unseemly haste in finding a sinecure for the DM in effect gives the game away. The party has been caught on the wrong foot. The EC's action is a well deserved indictment and a clear signal that it will not allow itself, like the state election commission, to be taken for granted. The lesson is not only for the CPI-M but more to the point, to the army of bureaucrats that what is demanded is probity and impartiality and toadying up to the party in power will involve a remark which will blot the officer's copy-book to his detriment.

The Election Commission has done its duty; now let the bureaucrat do his.

# SC strikes down govt's poll reforms law

By Rakesh Bhatnagar  
TIMES NEWS NETWORK

New Delhi: Confronting parliament for making a "half-hearted attempt" to cleanse the electoral process and curb the criminalisation of politics, the supreme court on Thursday declared as unconstitutional the amended electoral reforms law, which had negated the court's order making it mandatory for candidates to disclose their criminal antecedents, assets, liabilities and educational qualifications in the nomination papers.

In a landmark judgment, the court restored its May 2, 2002, verdict. A bench comprising Justices M.B. Shah, P.V. Reddi and D.M. Dhanmadhikari also questioned parliament's legislative competence to ask the state or its instrumentality to disobey the court's orders.

They pronounced separate but concurring judgments.

"The legislature cannot say that the law declared by the supreme court is not binding," Justice Shah said.

Earlier aggrieved by the court's discrimination of politics, the newly-enacted Right to Information Act, the Centre first promulgated an ordinance and then amended the Representation of People Act (RPA). Section 33 of the amended RPA stipulated that "notwithstanding anything contained in any judgment of any court or any order of the Election Commission (EC), no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder".

The amended RPA stipulated that

candidates would have to furnish details of only such criminal cases in which cognizance had been taken by the court. It also said only elected candidates were required to give details of their assets and liabilities, but did not make any provision for declaring their educational qualifications.

Holding that the amended RPA curtailed the right of the people to know about their candidates, the court also quashed Section 33 and clarified that it would be effectuated prospectively. Besides, the judges directed the EC to issue a fresh notification for the implementation of its judgment.

On the amended RPA, the bench asked whether there was any necessity to keep voters in the dark about any murder, dacoity or rape committed by a candidate or about his ill-gotten money which could be used for elections.

Justice Shah said the judgment was aimed at cleansing democracy of unwanted elements and giving the country a competent legislature.

Henceforth, unless the government still attempts to circumvent the judgment, each candidate will have to furnish on affidavit five types of information while filing his/her nomination:

- Whether he/she has been convicted/acquitted/discharged of any criminal offence in the past. If any, whether he/she has been punished with an imprisonment or fine.
- Prior to six months of filing of the nomination, whether he/she had been accused in any pending case of any offence punishable with imprisonment for two years or more and in which a charge has been framed or cognizance taken by a court of law. If so, the details thereof.
- The assets (immovable, movable, bank balances, etc.) a spouse and dependents.
- Liabilities, if any, especially overdue or government situations or government.
- The educational qualification.

The court said the amended RPA was a "half-hearted attempt to fight the use of criminal power in elections."

The judgment is a failure, it said, in the face of the actions challenging the ordinance filed by the People's Liberties, Lok Satta and

**Comment:** Rather than seek enforcement on their part, makers should treat it as a challenge to set their own house in order, the increasing distance between the political process and the deprivation of all

# Parties divided on electoral reform ruling

**BUREAU**

March 13: The Congress to convene an all-party meeting to discuss the fall of the Supreme Court verdict on the electoral reform. The constitutional matters are being discussed by the ministry. The minister said that the law enacted by Parliament last year was beyond its legislative competence as it said that voters did not have the right to know about candidates before they voted. The three-judge bench restored its earlier directive making it mandatory for candidates to declare their criminal antecedents, if any, assets and liabilities and educational qualification right at the time of filing nomination papers.

A statement from Congress president Sonia Gandhi said: "The party is fully in concurrence with the orders of the Supreme Court that candidates

the BJP declared that "Parliament is supreme as far as legislative competence is concerned".

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must disclose all relevant information called for, particularly regarding convictions and charges for offences, assets and bank balances, and liabilities and overdrafts. The Congress party believes that such information must be disclosed by all candidates at the time of filing nomination and prior to elections."

Sonia said the Congress attaches great importance to the issue of electoral law reforms in the light of the recent Supreme Court order for disclosure of information by candidates. She expressed distress that the Congress had been clubbed with other parties in projecting the impression that the political establishment was opposed to the

implementation of the apex court's order.

The Congress chief said the only point on which her party disagreed with the Election Commission's directive was vesting returning officers with powers to probe the veracity of the information given and reject nomination papers on grounds of incomplete or false information.

Though Swaraj was guarded in her reaction and distanced the government from the controversial law, BJP spokesman V.K. Malhotra did not conceal his unhappiness with the court ruling.

"The decision is serious and calls for deep introspection. Lawmaking, law interpretation and law implementation are

functions which are divided between Parliament, the executive and the judiciary. The Constitution is clear on the rights of each of them. The way our political system works, members are often framed. It is for parties to think if their nomination papers can be rejected on the basis of trumped-up charges," he said.

The Samajwadi Party came out more strongly against the decision. Its chief whip in the Lok Sabha, Akhilesh Singh, said the law would be used more stringently against "activists who were out on the streets agitating and protesting" than those "who relax in air-conditioned rooms". "The law would be applied only against those who take part in grassroots struggles. If this hap-

pens there will be mayhem," he warned.

Laloo Prasad Yadav's Rashtriya Janata Dal took a view close to the Congress. Its leader, Raghubansh Prasad Singh, said: "The Supreme Court's ruling is proper. If political parties cannot stem criminalisation, some other institution like the Supreme Court will have to step in."

The CPM rephrased the Samajwadi's view to say there was no provision in either the Indian Penal Code or the Criminal Procedure Code to distinguish criminal charges from political cases. "So how will the law decide who is a criminal and who is a political activist?" asked general secretary H.S. Surjeet.

14 MAR 2003  
THE TELEGRAPH

# Parties divided on electoral reform ruling

## OUR BUREAU

Delhi, March 13: The Centre is likely to convene an all-party meeting to discuss the fall-out of the Supreme Court verdict that declared the electoral reforms law unconstitutional.

Parliamentary affairs minister Sushma Swaraj said the law was "born out of an all-party meeting". As the ruling coalition and the Opposition had reached a consensus, both would have to put their heads together after today's development.

However, it appeared that the political establishment was divided in its reaction. While the court said it was not in a hurry to issue a judgment to nullify the "court order",

the BJP declared that "Parliament is supreme as far as legislative competence is concerned".

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# Cong backs SC ruling, BJP wants all-party mee

Statesman News Service

NEW DELHI, March 13. — The BJP and Congress seem to differ on a 'political response' to the Supreme Court verdict on the Representation of People Act.

The Congress welcomed the order and said it wouldn't challenge it. If it stands by its word, the BJP's resolve to turn the order into a Parliament-judiciary conflict may fall flat. The CPI-M general secretary expressed unhappiness at the judgment but reserved comments on whether it would join a united "political resistance".

Soon after the order, BJP spokesman Mr VK Malhotra demanded an all-party meeting to discuss the "serious" order and whether legislative competence lay with Parliament or with SC. He said the Constitution was very clear on the institutions having legislative and executive powers. As of now, Parliament is responsible for making laws, while the Supreme Court interprets them and ensure their implementation. Mr Malhotra said the legislation was passed by Parliament with near unanimity and by striking down some clauses of it, the Supreme Court had thrown a challenge to Parliament. On the issue of disclosing criminal antecedents (if any) of the candidates, Mr Malhotra said given the way many state governments were functioning, it would not be feasible.

In contrast, Congress spokes-

man Mr Jaipal Reddy said the party would oppose any move to nullify the judgment. The order, he said, had vindicated Mrs Sonia Gandhi's stand.

The Congress, however, had disagreed with the Election Commission's decision to vest returning officers with powers to disqualify a candidate for incomplete or false declarations. He refused comments on whether the order encroached on Parliament's powers.

Mr Reddy clarified that the Congress had been pleading that the judgment on disclosures by a candidate about his assets and criminal antecedents should be respected. It had raised it at an all-party meeting and had followed it up with a letter by Mrs Gandhi to the Prime Minister. When the letter too was ignored, the party tabled an amendment in Parliament, but it was defeated. Voters, he said, have the right to know everything about a candidate.

## From where it all began

NGO Lok Satta, which won a favourable verdict in the Supreme Court, said parties should not view the order as a threat, SNS adds from Hyderabad. Parliament, it said, can't deny the electorate the right to be informed of the antecedents of candidates. "This should be seen as an opportunity to cleanse the system and break free from corruption," said Mr Jaiprakash Narayan of Lok Satta.

## Timeline

2 May 2002: SC asks EC to guidelines asking poll candidates to details of assets, criminal records (if any), educational qualification. Sets 1 July 2002 as deadline.

28 June 2002: EC makes it mandatory for candidates to furnish information affidavit during nomination. Ret officers empowered to cancel nominations in cases of false declarations.

8 July 2002: All-party meet rejects guidelines, alleging they ignore and make filing of nominations cumbersome. Also objects to ROs' power to cancel nominations.

15 July 2002: Draft Representation of the People (Amendment) Bill from government silent on declaration of assets and lists only 'heinous' criminal antecedents.

2 Aug. 2002: Another all-party meeting rejects draft Bill and recommends disqualification only if the candidate is convicted and sentenced to two years or more.

22 Aug. 2002: President re Ordinance seeking to amend RPA asks government for clarifications.

24 Aug. 2002: Cabinet re Ordinance unchanged to President.

26 Aug. 2002: Poll reforms Ordinance comes into effect.

20 Sept. 2002: SC issues notice Centre and EC on petitions challenging poll reforms Ordinance.

13 March 2003: SC cancels Sec of amended RPA Act and makes mandatory for candidates to disclose details on basis of 2 May 2002 SC

14 MAR 2003

THE STATESMAN



# Only photo ID cards at booths

HT Correspondent  
Kolkata, April 11

12/11 HT's J. B. Chatterjee

COME LOK Sabha elections 2004, voters will have to carry their photo identity cards, instead of ration cards and other documents, to the booth to be allowed to exercise their franchise.

Chief electoral officer S.N. Haque on Friday said photo ID cards would be considered as a valid document for voting rights. He made the announcement after convening an all-party meeting on the panchayat elections at Writer's.

The Election Commission (EC) has sent instructions to the districts to complete distribution of photo ID cards by next year. It has set a target of 90 per cent distribution by September.

The distribution will kick off in Darjeeling and continue for 21 days. In Murshidabad, Nadia, Birbhum, Hooghly and Midnapore East, Kalna and Katwa of Burdwan, the ID cards will

be distributed from June 5 and in Kolkata, Howrah, Asansol and North and South 24 Parganas from June 27.

The state has geared up to reach the target within the deadline. According to a survey, out of 4,64,62,000 voters, a little over 3,89,00,000 (around 84 per cent) have photo ID cards.

Haque said the rate of distribution of ID cards is particularly poor in Kolkata and Darjeeling. In Darjeeling, many areas could not be covered of their inaccessibility while Kolkata's problem lies elsewhere. There are many voters who are not keen on having photo ID cards and have not bothered to apply.

The election department will also issue cards to voters who have either misplaced their cards or want changes done. For a new card, voters will have to pay Rs 25 though the card comes free the first time. Voters will not be charged for correction of mistakes made by the election department.

12 APR 2003

THE HINDUSTAN TIMES

MONDAY, MARCH 24, 2003

## A PERNICIOUS MOVE

MP-10

THE UNION CABINET'S decision to reintroduce (in the current session of Parliament) the Bill seeking to do away with the residency qualification for candidates contesting for a Rajya Sabha seat and also effect a switchover to open ballot as the procedure to elect its members is a patently retrograde move that is sure to erode the federal and democratic basis of the Indian Constitution. The Bill containing the notoriously undemocratic provisions was originally tabled in Parliament in its winter session in 2001 and following deep dissensions was subsequently referred to a Parliamentary Standing Committee attached to the Ministry of Home Affairs. Even this Committee failed to arrive at a consensus and the division was reflected in the report tabled in Parliament last July. The controversy over applying the residency criterion first arose in relation to the election of Manmohan Singh from Assam subsequent to his assumption of office as the Union Minister of Finance way back in 1991. The then Chief Election Commissioner, T.N. Seshan, displaying a penchant for applying the rule, sought to disqualify Dr. Singh's election on the ground that the latter was not normally resident in the State even if his name was added to the electoral rolls. Even while this was in fact the case, a reasonable reading could have been to view this not so common aberration as necessitated solely by the Government's intention (in exercise of its executive powers) to avail itself of the services of a person of eminence in the country's interest. Once such a person is inducted into the Cabinet, it becomes incumbent for him to seek election to either House of Parliament within a stipulated period of six months and it is but natural and reasonable for the party in power to field him from a safe constituency.

The composition of the Rajya Sabha — as the nomenclature connotes — is by definition intended to give representation to the various States within the Federal Union, unlike the Lok

24/3

Sabha which is essentially the House of the people, whose election is not restricted by place of domicile. Thus, the principle behind the stipulation requiring candidates seeking election to the Rajya Sabha to be ordinarily resident in the respective States is, if anything, self-evident. The few instances where there have been departures are hardly a basis for dispensing with the legitimate Constitutional stipulation. It is also arguable that not all departures from the norm have been above board and have in fact been used to bestow favours on political heavyweights. But measures as the one being contemplated by the Union Cabinet are hardly the kind of corrective for such misdemeanours. If an earlier proposal to divest the E.C. of its power to reject the nominations of errant candidates smacked of utter contempt for the authority daring to enforce the provisions in the law, the legislation to be brought before Parliament to do away with the residency requirement for elections to the Rajya Sabha is a more invidious move that will erode the democratic content of our Constitution.

The other proposal, namely, to introduce an open ballot for the election of members of the Rajya Sabha to check cross-voting by members of State Legislatures is again fraught with dangerous consequences for the democratic ethos underpinning the polity and the competitive party system. The sanctity of the secret vote cannot be undermined by reason of wanting to ensure adherence to the basic norms of party discipline. Political parties, rather than grapple with issues of large-scale dissensions and indiscipline among their ranks, appear anxious to enforce loyalty even if at enormous peril to the need to adhere to the rudiments of a democratic style of functioning. Critical as it is for the very survival of the institution, loyalty to the party is best inculcated by example and the courage displayed by the leadership to stand up for convictions.

# Electoral law

By Rajeev Dhavan

*It is doubtful if the legislature can seriously interfere with the voter's right to know, which is part of both free speech and fair democratic elections; which together constitute a part of the Constitution's basic structure.*

9.6.2002  
HP-10  
21/3

**T**HERE IS a forced uncertainty in the air. On May 2, 2002, the Supreme Court declared the voters' right to know a candidate's criminal antecedents, educational qualifications and assets and liabilities. No sooner was this given effect to by the Election Commission's order of June 28, 2002, politicians were up in arms. Legislation was enacted to replace the ordinance of August 24, 2002, which the President, A.P.J. Abdul Kalam, had reluctantly signed; and to upset and dilute the Supreme Court's order — with a specific provision (Section 33B) mandating that the Court and the Election Commission's order be ignored.

The legislature made supplying information about educational qualifications redundant. Information about assets and liabilities was not to be disclosed to the voter, but only by successful candidates to the Speaker and Chair of the House after the election. The voters' right to know was no longer pivotal and was reduced to knowing whether the candidates had been charged with an offence which carried a prison term of more than 2 years or convicted and sentenced to imprisonment for a year or more. This was not what the Supreme Court had in mind. The stage was set for a confrontation.

On March 13, 2003 — a day before the famed Ides of March of the Roman Calendar — the Supreme Court quashed part of the legislation to simultaneously restore both its own and the Election Commission's order of May-June 2002. With this, the contours of the voters' right to know are now defined by the Supreme Court's judgment and not by Parliament's law. Parliamentarians are not happy. They plan retaliation. In Shakespeare's phrase, the Ides of March have come but not gone.

Controversy begets controversy but not necessarily confrontation. The Supreme Court's law has to be obeyed. There is unbroken authority since 1940 that the legislature cannot usurp the judicial power to sit in appeal over a court's decision. Among many celebrated instances, where the Supreme Court has simply not permitted the legislature to brazenly overturn the Court's decision, is the Supreme Court's Cauvery opinion of 1993, declaring the Karnataka legislature's attempt to nullify the Cauvery

Tribunal's award unconstitutional. In the LIC Bonus case (1978), a seven-judge Bench of the Supreme Court reminded the Union legislature that it simply cannot usurp the judicial power on matters decided by and pending appeal in the courts. Nor was the Karnataka legislature in 1995 permitted to take away the benefits granted by the court by simply reversing the latter. In 1996, the Andhra Pradesh legislature was prevented from altering court decisions relating to *inam* lands. Examples abound.

But, the legislature is not helpless. While not sitting in appeal over a court's decision, it can change the entire basis of the law and proceed on the new basis. This distinction is sometimes thin; and depends on the facts of each situation.

However, the present controversy is more complicated. The Supreme Court's decision on voters' rights was not an ordinary decision. It interpreted Article 19(1)(a) which guarantees free speech to all citizens to include the voters' right to know about their candidates. As long as Article 19 remains unchanged, this interpretation of the Supreme Court on its contents cannot be altered by a legislative side wind, which would be susceptible to invalidation for violating the Constitution's basic structure.

At present, there is a matter pending in the Supreme Court as to whether a constitutional amendment adding Article 16(4A), granting additional rights to the Scheduled Castes and the Scheduled Tribes, is constitutional after the Supreme Court has held it to be contrary to the very concept of equality underlying the Constitution.

Likewise, it is doubtful if the legislature can seriously interfere with the voter's right to know, which is part of both free speech and free and fair democratic elections; which together constitute a part of the Constitution's basic structure. But, matters do not

need to be complicated to such heady constitutional heights. Politicians should not just be concerned about themselves or the 'goondas' and others who win elections for them. India is drifting towards criminalised politics with devastating speed in ways that parallel the worst similar trends in Asia, Africa and America. The disqualificatory laws have proved ineffective as criminal trials continue into oblivion. The first effective step would be that political parties themselves weed out criminals. This should be easy since most seats are distributed in Delhi under conditions of centralised party political control. But unfortunately, this simple solution does not appeal to politicians who want gangsters to do their dirty work for reward of office.

Now, what do we do if politicians will not exclude criminals from electoral seats? The Supreme Court's solution is to empower the people with the right to know so that they can drive out criminals from the fray by using their right to ballot. Unfortunately, politicians do not quite want the voters to know the requisite bundle of information on assets (revealing corruption) or educational qualifications (suggesting incompetence in dealing with legislative business).

The right to knowledge of criminal antecedents is limited to where a person is charged with offences attracting more than two years of imprisonment or where the person has actually been convicted and sentenced to imprisonment of more than one year. This appears unexceptional except that actual conviction for one year seems unnecessary as much depends on the sentencing leniency of the court. Such leniency after conviction should not mean the person deserves to be a legislator.

What we really need to address is not the restoration of the Supreme Court's bundle of the voters' right to know but its consequences. What

happens if a candidate makes a false declaration or fails to make a declaration of the required facts? This has four aspects. The first consequence attached to filing a false affidavit or not filing one under the new electoral law is punishment for an electoral offence (Section 125A) — imprisonment for six months or fine or both. This is ingenious because of the second aspect whereby committing such an offence is not a basis for future disqualification because the offence is not listed as disqualificatory and resists automatic future disqualification because the punishment is less than two years. This is a serious flaw, implying that those found guilty of subverting the electoral process itself should not be barred from future elections. The third issue is whether the election of a person who has not disclosed the information required by the Supreme Court or the law can be set aside on that ground. Even though the non-supply of information is not a corrupt practice, such a breach would be the basis of setting the election aside for "non-compliance with the provisions of the Constitution, or the Act or any rules or orders under the Act." (Section 100(1)-iv). The fourth possible consequence concerns the Returning Officers' power to reject any candidature for the non-supply of information — explicit in the Commission's order of June 28, 2002, rejected by the legislature and now revived by the Court. This could prove dangerous for both the candidates and the electoral process.

Of course, candidates are expected to know their own antecedents — including charges framed in their presence. But, given the schedule of the elections, it is not really possible for a Returning Officer to offer the requisite due process.

No doubt, persons who do not give information to the voter will eventually be unseated by an election petition — often years later. But, a threshold rejection of candidates requires reconsideration. Perhaps, some intermediate fast track alternative solution can be found in addition to an election petition after the event. This needs working out.

Politicians should not resist the voters' right to know but try and give it meaning in a constructive way to enhance Indian democracy.

# Cabinet okays Bill on open ballot for RS poll

By Our Special Correspondent

**NEW DELHI, MARCH 18.** The Union Cabinet today decided to go ahead with a controversial Bill that seeks to introduce open ballot for election to the Rajya Sabha and to do away with the provision regarding residence for contesting to the Upper House.

The Bill, which was introduced in Parliament in December 2001, had run into rough weather after a section of the MPs objected to the changes, even as another section welcomed it. As a result, the Parliamentary Standing Committee on Home Affairs, which examined it, failed to arrive at a consensus and the division was reflected in a report tabled by the panel in Parliament in July last year.

The MPs were divided on both the issues. On open ballot, while one section felt that it was required because it would lessen the problem of cross-voting,

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the others argued that if the problem of money power had to be curbed, it would better to put checks on political parties from receiving funds in consideration for getting a member elected to the Upper House and not by doing away with the system of secret ballot.

On the issue regarding residence, a section of members agreed that the current proviso that a person seeking election to the Rajya Sabha from any State should be a resident of that State acted as a hindrance to persons who may belong to more than one State occupationally and it was also not in consonance with the spirit of the Constitution which gave the right to move and reside anywhere in the country.

Opposing this, the other section of MPs argued that the move would compromise on the federal nature of the Rajya Sabha.

Briefing reporters after the Cabinet meeting, the Union

9. Guliani  
Minister, Sushma Swaraj, said the Government would seek to have the Bill taken up for consideration in the current session of Parliament itself, after the recess break.

The Cabinet also decided to amend the Banking Regulation Act to raise the ceiling for foreign equity in subsidiaries of foreign banks to 74 per cent from the present limit of 49 per cent and to allow voting rights in proportion to the shareholding instead of the current position where the voting right of the foreign participant was restricted to 10 per cent.

Ms. Swaraj said the change in foreign equity had been decided upon since as per regulations, holding of at least 51 per cent share was required for a subsidiary of a foreign bank.

The move is a follow-up to the announcement in this regard by the Finance Minister, Jaswant Singh, in his budget speech.

The amendments would be

introduced in Parliament during the current session.

In addition, the Cabinet decided to reconstitute the Jallianwala Bagh National Memorial Trust with a view to providing representation to various political shades.

The trust would now comprise the Prime Minister, the Union Home Minister, the Union Minister for Culture, the Leader of the Opposition in the Lok Sabha, the Governor and the Chief Minister of Punjab and three eminent persons nominated by the Central Government, of whom one would have to be from Amritsar.

Under the existing provision, the trust comprised the Congress president, the Governor and the Chief Minister of Punjab and three persons nominated by the Central Government.

In addition, at the time of its enactment in 1951, Jawaharlal Nehru, Saifuddin Kitchlew and Maulana Abul Kalam Azad were included as trustees for life.

19 MAR 2003

SATURDAY, MARCH 15, 2003

## RULING FOR REFORM

*9-6-2003*

BY HOLDING ONE provision (Section 33 B) of the Representation of the People Act as "un-constitutional", the Supreme Court has thwarted a concerted attempt by the Legislature to curtail the right of citizens to know more about the candidates they elect. The provision, which had the backing of virtually the entire political class, was introduced into the RP Act with the sole purpose of neutralising an earlier Supreme Court judgment that made it mandatory for candidates seeking election to declare their financial assets, their educational qualifications and their criminal antecedents, if any. By declaring the amendment "null and void", the Court has breathed life back into the Election Commission's order of June last year. That order (which in turn was based on a Supreme Court judgment one month earlier) had directed candidates to furnish statements about the assets and liabilities of themselves, their spouses and members along with their nomination papers. Also required from candidates were affidavits declaring all previous convictions, cases in which criminal charges had been framed and cognisance taken thereof. From now candidates seeking election who fail to provide such information could find their nomination papers rejected on grounds of non-disclosure.

The move to deter corrupt and criminal elements from entering legislatures has its origins in a writ petition that finally resulted in the Supreme Court declaring that voters have a fundamental right to know details about the financial, criminal and educational backgrounds of those they elect. The Court ordered that such disclosures be made part of the nomination process, an order that the Election Commission duly complied with after it found the Centre dragging its feet on the issue. It was then that the political class, in a depressing and cynical show of unity, backed the drafting of an ordinance with the stated aim of furthering poll reforms but the express purpose of scuttling the E.C.'s order. Significantly,

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the President, A. P. J. Abdul Kalam, returned the ordinance for reconsideration; however, it was promulgated and eventually enacted as law. Thus it is clear that the recent Supreme Court judgment, which is a result of a challenge of the constitutionality of the ordinance/law, has been delivered against a disquieting backdrop of events that reflect the extraordinary keenness within the political class to resist well-meaning reform aimed at checking the criminalisation and corruption of the Legislature.

What now? It has been announced that an all-party meet will be held to examine the Supreme Court's recent judgment, but what purpose can such a gathering serve? As things stand, only a larger and Constitutional Bench can review the recent judgment delivered by a three-member Bench. It may not be possible to nullify the Court's ruling via a Constitutional amendment, but any such attempt would be a truly disgraceful move. Apart from reinforcing the belief that the political class has no desire to cleanse the polity of criminal and corrupt elements, it would send out the signal that Parliament is engaged in an ugly battle of supremacy with the Judiciary. It is true that it is the Legislature's function to draft laws, including those that deal with poll reform. However, it is not the business of the Legislature to encroach on the fundamental rights of the citizen, which the Court has held extends to his or her right to know the background of the candidates he elects. Rather than see this as an example of the Judiciary usurping the role of the Legislature, the various political parties would do well to respect the Court's ruling and let matters lie. The basis of the Court's ruling is derived from the concept of the right to information, which in turn is based on Article 19 of the Constitution. If the political parties fall prey to the temptation of engaging in another tactic or manoeuvre aimed at denying the enforcement of this fundamental right, it would be a truly unfortunate thing indeed.

15 MAR 2003

**THE HINDU**

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RP ACT AMENDMENT STRUCK DOWN

J. Bleekman

M/3

# Declaration of assets, antecedents must: SC

By J. Venkatesan

**NEW DELHI, MARCH 13.** The Supreme Court today gave a severe jolt to the Government and major political parties by striking down as "unconstitutional" a provision in the Representation of the People (Amendment) Act nullifying an earlier judgment making it mandatory for candidates to declare their criminal antecedents, wealth and educational qualification, etc.

A three-Judge Bench, comprising Justice M.B. Shah, Justice P. Venkatarama Reddi and Justice D.M. Dharmadhikari, gave different but concurring judgments declaring "null and void" the controversial provision of Sec. 33 B of the amended Act.

The provision said that "notwithstanding anything contained in any judgment of any court or any order of Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or rules made thereunder"

The Bench held that "a voter has a fundamental right to know the antecedents of a candidate" and this right was independent of the statutory rights

under the election law. Further, "a voter is first a citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution".

The Bench said that "it is true that legislature is entitled to change the law with retrospective effect which form the basis of a judicial decision. This exercise of power is subject to constitutional provisions and, therefore, it cannot enact a law which is violative of fundamental right".

The Bench held that Sec. 33 B on the face of it was beyond the legislative competence, as this court had held that voters had a fundamental right under Article 19 (1) (a) of the Constitution to know the antecedents of a candidate for various reasons.

It pointed out that the amended Act "does not wholly cover the directions issued by the court. On the contrary, it provides that candidates would not be bound to furnish certain information as directed by the court".

Mr. Justice Shah observed that members of a democratic society should be sufficiently informed so that they might cast their votes intelligently in favour of persons who were to govern them.

He said the "right to vote

would be meaningless unless citizens are well informed about the antecedents of a candidate.

"There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to change our democratic governing system and to have competent Legislature," he said.

Mr. Justice Shah said the legislature could remove the basis of a decision rendered by a competent court, thereby rendering all decisions ineffective but a legislature "has no power to ask the instrumentalities of the State to disobey and disregard the decision given by the court". Mr. Justice Shah wondered whether there was any necessity to keep the voters in the dark about the murder, dacoity or rape committed by a candidate or about his ill-gotten money which could be used for elections. He also asked if it was not necessary to make the candidates declare their assets and liabilities and would such declaration not help in controlling the role of unaccounted wealth in the elections.

Mr. Justice Shah said that a declaration "that an order made by a court of law is void" was normally part of a judicial function and added that "legislature cannot declare that decision as not binding or is of no effect".

In his judgment, Mr. Justice

Reddi said the casting of a vote marked the accomplishment of the right to the freedom of expression of the voter and held that the new electoral reforms law was not adequate to safeguard the right to information of the voter.

Mr. Justice Dharmadhikari said that the court had to intervene because the legislative field, even after the passing of the Act left a vacuum.

He said it was a half-hearted attempt in the direction of electoral reforms by the Government and a much-improved electoral system was required to make the election process both transparent and accountable so that the influence of tainted money and physical force of criminals did not make democracy a farce — the citizen's fundamental right of information should be recognised and fully effectuated.

## EC hails verdict

"We welcome the judgment," said the Election Commissioner, T.S. Krishnamurthy, reacting to the verdict. Speaking to *The Hindu*, he said, "we sincerely hope that this judgment will pave the way for purity in electoral process and further strengthen democracy".

**All-party meet planned:  
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# 'Nod' for Representation of People (Amendment) Bill

By Our Legal Correspondent

**NEW DELHI, JAN. 2.** The President has given his assent to the Representation of People (Amendment) Bill, 2002 which was passed in the winter session of the Parliament. Notified in the Gazette as Act No. 72 of 2002, it recognises the right of voters to know the antecedents of candidates contesting elections and comes into effect from August 24, 2002, when an ordinance was promulgated.

As per the Act, which seeks to replace an ordinance promulgated to this effect on August 24, last a candidate, contesting an election for Parliament or State Legislature, would be required to disclose whether he was accused of any offence punishable with imprisonment for two years or more in a pending case in which charges had been framed and whether he had been convicted of an offence in which the punishment awarded was one year or more.

However, a candidate would be required to furnish information only under this law made by

Parliament or the rules made thereunder and not otherwise. It also supersedes the orders of the Election Commission issued on June 28 last to give effect to the directions of the Apex Court judgment dated May 2.

Under the amendment, which gives effect to the impugned judgment, an elected candidate is required to declare his assets and liabilities before the Presiding Officer of the either of Parliament and State Legislature, as the case may be, as a post-election measure.

It also enjoins a candidate contesting an election to be liable for penal consequences for filing a false affidavit or concealing the required information.

He would also be liable for similar consequences for giving false information or concealing the required information in his nomination paper to be filed before the returning officer.

The President has also given his assent to the Refugee Relief Taxes (Abolition) Repeal Bill and the Appropriation (No. 6) Bill and they have been notified as Act No 70 and 71 of 2002.

THE HINDU

JAN 17 2003

# Shourie hints at extending disinvestment to more arenas

By Our Staff Reporter

**KOCHI, FEB. 1.** The Union Minister for Disinvestment, Communications and Information Technology, Arun Shourie, has hinted at extending the disinvestment process to more arenas. He was inaugurating a national seminar on strategic issues of disinvestment policy, organised by the TKM Institute of Management, Kollam, here today.

Picking out cases of huge losses suffered by the Government because of investment in public enterprises, the minister emphasised the need for disinvestment. The process was aimed at making use of the country's resources, including human capabilities at optimum level. It would require continual adjustment of policies to seek the objectives as the country is going through a phase of transition, he said.

The minister argued that the word disinvestment was a misnomer as it was only a device for increasing investment and re-investment. The present phase of our economic reforms was the result of internal impulse of

the Indian society rather than globalisation. Likening the country 'during the licence raj' to an 'octroi post', the minister said the role of the State was to augment its resources and improve the economy.

Citing examples of Balco, Computer Maintenance Corporation, IDPL, Paradip Phosphates and various State electricity boards, he said procedural delays and unaccountability had resulted in massive losses to PSEs of the country 'of government servants, by government servants, for government servants'. Though committees were set up, nothing could be done to avert bankruptcy. As many as 35 revival packages were prepared, but that too involved a cost of Rs. 40,000 crores. Out of the 1,000 odd public enterprises in the country, one-third was 'non-functional'. Corrupt officials and 'traders in unions' were perpetrating the faulty system in public enterprises, he said. Disinvestment was the only way to save wages and to grow employment, he said, again citing the examples of Balco and Paradip Phosphates.

What happened in the insurance sector would have to be applied in petroleum sector, the minister said. The fears on 'strategic sector being opened up to private sector' were frivolous, he argued. There would be regulating mechanism as in the telecom sector. Like a river flowing well within strong banks, the new reforms would chart a smooth course with the regulatory system. Several State governments are unable to pay salaries to the staff. The major part of central tax revenue was utilised for paying interest on past debt. Countries such as China could achieve 10 per cent growth rate only because of the change in the attitude.

Earlier, the State minister, M.A. Kuttappan, sought to justify privatisation by pointing out the good performance in those sectors. A historical error was being corrected by the new reforms, he added.

Former Union minister, S. Krishnakumar, Raji Philip, Managing Director, Hindustan Paper Corporation, A.M. Salim, Director, TKM Institute of Management, were among those who spoke.

THE HINDU

FEB 2 2003



## Change of focus in poll Ordinance

NEW DELHI, Jan. 17. — The Supreme Court today allowed change of focus of a petition challenging the electoral reforms Ordinance to that of the Act, which recently got the Presidential assent after being passed by Parliament.

A three-judge Bench, headed by Mr Justice MB Shah, allowed the plea of People's Union for Civil Liberties to treat its petition as the one challenging the constitutional validity of the Representation of People (Amendment) Act incorporating various reforms in electoral laws, including steps to stop criminalisation of politics. The Bench, however, gave time to the Centre and other parties to the matter till Friday to file their written submissions.

The PUCL and others had challenged the validity of the Ordinance and during the pendency of the petition in the Supreme Court, the electoral reforms Bill was passed. The Bench agreed with the petitioners that as the provisions of Ordinance, which were challenged by them, were taken as it is in the Act, there was no harm in allowing amendment in the prayers of the petitions. On 24 October, the Court had reserved its verdict on petitions challenging the constitutional validity of the Ordinance on the ground that it did not honour the court's 2 May order on the issue and curtailed the right to information of a voter. — SNS

THE STATESMAN

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