RITE OF RIGHTS

The proposed employment guarantee bill has an obvious economic angle. What is being ignored in the debate is another equally important aspect, that of rights. The bill proposes to make rural employment for 100 days every year a legal right. A person who is willing to work and demands work has to be given a job for at least 100 days per annum. This right and its implications need to be explored. The most important question is whether rural employment can at all be a right and whether such a right is at all enforceable. There exists in India a guaranteed right to education, but this in no way ensures that all children of school-going age are actually in schools. One important feature of any right is the consequence of transgressing such a right. This remains vague in the context of guaranteed rural employment. Who will be penalized for a breach of the right? If the rural employment scheme remains unimplemented and if nobody is punished for this, then over time the right will become meaningless. The right to education is already on that slippery slope. Rights need to be taken seriously. In India, this is often not the case even among activists with the most noble aims and intentions.

Rights, in jurisprudence, are always predicated upon duties. The converse is equally true: duties flow from rights. But the duties side of the roster in the right to rural employment has not been touched upon in any of the discussions. There has been no discussion about the failure to perform the duties that are tied to the right to work for 100 days. This leads to the suspicion, voiced in the previous paragraph, that this particular right is not being taken seriously. This suspicion is reinforced by the fact that the guarantees are being extended to only 150 backward districts. Moreover, no timetable for implementation has been mooted. One apparent reason for not taking the right seriously is the costs involved. The government has scaled down the drain on the exchequer to Rs 10,000 crore per annum. The right to rural employment, if taken seriously, can make a dent of nearly Rs 40,000 crore every year. A diluted right, such as the one proposed, keeps both populists and a severe drain on the fisc at bay. The economy of rights has thus been an important part of this piece of decision-making. The purity of rights has been diluted by economic compulsions.

23 DEC 2004 THE TELEGRAPH

OFFICE OF GOVERNOR

Constitutional Head With No Security Of Tenure

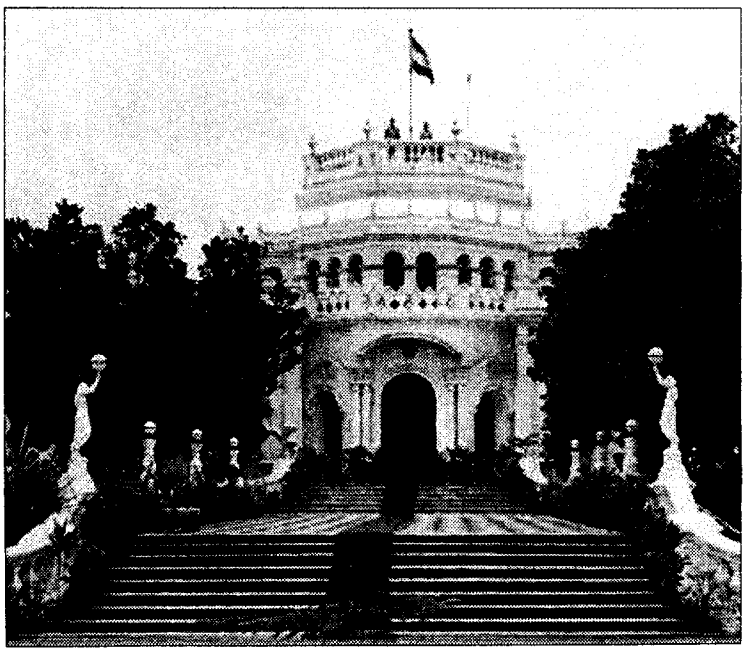
By SAM RAJAPPA

The post of Governor has existed ever since the British occupied India in 1757. His role, however, has changed since India became independent. While all other posts in the executive and legislature are elected, the Governor is appointed, transferred or removed by the President. The Governor's office, according to a 1979 ruling of the Supreme Court, in the Raghulal Tilak case, "is not subordinate or subservient to the government of India, nor is he accountable to them for the manner in which he carries out his functions. His is an independent constitutional office which is not subject to the control of the government of India. He is constitutionally the head of state... without whose assent there can be no legislation in exercise of the legislative powers of the state".

Whims and fancies

Under Article 156 of the constitution, the Governor shall hold office during the pleasure of the President. The Governor is subject to the whims and fancies of the Union government. Over the years, the gubernatorial office has been reduced to that of a post office and the Governor himself has become a part of the spoils system. When a new government is formed at the Centre, the President is advised to withdraw his "pleasure" of the existing Governors and appoint people committed to toe the line of the new government. Unlike other nominated offices like the judges of the High Court and the Supreme Court or members of the Public Service Commission who are adequately protected by the constitution and have been insulated from summary dismissal by the executive government, the high office of the Governor has no such protection. One of the principal guardians of fundamental rights, including Article 14, the Governor does not have the minimum protection against arbitrariness which the lowest rung of the government employees enjoy.

The pressures of coalition politics have a deleterious effect on the office of Governor. The latest example is the manner in which the Tamil Nadu Governor, PS Ramamohan Rao, was removed from office. It is common knowledge that the DMK, a crucial constituent of the United Progressive Alliance government at the Centre, wanted Ramamohan Rao replaced by Surjit Singh Barnala although the latter belongs to the Akali Dal, a constituent of the opposition National Democratic Alliance. The official explanation given by the Union Home Minister, Shivraj Patil, is that Ramamohan Rao failed to host the traditional Independence Day tea party and that he was away in Athens watching the Olympic Games on 15 August. The Governor was granted leave



of absence and to go abroad by the President with the consent of the Home and External affairs ministries. The Home Ministry could have withheld permission and advised him not to leave the country during the Independence Day if the tea party was a constitutional obligation and crucial for his continuance in office. The Governor's explanation that he had no intention of hosting a tea party this year because of the gruesome death of about 100 children in a school fire in Kumbakonam a few weeks earlier was not taken into consideration.

Political agents

In July last the UPA government removed the Governors of Uttar Pradesh, Haryana, Gujarat and Goa, claiming their proximity to the Rashtriya Swayamsevak Sangh. The RSS is no longer a banned organisation and it is not a crime to be associated with it. Subsequently, the Governors of Bihar, Rajasthan and Punjab have taken the cue that the President was about to withdraw his "pleasure" and resigned. The UPA government is bent upon showing the door to the governors appointed by the NDA government. The idea of the dumping ground of rejected or inconvenient politicians. Congress and BJP are equally guilty of devaluing the office. Since the prime ministership of Indira Gandhi, governments at the centre have been clear that the Governor must conduct himself in a manner to benefit the ruling party.

Surjit Singh Barnala's refusal to recommend the dismissal of the DMK government of M. Karunanidhi in January 1991 stands out in sharp contrast. Jayalaliatha with 11 Lok Sabha members had extracted a promise from Chandrashekar before he became Prime Minister in the autumn of 1990 that he would dismiss the democratically elected DMK government in exchange for the support of the AIADMK MPs. Barnala was under pressure from Delhi to send a report that law and order have broken down in Tamil Nadu and the state was ripe for President's rule. Finding the law and order situation in Tamil Nadu far better than in neighbouring states, Barnala demurred. Jayalalitha, who was in political wilderness, was getting impatient.

Eventually, Barnala was summoned to Delhi and asked prepared in the Union Home Ministry. Barnala refused and resigned his governorship. By a strange quirk of fate, Jayalalitha as the Chief Minister had to welcome Barnala as the Congress-friendly Governor of Tamil Nadu.

In order to regain past glory, the constitutional office of the Governor must be transformed into something that cannot be reduced to an agency of the Centre. But given the constitutional power of appointment and removal of governors, the Centre would continue to use them against state governments ruled by parties not in sync with the ruling formation of the Centre. One way is for Parliament to enact a law by suitably amending Article 158 which would lay down guidelines for the exercise of power of removal and transfer.

Extraneous considerations

The Governor is not a employee of the Union government. That only means that he or she is entitled to constitutional respect and protection of a far higher degree. The law should ensure that extraneous considerations are outside its purview while appointing and removing Governors. The law should also provide for mandatory consultation with state governments before his appointment, removal or transfer.

Over the years, a number of committees, commissions and legal experts have called for some criteria to govern the appointment, of Governors. The Sarkaria Commission had come out with the most exhaustive recommendations and wanted the original constitutional idea about Governors to be adhered to in order to strengthen the federal nature of the scheme of governance of the country. A Governor, it suggested, should be a detached figure who has not taken part in active politics.

The National Commission to Review the working of the Constitution supported Justice Sarkaria's recommendations and insisted that appointment of Governor by the President must be in consultation with the Chief Minister of the concerned state. Transfers should not be punitive and removal could only be for proven misbehaviour or incapacity after proper adjudication. Till the law is changed, it could be laid down that removal can be for valid reasons, given in writing in such a manner as to show that the Governor concerned has for justifiable reasons

The author, a veteran journalist who

THE STATESMAN

13 NOV 2004

CAVEAT
C R IRANI

The Supreme Court speaks!

ON 5th November, 2004, a Bench of five Lordships of the Supreme Court (coram, Hegde, Variava, Singh, Sema and Sinha, JJ), unanimously directed introducing an element of sound common sense into the age-old question of when the Governor can act in his discretion and when he is bound to follow the advice given to him by his Council of Ministers. It will be noticed, at the outset, that this distinction is applied only to relations between Governors and the States they represent, and do not extend to the Centre and Parliament. The reason is to allow state legislators the maximum discretion, knowing that the Central apparatus can be expected to correct any aberrations that may arise lower down.

The facts of the matter are simple and direct. In 2003, the Congress government of Madhya Pradesh had two ministers, Rajendra Kumar Singh and Sishahu Ram Yadav. A complaint was made to the Lokayukta that these ministers were involved in releasing 7.5 acres of land to the previous owners, even though the same had been acquired by the state-owned Indore Development Authority. After proper inquiry, the Lokayukta held that there were sufficient grounds for prosecuting

Soli's arguments were unbeatable. A major argument was advanced on interpretation of Article 163 of the Constitution

the two ministers under Section 13(1)(d) of the Prevention of Corruption Act, 1983, and on a charge of criminal conspiracy punishable under Section 120(B) of the Indian Penal Code. It is recorded in the judgment that by the time the report was given the two ministers had resigned. Sanction was applied for from the Council of Ministers for prosecution of the Ministers. To everyone's surprise, but to none voiced by any politician, the Council refused consent to prosecute saying *there was not an iota of material available to prove the conspiracy*. The Governor, Bhai Mahavir, then came into the picture. He had no difficulty in holding that the evidence was enough to show that a prima facie case for prosecution was made out and accordingly sanctioned prosecution under Section 197 of the CrPC.

The judgment shows clearly that the case against the ministers was handled brilliantly by the Attorney-General of India, Soli Sorabjee, as he then was. The matter was heard by a single judge who held that sanction was properly withheld and then by the Division Bench who agreed with the single judge and inexplicably held that while the precedent quoted before them may apply to the case of a Chief Minister, *it cannot apply to a case where Ministers are sought to be prosecuted!* Their Lordships contend themselves by observing that they are unable to appreciate the *subtle distinction* sought to be made by the Division Bench below. The string of decisions hereto quoted as precedents, seemed to lay down unreasonable distinctions in favour of the rank held by the sanctioning authority and not so much by the facts and arguments of the cases before them. That is where Soli's arguments were unbeatable. A major argument was advanced on interpretation of Article 163 of the Constitution dealing with how the Council of Ministers would aid and advise the Governor. Sorabjee showed that unless he was right, it would lead logically to a decision of total irrelevance of Article 163(2). The Court could not accept such a conclusion and Sorabjee won. Another important aspect was disposed off by this judgment. The ground of the judgment was clearly the existence of bias and the need to remove it. The judges went along with Sorabjee's argument that the principle of real bias has now taken a tilt *to real danger of bias* and *suspicion of bias*. It is far more satisfactory to rely on dangers and suspicions of bias rather than the more open proposition of a mere danger

...rank opportunism and corruption, paraded as being in defence of the law, will not disfigure our legal system

of bias. And as Sorabjee rightly contends, bias is likely to operate in a subtle manner.

Before we part with the case, it is necessary to acknowledge the work done by the Lokayukta. As the judgment acknowledges, the matter was pursued to cover a large area namely the statutory provisions, the history of the case, Orders dated 11th August 1995, 24th February 1997, and 8th March 1997, which were said to be passed *in the teeth of the statutory provisions*, the clandestine manner in which the matter was pursued, the noting on the files, as also how the accused persons deliberately and knowingly closed their minds and eyes from the realities of the case. Despite the provocation, their Lordships in the Supreme Court hold that they do not intend to lay down any law in this behalf. Each case may be judged on its own merits. That is how it should be. But thanks to the former Attorney-General, and for all time to come, rank opportunism and corruption, paraded as being in defence of the law, will not disfigure our legal system. For this relief, much thanks! We are also grateful to their Lordships for restoring the right of the Governor to prevent a miscarriage of justice.

SANCTIONING OF MINISTER'S PROSECUTION

Governor above Cabinet: SC

Our Legal Correspondent

NEW DELHI, Nov. 5. — In a judgment of far-reaching consequences, the Supreme Court (coram, Hegde, Variava, Singh, Sema , Sinha, JJ) today ruled that the Governor is not bound by the Cabinet's advice in the matter of grant of sanction to prosecute any minister for any offence under the Prevention of Corruption Act and the Indian Penal Code.

If the Governor is satisfied that a prima facie case exists for prosecution, he may grant such sanction, even where the Cabinet has recommended to the contrary, the Supreme Court held. Such sanction of the government is mandatory under Section 197 of the CrPC.

"If... the Governor cannot act in his discretion, there would be a complete breakdown of the rule of law as it would then be open to state governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. If, in cases where a prima facie case is made out, sanction to prosecute high functionaries is refused or withheld, democracy itself will be at stake. It would lead to a situation where people in power may break the law with impunity, safe in the knowledge that they will not be prosecuted as sanction will not be granted," the court observed.

The court thereby struck down the Madhya Pradesh High Court order of 10 January, 2003, ruling that the the grant of sanction was not a function which could be exercised by the Governor "in his discretion" within the meaning of these words as used in Article 163 of the Constitution.

The HC held that the Governor could not act contrary to the "aid and advice" of the council of ministers.

The HC order came on an appeal by two Madhya Pradesh ministers, Mr Rajender K Singh and Mr Bisahu Ram Yadav, whose prosecution were sanctioned by the Governor in connection with a case involving the illegal "release" of 7.5 acres of land to the original owners after it had been acquired by the Indore Development Authority. The Lokayukta had earlier held that there were sufficient grounds for prosecuting the two ministers under Sec. 13(1)(d) read with Sec. 13(2) of the PCA, 1983, and Sec. 120B of the IPC. The state council of ministers had refused to grant such sanction. The MP Special Police Establishment came in appeal against the HC order to the Supreme Court which set it aside. "In this, on the material disclosed by the report of the Lokayukta, it could not have been concluded, at the prima facie stage, that no case was made out... We have no hesitation to hold that the decision of the council of ministers was ex-facie irrational whereas the decision of the Governor was legal," it said.

6 NOV 2004 THE STATESMAN

২৩৮ সংখ্যা মঙ্গলবার ১৬ কার্তিক ১৪১১ কলকাতা

রাজ্যপাল: এ ভারে নয়

মহারাষ্ট্রের মুখ্যমন্ত্রীর গদি হাত হইতে ফসকাইয়া গেল, তাই অন্ধ্রপ্রদেশের রাজ্যপালের কুর্সি। সুশীলকুমার শিন্ডে কংগ্রেস হাইকম্যান্ডের প্রীতিভাজনদের দলে, তাই তাঁহাকে এই সাত তাড়াতাড়ি সান্ত্বনা পুরস্কার। পুরস্কার বিতরণ রাজা-মহারাজাদের চিরপুরাতন অভ্যাস, আর আজকালকার নেতারা রাজা-মহারাজাদেরই যোগ্য উত্তরাধিকারী। তাই শাসনকার্য চালাইবার নামে প্রসাদকণা বিলাইতে তাঁহারা ঠিক একই রকম পটু ও ব্যগ্র। ব্যগ্র, কেননা এই সকল অভ্যাস-স্তম্ভের উপরেই তাঁহাদের শাসনকর্তৃত্ব-কাঠামোর প্রাত্যহিক নির্মাণ। বলিবার কিছুই নাই। যে দল লঙ্কায় যায়, তাহারাই হয় রাবণ, সুতরাং কংগ্রেসকে এই কু-অভ্যাসের জন্য আলাদা করিয়া ভর্ৎসনা করিবারও কিছু নাই। বরং এই প্রসঙ্গে একটি অন্য মৌলিকতর প্রশ্নে মনোনিবেশ করা যাক। শাসকদের পুরস্কার বিতরণ রীতিটি অ-সংশোধনযোগ্য, সন্দেহ নাই। কিন্তু পুরস্কার হিসাবে রাজ্যপালের পদটি লইয়া এই ছেলেখেলাও কি সংশোধনের অতীত? দলীয় রাজনীতির প্রসাদকণায় অন্বিত দেশের প্রায় প্রতিটি রাজ্যের রাজ্যপাল। যদি বা উদ্দিষ্ট ব্যক্তিটির অন্য কোনও কৃতিত্ব ও যোগ্যতা থাকেও, দলীয় রাজনীতির ক্লিন্নতার সঙ্গে গাঁটছড়া বাঁধিবার পর কি সেই কৃতিত্বের গৌরব সম্পূর্ণ রূপে ধ্বস্ত হয় না? এই ব্যবস্থায় প্রাদেশিক শাসনের শীর্ষপদটির কি কোনও গরিমা কিংবা মর্যাদা আদৌ অবশিষ্ট থাকে? সংবিধান-প্রণেতারা যে যুক্তিতেই এই পদটির প্রয়োজনীয়তা উপলব্ধি করিয়া থাকুন না কেন, রাজনৈতিক প্রসাদভিক্ষুরা যেমন ব্যতিক্রমবিহীন ভাবে রাজ্যপাল হিসাবে বৃত হইয়া থাকেন, তাহাতে বহু-অপব্যবহৃত এই পদের মৌলিক যৌক্তিকতাটিই আবার ফিরিয়া ভাবা জরুরি হইয়া পড়িয়াছে। রাষ্ট্রপতি পদটির প্রয়োজনীয়তা তবুও খানিক বোধগম্য: ব্রিটিশ সংবিধানের উপরে ব্রিটিশ রাজা বা রাণির অস্তিত্বের মতোই, দলীয় শাসন হইতে সমগ্র রাষ্ট্রিক শাসনের এক প্রকার বিচ্ছিন্নতা এই রাষ্ট্রপতি পদের দ্বারা প্রতীকায়িত হয়। এতদ্ব্যতীত, রাজনৈতিক পালাবদলের মধ্যে রাষ্ট্রের প্রবহমানতা ধরিয়া রাখার জন্যও এই পদের গুরুত্ব স্বীকার্য। কিন্তু রাজ্যের ক্ষেত্রে এই দুই যুক্তির কোনওটিই তত জরুরি নয়। তবু রাজনৈতিক দাক্ষিণ্য বিতরণের উদ্দেশ্যে পদটি অনন্ত কাল সুরক্ষিত থাকিবে?

পদটির অস্তিত্ব বিষয়ে পুনর্বিবেচনা যদি এখনই সম্ভব না হয়, অন্তত পদটির অপব্যবহার থামাইবার সম্ভাব্য পন্থা বিবেচনার কাজে গড়িমসির কোনও কারণ থাকিতে পারে না। মূল কথা, যে কোনও উপায়েই হউক, এই ধরনের পদগুলিকে দলীয় রাজনীতির পঙ্কিল আবর্ত হইতে দূরে রক্ষা করিতে হইবে। হাউস অব লর্ডস-এর প্রতিনিধিরা যেমন আইনের মুখাপেক্ষী না হইয়া কেবলমাত্র দেশীয় রীতির প্রতি সম্মানজ্ঞাপনেই নিজেদের ভোটাধিকার ছাড়িয়া দেন, ঠিক তেমনই রাজ্যপাল, রাষ্ট্রপতি, এবং রাজ্যসভার সদস্যদের দল-রাজনীতির ঊর্ধ্বে উঠিবার জন্য ভোটাধিকারের মায়া ত্যাগ করিতে হইবে, দরকার হইলে আইনের দণ্ড তাড়নার সাহায্যেই। একটি মডেল বিচার করিয়া দেখা যাইতে পারে। মডেলটি এই রূপ: রাজ্যসভার সদস্য রূপে যাঁহারা মনোনীত হইবেন, তাঁহাদের ন্যূনতম দুই-তিন বছর সক্রিয় রাজনীতি হইতে দূরে বিরাজ করিতে হইবে— সরকারি অফিস হইতে অবসর গ্রহণের পর বেসরকারি কাজে যোগ দিবার আগে যেমন কিছু সময় অতিবাহনের রেওয়াজ রহিয়াছে, ঠিক তেমনই। এক বার সদস্য রূপে মনোনীত হইলেই সেই সব ব্যক্তির ভোটাধিকার চিরতরে বিনষ্ট হইবে, এবং ভবিষ্যতেও তাঁহাদের রাজনীতিতে ফিরিয়া স্থান গ্রহণের কোনও সম্ভাবনা না থাকে। রাজনৈতিক বাণপ্রস্থ-গ্রহণকারী এই সকল বর্তমান ও প্রাক্তন রাজ্যসভা সদস্যদেরই মধ্য হইতে নিযুক্ত হইবেন প্রাদেশিক রাজ্যপাল। এবং রাজ্যপাল হিসাবে যথাযথ যোগ্যতা দেখাইয়াছেন, এমন ব্যক্তিদের মধ্য হইতেই নির্বাচিত হইবেন স্বয়ং রাষ্ট্রপতি। এই মডেল অনুসরণ করিলে ভারতে গণতান্ত্রিক ভাবে নির্বাচিত রাজনৈতিক নেতৃত্বের পাশাপাশি রাজ্যসভা-রাজ্যপাল-[illegible]য়ে একটি সম্পূর্ণ পৃথক ধারা নির্মিত করা সম্ভব হইবে, মূল চরিত্রে যাহা সম্পূর্ণ অরাজনৈতিক, এবং তুলনামূলক গুরুত্ব-বিচারে যাহা শেষ পর্যন্ত নেহাতই প্রতীকী অভিভাবকত্বের নিরপেক্ষতায় উন্নীত। ব্রিটিশ সংবিধানের আদল অনুকরণের কারণেই এই সকল পদের উৎপত্তি, ব্রিটিশ রীতি অনুকরণ করিয়াই ইহাদের প্রতীকী নিরপেক্ষতা রক্ষা করিতে হইলে এই পন্থা গ্রহণ ভিন্ন গতি নাই। ভারতীয় সাংবিধানিক কাঠামোর অন্যতম দুর্বল একটি অংশকে যথাসম্ভব অর্থযুক্ত করিয়া তুলিতে হইলে এই সংস্কার-বিবেচনা এখনই দরকার।

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Parliament and the Judiciary

All the three wings of the state are creatures of the Constitution and are bound by it. There has to be complementarity among the constitutional institutions and no one institution can claim superiority over the other. Nevertheless, in a system governed by a written Constitution, there has to be necessarily an independent judiciary, says ***N.R. Madhava Menon.***

THE INDIAN Constitution today is far different in content and concerns from what it was at the commencement of the Republic. The original text has undergone many changes, some of which are beyond the imagination of even the framers of the Constitution. Parliament made nearly 100 amendments, some inconsequential in nature, some corrective of the distortions that had crept in, and still others to advance developmental goals.

As compared to this, what the Supreme Court has done through a couple of judgments is indeed radical enough to alter the very character of the Constitution as originally conceived by the Constituent Assembly. Among such radical changes rendered by the Court are the discovery of the "basic features" beyond the amending powers of Parliament, the introduction of the "due process clause" in its substantive and procedural aspects in the reading of Article 21 and Article 14, and the generation of numerous rights and freedoms not expressly given in Part III of the Constitution.

In doing so, the Supreme Court has assumed powers that many constitutional scholars believe do not belong to it. How did it happen and why are questions seldom asked?

Accountability

What is at stake is the way WE, THE PEOPLE OF INDIA have resolved to govern ourselves and the manner in which human rights and democratic accountability are sought to be achieved under a federal polity. In the final analysis in any constitutional democracy, power resides with the people and it is exercised through the rule of law reflecting their collective will. Constitutional institutions are only instruments that exercise limited power in a system where power is divided and operated through checks and balances.

Having critiqued the role of the Court in shaping the Constitution (see accompanying boxes) in its new *avatar*, it is important to see how the other two organs of Government performed in order to decide whether a change is warranted now and, if so, how it is to be achieved.

The Constitution of a nation is a living thing and must be allowed to evolve naturally unless a revolution overtakes it. Any attempt to redraft the Constitution in its essential elements is fraught with unforeseen consequences. At the same time, debating the strengths and weaknesses of the system and proposing alternative courses of action is the democratic way of building public opinion towards change and progress.

The former Chief Justice of India, Dr. A.S. Anand, in his Millennium Law Lectures (October 1999) at the Kerala High Court Advocate's Association, while defending judicial activism emphasised the need for caution to ensure that activism does not become "judicial adventurism." Otherwise, he warned, it might "lead to chaos and people would not know which organ of the state to look for to stop abuse or misuse of power." Quoting approvingly the observations in respect of policy-making of Lord Justice Lawton in the *Laker Airways Case* (1977(2) WLR 234 at 267), he reiterated the principle that " ... the role of the judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play." Dr. Anand added that the "judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that Court cannot run the Government. The Courts have the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation."

Lack of remedy

Wise words indeed for judges to remember. The problem, however, is the absence of an effective remedy when judges cross the *Lakshman Rekha* consciously or otherwise, leaving no remedy to restore the constitutional balance. Such situations may be rare but they do exist. All the three wings of the state are creatures of the Constitution and are bound by it. As coordinate organs of the state there is to be complementarity among the constitutional institutions and no one institution can claim superiority over the other. Nevertheless, in a federal system governed by a written Constitution, there has to be necessarily an independent judiciary capable of resolving disputes between the federating units and the Centre as well as to judge the constitutionality of legislative and executive action in terms of the guaranteed rights of citizens. For the progress of the nation it is imperative that all the three wings of the state function in complete harmony.

Unfortunately, on many occasions this did not happen and issues to be decided through political and legislative processes were brought before the courts for adjudication. While so adjudicating, courts have to review the constitutionality of the law and interpret its scope *vis-à-vis* the powers given under the Constitution.

In doing so it is not to be understood that the Court is a super legislature and sits in judgment on the wisdom of policies adopted by the legislature. It is only ensuring the observance of the provisions of the Constitution, which is the legitimate function of the Court. Judicial review is fundamental to the rule of law though *prima facie* it may appear to a layman as anti-democratic and elitist. Courts of law are creatures of the Constitution and can act only within the sphere of its jurisdiction.

There are at least two types of situations in which the Court took an activist posture and either assumed a legislative role or attempted to directly undertake governance. The first type of situation is where gaps and ambiguities exist in the law or where the full protection of Fundamental Rights warranted enunciation of a new policy or extension of an existing policy in conformity with the constitutional scheme and the international obligations of the State. The *Visakha Case* judgment (1997(6) SCC 241) and the *Lakshmi Nath Pandey Case* (1984(2) SCC 244) are examples of this type of judicial activism in the legislative sphere. The expansion of the right to life under Article 21, invoking the Directive Principles, is another example of activism in areas legitimately belonging to the legislature.

The second type of situation in which the Court proactively involved itself in what is generally called the executive function, is where the laws are left unimplemented for whatever reasons and individual rights or public interest are adversely affected thereby. Many decisions on environmental law, directing executive action even where budgetary re-allocation is required are illustrative of judicial intervention in the executive sphere. An extreme example of this type of judicial activism is the *Vineet Narain Case* (AIR 1996 SC 3386) where through the devise of continuing mandamus the Supreme Court directed the investigation of high-level corruption and monitored its progress till its completion with the filing of the chargesheet.

Cause of justice

From the perspective of the judiciary it was only attempting to achieve the constitutional purpose in the best way it felt appropriate in the situation. In the process it did advance the cause of justice and ensured proper implementation of the rule of law. However, from the perspective of the legislature, it was usurpation of its powers and functions. The executive argued that the court was in effect running the Government the way it considered desirable.

Both raised the issue of judicial accountability, the demise of the doctrine of separation of powers, and the negation of checks and balances in the constitutional scheme. The judiciary defended itself by saying that the court acted only in areas where there was legislative vacuum in the field of human rights and that its action only strengthened democracy and the common man's faith in the rule of law (Dr. A.S. Anand, Millennium Lecture reproduced in *Law & Justice* edited by Soli Sorabjee, Universal 2004).

Where does this discussion on judicial role in constitutional law-making lead one in terms of parliamentary democracy, democratic accountability and constitutional governance? The answer depends on how one perceives the performance of the executive and legislative wings of the state and what constitutes public interest in the given situation. It is difficult to resolve this question in terms of the original intent of the constitution-makers or the presumed will of WE, THE PEOPLE OF INDIA. Nor can it be addressed by textbook definitions of democracy, the rule of law and constitutional governance.

Accountability, of course, is a key issue. The over-concentration of power in any one institution is inimical to democratic accountability and good governance. There is need for restraint and the development of healthy constitutional conventions and practices. In the present context, judicial appointments, judicial independence and judicial accountability are issues that warrant informed and responsible debate if parliamentary government is to remain the central theme of Indian democracy.

Not in India alone

The problems are not peculiar to India either. In 1998 a joint colloquium was organised in London sponsored by the Commonwealth Parliamentary Association, the Commonwealth Lawyers' Association and the Commonwealth Judges' Association on "Parliamentary Supremacy and Judicial Independence." It adopted a set of guidelines on Good Practice Governing Relations Between the Executive, Parliament and the Judiciary in the Promotion of Good Governance, the Rule of Law and Human Rights. In relation to Parliament and the judiciary, the following guideline was adopted which speaks of the delicate balance and the restraint and responsibility each institution must demonstrate in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by other institutions. The guideline stated: "The legislative function is the primary responsibility of parliament as the elected body representing the people. Judges may be constructive and purposive in the interpretation of legislation, but must not usurp Parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the court to declare the incompatibility of a statute with the Constitution, leaving it to the legislature to take remedial measures."

In conclusion, it is worthwhile to recall the views of the Hon'ble Justice Pierre Olivier of South Africa. He was highly critical of the Westminster model of parliamentary sovereignty which proved powerless to protect the people of apartheid South Africa from unjust laws passed by a Parliament which was a rubber stamp of a tyrannical executive. Judge Olivier painted a vivid picture of the intolerable position in which South African judges were placed in having to apply oppressive laws in relation to which the possibility of judicial review was carefully excluded. Even judicial review of executive action was emasculated by laws conferring draconian powers upon the executive.

Does this description of the erstwhile South African model of Parliamentary supremacy strike any parallel with the state of Parliament during the Emergency period in India? If so, there is reason to let the "basic structure" doctrine remain in Indian Constitutional Law despite the threat of "judicial activism" upsetting the democratic balance of power. The issue cannot be resolved by declaring that in India the Constitution is supreme. This is because of the vastness of the power of judicial review the courts have assumed and the limitations on amending power of Parliament again developed through judicial interpretation. The proposition that "Constitution is what the judges say it is" cannot be accepted under any democratic scheme of governance. Particularly when there is no clarity or certainty as to the nature, number and scope of unamendable basic features of the Constitution. In the circumstances, the available options are a national debate on the issue and possibly a referendum on scope and procedure of amendment of so-called basic features and/or a review of the whole situation by the full Court of 26 judges of the Supreme Court after issuing notices to all the stakeholders.

(Dr. Madhava Menon is Director, National Judicial Academy, Bhopal. The opinions expressed are his personal views only.)

The due process clause

THE IMPORTATION of the "due process clause," consciously deleted at the time of framing the Constitution, has led to a decisive supremacy of the judiciary over all other branches of Government. The Supreme Court judgment in the *Maneka Gandhi Case* (AIR 1978 SC 597), while interpreting equality before law (Article 14), said that all Articles on Fundamental Rights bear a relationship with one another and any law depriving a person of any of the liberties or freedoms must not only satisfy the requirements of Article 21 (procedure established by law) and Article 19 (equality before the law). Reading the principle of "reasonableness" or non-arbitrariness as an essential attribute of equality impacting on the freedoms under Article 21, is indeed a clever way of introducing the "due process clause" in place of the "procedure established by law" provision in that Article.

Justice Krishna Iyer in his separate but concurring judgment declared that "law is reasonable law, not any enacted piece."

He further said in the *Sunil Batra Case* (AIR 1978 SC 1675) that though the Constitution had no "due process" provision, yet after the *Maneka Gandhi Case* judgment the consequence was the same.

Undefined doctrine

By a stroke of the pen, the Supreme Court changed the course of constitutional law since then. The all-pervasive "brooding omnipresence of reasonableness" the court discovered in the equality guarantee (Article 14) led to the undefined and undefinable "reasonableness" doctrine, the *Brahmastra*, so to say, in the hands of Supreme Court judges.

One can argue that if Article 14 were to be read like that, what was the necessity of stipulating reasonable restrictions in considerable details in Article 19(2) to (6). Perhaps in the light of the new interpretation, all rights and freedoms and their scope can be articulated from Article 14 only, making the rest of Part III almost redundant.

"Due process" today has such meaning and scope as judges from time to time might give to it. By re-interpreting Articles 14, 19 and 21 and by refusing to take note of the rejection of the "due process clause" in the Constituent Assembly, the judges have given to themselves the unchallengeable authority to strike down any legislation or other state action solely on the ground that it does not appear to them to be "reasonable, just and fair."

Inherent danger

Some see in this act a "naked usurpation of the legislative function under the thin guise of interpretation." Judicial law-making increasingly has become the order of the day and is welcomed by a large body of people who seem to have become disenchanted with the uncertainties of the electoral and parliamentary processes. But the danger inherent in such a position is there for every thinking person knowledgeable about history to see.

Today it may appear to be a better choice; but what is at stake is the very foundation of democracy and democratic form of Government. That is why the Supreme Court itself on several occasions has reminded us that absolute power is anathema to our constitutional order.

Criticising the role of the American Supreme Court's continuing revision of the Constitution using the Fourteenth Amendment and under the guise of interpretation, many scholars and even judges of that country have warned of the dangers involved in such an extraordinary role, "that of the nation's paramount policy-maker, a super legislature." The Court was not empowered to rewrite the Constitution; it was specifically barred from policy-making, no matter how humane or justifiable its purpose, wrote a reputed jurist (see Raoul Berger, *Government By Judiciary – The Transformation of the Fourteenth Amendment*, Harvard University Press, 1977).

The comments on the American Supreme Court's role in exercising powers of amendment equally applies to the Indian Supreme Court's assumption of extraordinary powers under the "basic structure" doctrine and the "due process clause", both alien to the text and history of the Indian Constitution. The threat involved is to the democratic system itself, which indeed is a basic structure if there is one. — **N.R.M.M**

The basic features

A FIVE-JUDGE Bench of the Supreme Court in the Sankari Prasad case (AIR 1951 SC 458) unanimously held within a year of the commencement of the Constitution that Parliament had unfettered power to amend the Constitution. This position was reiterated by majority in the *Sajjan Singh Case* (AIR 1965 SC 845) 15 years later though a minority view doubted the amendability of Fundamental Rights.

The settled law on Parliament's power to amend any part of the Constitution was reversed in the 11-judge Bench decision in the *Golaknath Case* (AIR 1967 SC 1643) by a narrow majority of 6 to 5. Chief Justice Subha Rao in effect ruled that Fundamental Rights cannot be abrogated even by an amendment of the Constitution because amendments are also laws within the meaning of Article 13. The shift in the Court's perception can be understood only in terms of the socio-political developments of the times.

The repeated judicial interventions against abolition of *zamindari* and land reform laws based on inadequacy of compensation under the right to property guarantee did create distrust between Parliament and Judiciary, each claiming to interpret constitutional intent in opposing fashion. Parliament ultimately won, though in the process people lost a valuable right originally guaranteed as a fundamental right under the Constitution. (Right to Property (Article 31) deleted from Part III by Constitution (Forty Fourth Amendment) Act, 1978).

'Cannot be altered'

The birth of the basic feature doctrine happened in the *Keshavananda Bharati Case* (AIR 1973 SC 1461). Thirteen judges by a majority of 7 to 6 overruled the decision in the *Golaknath* case to declare that the Constitution has certain "basic features" that cannot be altered or destroyed at all through the amending process. To the extent Fundamental Rights are part of the "basic features" they are unamendable. It is difficult to explain how and where the majority of judges in the *Kesavananda Bharati Case* discovered this unique doctrine to curtail parliamentary power of amendment, which the Court itself repeatedly said before was unfettered. Does the Court have such a power as part of the judicial review or in its inherent jurisdiction? Interpretation of which provision of the Constitution can lead to such a result? Can such a thin majority of just one judge re-write the constitutional text to make a substantial dent in distribution of powers and erosion of parliamentary authority in legislative business?

While these and related questions were debated again and again, the basic structure doctrine has been acted upon by the court thereby establishing judicial supremacy on matters of constitutional principles and policies. Dr. Ambedkar, Chairman of the Drafting Committee, expressed himself against such a claim by the Supreme Court. So did Jawaharlal Nehru. Both felt that such a situation would not emerge given the clarity of the text of Article 368. In fact, it is pertinent to point out the Parliamentary political system was chosen for India because of a desire to have a strong executive government in the context of the political situation arising out of Partition and the integration of States. Parliamentary sovereignty, an associated legal paradigm of strong executive government, became a powerful institutional fact in the working of the Constitution.

Lurking fear

However, lawyers and judges brought up in the legacy of the Common Law culture projected the argument that Parliament is only a creature of the Constitution and therefore primacy is with the Constitution. This logic paved the way for the acceptance of the law declared by judges having priority over all enacted law including constitutional amendments. In all these, there was a lurking fear of Parliament not respecting Fundamental Rights to the same degree as the judges thought the Constitution demanded. The "basic structure" doctrine, which the minority judges (Mudholkar J. and Hidayatulla J.) hinted at in the *Sajan Singh Case* (AIR 1965 SC 845), came in as a solid shield against claim of Parliamentary supremacy in the matter of amendments even in the face of the explicit language of Article 368.

The question is not whether such an ingenious interpretation blocking unfettered discretion to Parliament on amending the Constitution has done some good against the uncertainties of majoritarian politics or whether the Constitution is safe in the hands of the Court rather than of Parliament. The question is whether the people operating through a representative parliament are helpless to determine the structure and quality of governance and whether a small, often divided, set of appointed judges can replace democratic judgment on "basic features," whatever it means.

One cannot forget that the judgment in the *ADM Jabalpur Case* (AIR 1976 SC 1207) also came from the very same court where it unhesitatingly approved the suspension of the right to life and liberty under Emergency laws. The difficulty arises because of the uncertainty of so-called "basic features" and the inclination of the court to change its interpretation by narrow majorities from time to time.

Discomforting questions

Secularism was declared a basic feature in the *S.R. Bommai Case* (AIR 1994 SC 1918). Presumably, socialism as interpreted by the Supreme Court in the nationalisation era is also a basic feature. If so, it may raise several questions for policy-planners now involved in disinvestment and privatisation, which the court alone can clarify. Judicial review and judicial independence are considered part of "basic features." When the court claims exclusive jurisdiction in deciding judicial appointments to superior courts, interpreting the written text that way, and limits power expressly given to the Executive by the Constitution, it is legitimate to ask whether we are heading for an arrangement contrary to the spirit of parliamentary democracy and concentration of unfettered power in one institution which, incidentally, is not an elected body. Can one proceed on the assumption that judges cannot go wrong and what they decide would always be in the best interests of the people? Or is it that people themselves do not know their interests and they need to be told by an expert body? These are discomforting questions that loom large in the whenever controversial decisions on popular issues are rendered by the court. — **N.R.M.M.**

Indian Constitution

Statute panel never debated: Sorabjee

Statesman News Service

BHUBANESWAR, Sept. 19. — Legal luminary Mr Soli J Sorabjee today regretted that the Constitution Review Commission's recommendations have never been discussed or debated in Parliament, because other issues take precedence. He was addressing a seminar here on citizens' responsibilities and the Constitution. The seminar was organised by the Orissa Civil Liberty Forum.

Sarcasm was evident in his apprehension that the recommendations, which include the need to incorporate the right to vote to the list of duties in 51 (A) may gather dust. He also referred to the proposed "no work no allowance" Bill, advocated by Mr Fali Nariman, saying there would be near unanimity in rejecting such an enactment.

He also felt that the anti-defection law needed to be strengthened, by giving the power of examining a person's defection to the Election Commission, rather than the Speaker. Mr Sorabjee underscored two of the 10 fundamental duties listed in Article 51(A) — promoting harmony, the spirit of brotherhood transcending religion, dignity of women and the development of a scientific temper, humanism and spirit of inquiry. He also felt that the freedom to dissent was under siege, adding that religion and superstition have a greater hold on the masses.

The problem was how to enforce the duties enshrined in Article 51 (A), he said, rather than legal sanction and penalties, before stressing on social efforts and education.

The concept of duties and citizens' responsibilities did not emanate from the Swran Singh Committee, he said. It has been a part of our tradition. The *Bhagawad Gita* emphasises the significance of duties, when it states: "Your duty is your right."

He was candid in saying that he hated the 42nd Amendment as a totalitarian move. Mr Justice AK Patnaik and Mr Justice BP Das of the Orissa High Court also spoke about fundamental duties and Article 51 (A). Orissa advocate-general Mr BK Mohanty also delivered a brief speech.

বিষয় বিচারে বিলম্ব, মতপার্থক্য প্রধানমন্ত্রী ও প্রধান বিচারপতির

স্টাফ রিপোর্টার, নয়াদিল্লি, ১৮ সেপ্টেম্বর: বিচারব্যবস্থায় দেরির জন্য কে দায়ী, তা নিয়ে আজ প্রধানমন্ত্রী মনমোহন সিংহ ও দেশের প্রধান বিচারপতি আর সি লাহোটির মধ্যে কার্যত চাপানউতোর হয়ে গেল। গণতন্ত্রের দুই প্রধান স্তম্ভ বিচারব্যবস্থা ও আইনসভার শীর্ষব্যক্তির মধ্যে প্রকাশ্য মঞ্চে এ ধরনের চাপানউতোর এক কথায় অভিনব।

দুর্নীতি এবং জমে থাকা মামলা নিয়ে আজ প্রধান বিচারপতি ও দেশের মুখ্যমন্ত্রীদের সামনে উদ্বেগ প্রকাশ করেন প্রধানমন্ত্রী। কিন্তু তাঁর সামনে, একই মঞ্চে দাঁড়িয়ে লাহোটিও পাল্টা জানিয়ে দেন, জমে থাকা মামলার জন্য কেবল আদালতকে দায়ী করে লাভ নেই। সরকারকেও দায় স্বীকার করতে হবে। শুধু ঢিলেমির কারণ নয়, প্রতিকারের উপায় নিয়েও স্পষ্ট মতপার্থক্য ধরা পড়ে প্রধানমন্ত্রী ও প্রধান বিচারপতির কথায়। পর্যাপ্ত বরাদ্দের অভাব এবং পরিকাঠামোগত অসুবিধাও বিচারব্যবস্থায় প্রতিবন্ধকতা তৈরি করছে বলে অনুযোগ করেন প্রধান বিচারপতি।

দ্রুত মামলার নিষ্পত্তির জন্য বিচারকদের ছুটির মতো স্পর্শকাতর বিষয়টি উল্লেখ করেন মনমোহন। বিজ্ঞান ভবনে আলোচনা চক্রে তাঁর প্রস্তাব, "বিচারব্যবস্থায় কর্মদক্ষতার উন্নতির একটি সহজ উপায় হল, আদালতের কাজের দিন বাড়ানো ও লম্বা ছুটি কমানো। এতে যা কাজ হবে, তা বর্তমান বিচারকদের সংখ্যা এক চতুর্থাংশ বাড়ানোর সমান।" প্রধান বিচারপতি আবার পরিসংখ্যান দিয়ে বলেন, ভারতে প্রতি ৫০ লক্ষ মানুষ পিছু সাড়ে দশ জন বিচারপতি রয়েছেন। এই অনুপাত পৃথিবীতে সর্বনিম্ন। সময়মতো বিচারের জন্য এই অনুপাত অন্তত ৫০ হওয়া প্রয়োজন।

লাহোটি আরও অভিযোগ জানান, নতুন বিচারক নিয়োগের জন্য টাকা নেই, আধুনিক পরিকাঠামো তৈরি করার সুযোগ নেই। নিম্ন আদালতগুলি বিচারকের অভাবে ধুঁকছে। অন্য দিকে, প্রধানমন্ত্রী জোর দেন লোক আদালত জাতীয় বিকল্প মীমাংসাসূত্র বার করার দিকে। তাতে আদালতের উপরে চাপ কমবে। যাতে যথাসম্ভব কম আবেদন আদালতে জমা পড়ে, সে ব্যাপারে সরকার চেষ্টা করছে বলেও জানান তিনি। মনমোহনের বক্তব্য, "আমরা জাতীয় কর ট্রাইব্যুনাল গঠন করব ঠিক করেছি। এতে কর সংক্রান্ত মামলার ভার কমবে।" কেন্দ্রীয় সরকারের বিরুদ্ধে রাষ্ট্রায়ত্ত সংস্থা যাতে আদালতে না-যায়, তার জন্য একটি প্রস্তাব '৯৪ সালে বিবেচিত হয়েছিল। প্রধানমন্ত্রী জানিয়েছেন, এ বার সেটিও গ্রহণ করা হবে। পাশাপাশি, লাহোটির আক্ষেপ, পরিকল্পনা খাতে বিচারব্যবস্থার জন্য অত্যন্ত কম বরাদ্দ করা হয়। এবং কেন্দ্রীয় অনুদান পেতে গেলে রাজ্যগুলিকেও 'ম্যাচিং গ্রান্ট' দিতে হয়, পরিস্থিতি আরও কঠিন হয়ে পড়ে।

বিচারব্যবস্থায় দুর্নীতি হঠাতে বিচারকদের আত্মসমীক্ষা শুরু করতে হবে বলে আজ মন্তব্য করেছেন মনমোহন। বিচারব্যবস্থায় দুর্নীতির প্রশ্নে প্রধানমন্ত্রীর সঙ্গে অবশ্য একমত হয়েছেন প্রধান বিচারপতি। মনমোহন বলেন, দুর্নীতির বিষয়টি নিয়ে সরকারও চিন্তিত। তাঁর কথায়, "বিচারব্যবস্থার একাংশে ক্রমবর্ধমান দুর্নীতির দিকে একাধিক প্রাক্তন প্রধান বিচারপতি আমাদের দৃষ্টি আকর্ষণ করেছেন। বিচারের প্রক্রিয়ায় বাইরে থেকে প্রভাব খাটানো হচ্ছে না বলে যদি বিচারপ্রার্থীর দৃঢ় বিশ্বাস জন্মায়, তবেই বিচারব্যবস্থায় মানুষের আস্থা বজায় থাকবে।" বিচারব্যবস্থাকে দুর্নীতিমুক্ত করার জন্য কোনও সিদ্ধান্তের কথা না-বলে প্রধানমন্ত্রী বরং বিচার ও আইন জগতের লোকজনকেই এগিয়ে আসতে আহ্বান জানিয়েছেন। তাঁর বক্তব্য, "সংবিধান নির্মাতারা চেয়েছিলেন, আমাদের বিচারব্যবস্থার স্বাধীনতা বজায় থাকুক। পরিবর্তে যথাসম্ভব সততা বজায় রাখার দায়িত্বও বিচারকদের উপরে বর্তায়। দায়বদ্ধতা, স্বচ্ছতা বাইরে থেকে চাপিয়ে দেওয়া যায় না, উচিতও নয়।"

মনমোহনের কথার সুর ধরে লাহোটিও আশ্বস্ত করতে চেয়েছেন, বিচারব্যবস্থাকে কালিমুক্ত করতে সব রকম ব্যবস্থা নেওয়া হবে। এই জন্য ইতিমধ্যেই বিভিন্ন ব্যবস্থা নেওয়া হয়েছে বলেও জানিয়েছেন লাহোটি। তাঁর বক্তব্য, "অসৎদের এখানে কোনও জায়গা নেই। আর্দশ বিচারব্যবস্থায় সামিল হওয়ার ক্ষেত্রে যাদের আচরণ অন্তরায়, তাদের বিরুদ্ধে ইতিমধ্যে ব্যবস্থা নেওয়া শুরু হয়েছে।"

PM regrets corruption in judiciary

1999 & continuing HT 19

HT Correspondent
New Delhi, September 18

VOICING CONCERN over growing instances of corruption in the judiciary, Prime Minister Manmohan Singh said today that the judiciary should do some "soul searching" to enhance accountability and transparency in its functioning.

Inaugurating the third conference of chief justices and the chief ministers at Vigyan Bhavan, Singh said, "A mechanism of accountability, conceived and implemented by the judiciary itself, is the surest way to ensure judicial independence."

He also regretted delays and arrears in the judiciary and said that the government was committed to "provide whatever support (is) necessary to cut delays in high courts and lower levels of judiciary".

But he was all praise for the Supreme Court for having discharged its responsibility as the custodian and watchdog of the fundamental rights of citizens.

"The Supreme Court of India is a shining symbol of the great faith our people have in judiciary and has also earned high praise all over the world," the Prime Minister said.

As if responding to his concerns, Chief Justice of India R.C. Lahoti proclaimed the year 2005 the "Year of Excellence in Judiciary" and pledged utmost efforts to reduce arrears without sacrificing quality, and rise to the highest standards of conduct and behaviour.

There would be no place for corruption or indolence in the system. "I mean business," he said, adding, "Cracking of whip on those who by their conduct or behaviour do not deserve to be members of an ideal judiciary has already commenced."

SC stays proceedings in Taslimuddin case

Our Legal Correspondent

NEW DELHI, Sept. 6. — The Supreme Court (coram, Hegde, Sinha, JJ) today stayed proceedings initiated by the Bihar government in an Araria court to withdraw a case of attempt to murder and possession of arms under the Arms and Explosives Act against Union minister Md Taslimuddin.

The Bench also issued notice to the Union government, the Bihar government and the RJD MP in this regard. During resumed hearing in the case, the court made several adverse references to the "mortal hurry" in which the non-bailable arrest warrant issued against Md Taslimuddin had been suspended by the local court. On 14 August, the application was moved late in the day and the NBW suspended the same day, it observed.

Appearing for the Delhi Study Group, which has filed a petition on the matter, senior counsel Mr Mukul Rohtagi drew the court's attention to the haste with which the NBW pending for years had been suspended soon after the new government took over in May and moved to have the case withdrawn.

"This is a fit case for transfer outside the state," he said, pointing at the way the public prosecutor in the state had sought suspension of the NBW on the ground that the state had initiated a move to have the case against him withdrawn.

"Soon after the new government took over, in July the state has a turn of heart. This is not a case that can be withdrawn without the Centre's permission," he said.

Taslimuddin's counsel, Mr L Nageshwar Rao, contested the locus standi of the petitioner saying that the Delhi Study Group was in fact a front of former Union minister Mr Shahnawaz Hussein, who lost the polls to his client.

He pleaded that the Supreme Court intervene in the matter, only after the local court, before which it is likely to come up on 8 September, comes out with its order on whether it would accept the state's plea to withdraw the case. But the court dismissed his plea.

THE STATESMAN 2004

SC orders review of acquittals for appeal

New Delhi: The Supreme Court on Monday entrusted the advocate general of Gujarat the task of reviewing the decision of the state law department not to file appeals in over 200 riot cases where the accused have been acquitted by the trial court.

It is a practice in all the states that the public prosecutor, in a criminal case, gives a report to the law department about the acquittal in a case suggesting whether or not to file appeals in the higher court. Resorting to this unprecedented measure, a bench comprising justice Ruma Pal, Justice S B Sinha and Justice S H Kapadia said the AG would scrutinise all the orders of acquittal given by the trial courts and suggest whether or not an appeal should be filed in these cases.

Going a step further, the bench said, in future, in all cases pertaining to acquittals in riots cases, the AG's view would be taken by the law department before deciding whether or not an appeal should be preferred by the state.

The court gave him four months time to go through the files and then file a report before it stating the progress in the matter. Last week, the court had formed a 10-member committee of top police officials in the state to consider whether or not it was required to reopen the cases earlier closed by the investigating officer.

Meanwhile, the court stayed the trial proceedings in a case pertaining to killing of two British nationals by a mob during the post-Godhra riots on a petition filed by their relative Imran Mohammad Salim Dawood. The petitioner has sought CBI probe into the case and its transfer outside Gujarat.

Appearing for the petitioner, senior advocate Indira Jaising alleged that the Gujarat police showed complete apathy in the case and did not even recover the body of the victims. Agencies

INDIAN EXPRESS

19 AUG 2004

MPs flay SC verdict on right to strike

Seek legislation to make right to strike a fundamental one

EXPRESS NEWS SERVICE
NEW DELHI, AUGUST 18

CUTTING across party lines, members of the Lok Sabha today criticised the Supreme Court verdict striking down the right to strike, and demanded that the government either bring in a legislation making the right to strike a fundamental right or move a special leave petition (SLP) against the Apex court's verdict.

In his reply to the calling attention motion on the issue, Minister of Personnel Suresh Pachauri said the SC verdict on the sensitive issue was "under review" and therefore it would not be "proper" to reveal the government's future moves. He, however, read out portions of the Common Minimum Programme to underline the UPA government's commitment to protect the interests of workers.

At the prompting of Speaker Somnath Chatterjee, the minister also said the government was "open" to the idea of calling a meeting of leaders of all political parties to discuss the issue.

Earlier, Left MPs Basudeb Acharia (CPM) and Gurudas Dasgupta led the outcry against the SC "obiter dicta" against the right to strike when the Apex court was dealing with a case related to the Tamil Nadu government's action against striking government employees.

The issue did not relate just to government employees but to the working class a whole, and the SC order violated not just the right of workers but affected India's democratic traditions, several MPs said.

Dasgupta said when he and another trade union leader had asked former prime minister Atal Behari Vajpayee about the NDA government's stance on the SC verdict, Vajpayee had said, "*Hum bhi khush nahin hain*" (we are not happy either). But the NDA government had done nothing about it.

The right to strike had been gained by the working class after immense struggle and it was used as a "last resort" and not "just for fun", he added.

Acharia said the people of Tamil Nadu had given a "mandate" against the arbitrary action of the Jayalalithaa regime as had the rest of the country by voting out the "anti-people" and "anti-working class" NDA government. The UPA government should respect the mandate and bring in a legislation to undo the SC verdict.

Although their names were not listed, several other members, including Anant Geete (Shiv Sena), Shailendra Kumar (SP), Devendra Prasad Yadav (RJD), Raghunath Jha (RJD), and V. Radhakrishnan (CPM) echoed the demand for government intervention to overturn the verdict.

The only member to take a somewhat different view on the matter was Manvendra Singh (Cong), who felt employees manning essential services such as hospitals or oil refineries should not be allowed to strike at will.

In his reply, Pachauri said industrial workers were governed by the Industrial Disputes Act and were entitled to the right to strike; industrial workers in public utilities could go on strike after giving 14-day notice; and government employees could seek various remedies through the consultative machinery or arbitration.

Supreme Court verdict against strike under review, says Minister

By Our Special Correspondent

NEW DELHI, AUG. 18. The Central Government said today that the recent Supreme Court judgment barring employees from resorting to strike is under review by it.

"The Supreme Court judgment is under review. It is not proper for me to mention what is the viewpoint of the Government," the Minister of State for Personnel and Public Grievances, Suresh Pachauri, said responding to a calling attention motion in the Lok Sabha.

The UPA Government was fully committed to protecting the interests of workers and employees, Mr. Pachauri said and added that the Supreme Court had, in its judgment in T.K. Rangarajan vs the Government of Tamil Nadu and others case on August 6, 2003, ruled that no right to strike — whether fundamental, statutory, equitable or moral — was available to government employees.

'Amend Constitution'

The members, who took part in the debate, said that Parliament was supreme and it should amend the Constitution to make the right to strike by workers and employees a fundamental right.

About the suggestion by the members that the Government convene an all-party meeting to find a way out, the Minister said, "we are open to it."

Mr. Pachauri said the Government's Common Minimum Programme was committed to the welfare of all workers, particularly those in the unorganised sector, who formed 93 per cent of the workforce. It had firmly rejected any automatic hire and fire policy but would make the required changes in the labour laws keeping the workers' interest in mind.

Industrial workers, covered under the Industrial Disputes Act of 1947, were entitled to the right to strike. In the case of those employed in public utility services, certain restrictions were there as these came under essential services. However, the employees had the right to go on strike provided they gave a 15-day notice.

So far as Government employees were concerned, he said they were covered under the conduct rules and their rights were protected under Articles 14, 16 and 311 of the Constitution. These employees also enjoyed Constitutional remedies under Article 226 besides taking recourse to Article 32.

Regarding the ILO Convention dealing with the freedom of association, Mr. Pachauri said the Government would like to see what was possible. It "is alive to [the] legitimate concerns" of its employees, especially for a fully functioning redress mechanism. The Joint Consultative Machinery scheme had been working for many years and had proved its usefulness both to the Government and its employees.

Initiating the discussion, A. Krishnaswamy, DMK, urged the Centre to ensure a comprehensive statutory right to strike for the Central and State Government employees.

The CPI(M) leader, Basudeb Acharia, said the Supreme Court observations had resulted in widespread resentment among employees. The right to strike was a "fundamental" right and the Government should enact a law to protect the right.

Gurudas Dasgupta, CPI, and R. Senthil, PMK, said the rights of the State Government employees could not be ignored. V. Radhakrishnan, CPI(M), said the Government should consider the option of moving a review petition in the Supreme Court.

SC for panel on riot cases

Our Legal Correspondent

NEW DELHI, Aug. 17. — The Supreme Court (coram, Pal, Sinha, Kapadia, JJ) today directed the Gujarat government to set up a high-level team, comprising seven IGs of the state, to re-look at the closure reports filed by the Gujarat police in some 2000 odd riot-related cases to establish whether these needed to be freshly investigated or reinvestigated.

The court directed that, if necessary, reinvestigation shall be taken up by a person who has not undertaken the investigation earlier. And if it is decided not to reinvestigate a particular case, the reasons for it should be recorded and put on the Internet so that they are accessible to all, the court ruled.

The high-level team would submit its report on the closure reports to the additional DGs who shall vet it and pass it on to the state DGP. He shall, in turn, submit a quarterly status report on the action taken on the matter to the court as per its directions.

Disposing of several riot-related petitions, at one point the court admonished the state government saying: "This is an abnormal, unprecedented situation. Not because of the rioting as it occurs in many other states as well but because of the state's response to it."

The court asked the Gujarat Advocate-General to appear before it on Monday and inform the court of the procedure that is followed by the state government in deciding whether to appeal a case in the higher court or not. It also asked the state government to furnish details by that day regarding the number of acquittals up to 19 August.

THE STATESMAN 18 AUG 2004

Govt to convene CJs, CMs meet on judicial reforms

Our Legal Correspondent

NEW DELHI, Aug. 9. — The government will convene a meeting of Chief Justices and Chief Ministers of all states in mid-September to formulate a "charter" on judicial reforms, the law and justice minister, Mr HR Bhardwaj, said here today.

The meeting will be inaugurated by the Prime Minister, he said.

Reaffirming the United Progressive Alliance's commitment to judicial reforms, the minister said that the process of upgrading the court infrastructure would continue. "The government has already sanctioned Rs 150 crore to upgrade the infrastructure in the courts and this process will be pursued further," he said.

He also announced that the government would set up a number of Alternative Dispute Resolution (ADR) courts to expedite corporate cases. "The Finance Commission has already earmarked Rs 10 crore for the establishment of such dispute resolutions to dispense with corporate and civil cases as fast as possible," he said.

He promised that a chain of such courts would be in place within two months. The proposed ADRs would comprise retired judges, eminent personalities and technocrats from India and abroad.

The minister was speaking at a seminar on justice and speed organised by the Associated Chambers of Commerce and Industry of India along with the Indo-German and Indo-American Chambers of Commerce.

On state funding of elections, Mr Bhardwaj said that a political consensus is needed to make it a reality.

SC notice on Akshardham

NEW DELHI, Aug. 9. — The SC today issued notices to the UP irrigation department, the DDA and the Sri AK Iyar Parushottan Sansthan on a petition challenging the construction of the Akshardham temple on the Yamuna river bed.

The petition filed by the UP State Employees Confederation alleged that the Sansthan "took unauthorised possession of the land which lies in an environmentally sensitive zone and has started constructing a large temple complex". — SNS

THE STATESMAN 10 AUG 2004

বন্‌ধ ডাকায় সেনা-বিজেপি'কে দিতে হবে ৪০ লক্ষ

নিজস্ব সংবাদদাতা, মুম্বই, ২৩ জুলাই: আপাতত তৃণমূল নেত্রী মমতা বন্দ্যোপাধ্যায়ের জন্য দুঃসংবাদ।

কেন?

এই প্রশ্ন ওঠা স্বাভাবিক।

উত্তর মিলবে মুম্বই হাইকোর্টের একটি রায়ে। বন্‌ধ ডেকে জনজীবন অচল করার জন্য মুম্বই হাইকোর্ট আজ বিজেপি এবং শিবসেনাকে ক্ষতিপূরণ দিতে বলেছে। এক, দু'টাকা নয়—দুই রাজনৈতিক দলকে ২০ লক্ষ টাকা করে মোট ৪০ লক্ষ টাকা ক্ষতিপূরণ দিতে হবে। একটি জনস্বার্থ-মামলার রায়ে মুম্বই হাইকোর্টের অস্থায়ী প্রধান বিচারপতি এ পি শাহ এবং এস ইউ কামদার ওই রায় দিয়েছেন। হাইকোর্টের ওই রায়ে বলা হয়েছে, ক্ষতিপূরণের টাকায় একটি তহবিল গড়া হবে। তহবিল খরচ করা হবে জনস্বার্থে।

গত বছর ২৯ জুলাই মুম্বইয়ের ঘাটকোপারে একটি বাসে বিস্ফোরণে ৪ জন মারা যান। জখম হন ৪০ জন। পরদিন, ৩০ জুলাই ২৪ ঘন্টা মুম্বই বন্‌ধের ডাক দেয় বিজেপি-শিবসেনা। জোর করে বন্‌ধ করায় শহরের প্রায় ৫০ কোটি টাকারও বেশি ক্ষতি হয়, এই অভিযোগ জানিয়ে মুম্বই হাইকোর্টে একটি জনস্বার্থ মামলা দায়ের করে 'অগ্নি' নামে মুম্বইয়ের একটি স্বেচ্ছাসেবী সংস্থা। মামলার আবেদনে বলা হয়, যে সব রাজনৈতিক দল গায়ের জোরে বন্‌ধ করেছে, তাদেরই ক্ষতিপূরণ দিতে হবে। ওই আবেদনে বিজ্ঞাপন জগতের দিকপাল ও অভিনেতা আলেক পদমসি, মুম্বই পুরসভার প্রাক্তন কমিশনার বি জে দেশমুখ প্রমুখ স্বাক্ষর করেন। জনস্বার্থ মামলার আবেদনে উল্লেখ করা হয়, একদিন শহর অচল হয়ে গেলে সাধারণ মানুষের প্রচুর ক্ষতি হয়। বন্‌ধ কেউ না চাইলেও শিবসেনা দল জোর করে মানুষকে কাজে যেতে বাধা দেয়। বিজেপি শিবসেনার সঙ্গে হাত মিলিয়ে বন্‌ধ সফল করে।

মুম্বই হাইকোর্টের বিচারপতিদ্বয় বলেছেন, বন্‌ধের ফলে সাধারণ মানুষের অবশ্যই হয়রানি হয়। এই ভাবে বন্‌ধ ডাকার জন্য বন্‌ধ আহ্বানকারীদের কটাক্ষও করেন দুই বিচারপতি।

এই রায়ের পরে মমতা কি ২ অগস্টের বন্‌ধের ডাক প্রত্যাহার করবেন? না, করবেন না। তিনি বলেন,"মুম্বই হাইকোর্ট কী রায় দিয়েছে, আমি তা পরিষ্কার জানি না। কোনও সরকার যদি মানুষের গণতান্ত্রিক অধিকার কেড়ে নেয়, তা হলে ধর্মঘট ডাকাও গণতান্ত্রিক অধিকারের মধ্যেই পড়ে। কোনও অবস্থাতেই আমরা এই বন্‌ধ প্রত্যাহার করছি না।"

মমতা বনধের ডাক প্রত্যাহার করুন, আর নাই করুন, সাধারণ মানুষ কিন্তু বন্‌ধের রাহুগ্রাস থেকে মুক্তির একটি দিশা অন্তত পেলেন। কিছু না হোক মুম্বই হাইকোর্টের আদেশ উল্লেখ করে আদালতে যাওয়ার পথ তাদের সামনে খুলে গেল।

এর আগে সুপ্রিম কোর্টও জোর করে সাধারণ মানুষের উপরে বন্‌ধ চাপিয়ে দেওয়া যাবে না বলে রায় দিয়েছিল। কিন্তু রাজনৈতিক দলগুলি, ট্রেড ইউনিয়ন সেই রায়কে পাশ কাটিয়ে বন্‌ধ করেছে। সব সময়ই বলা হয়েছে, সাধারণ মানুষের উপরে বন্‌ধ চাপিয়ে দেওয়া হয়নি। সাধারণ মানুষ স্বতস্ফূর্ত ভাবেই বন্‌ধে সামিল হয়েছেন।

মুম্বই হাইকোর্টের মামলাতেও একই কথা বলা হয়েছে অভিযুক্ত দুই রাজনৈতিক দলের পক্ষ থেকে। আজ আদালতের রায়ের পরে শিবসেনার প্রতিক্রিয়া ছিল তাই-ই। শিবসেনার মুখপাত্র সুভাষ দেশাই বলেন, সেদিনের বন্‌ধ ছিল স্বতফুর্ত। জোর করা হয়নি। বন্‌ধের পক্ষে বৃহত্তর মুম্বইয়ের সকলেই ছিল। সেদিন মুম্বইয়ের ঘাটকোপারে বোমা বিস্ফোরণ ঘটিয়ে জঙ্গিরা হিন্দু-মুসলিমের মধ্যে বিভেদ সৃস্টি করতে চেয়েছিল। তারই প্রতিবাদ করতে মুম্বইয়ের জনগণকে সঙ্গে নিয়ে বন্‌ধ ডাকা হয়। একই কথা বলেন রাজ্য বিজেপির শীর্ষ নেতা ও বিধায়ক অতুল শাহ।

শিবসেনা-বিজেপি আজকের রায়কে স্বাগত না জানালেও আজ অন্য রাজনৈতিক দল ও অনেক মুম্বইবাসী রায়ের খবরে খুশি। রায়ের খবর এই প্রতিবেদকের কাছে শুনেই উচ্ছাস প্রকাশ করেন কংগ্রেসের শীর্ষ নেত্রী ও মহারাষ্ট্র কংগ্রেসের পর্যবেক্ষক মার্গারেট আলভা। রাজ্য কংগ্রেসের সদর দপ্তর দাদারের 'তিলক ভবন'-এ কংগ্রেস সভানেত্রী প্রভা রাওকে পাশে বসিয়ে মার্গারেট আলভা বলেন, "জোর করে বন্‌ধ ডেকে শহরকে স্তব্ধ করা আইন বিরুদ্ধ এবং সুপ্রিম কোর্টের নির্দেশ অমান্য করা। শিবসেনা ও বিজেপি তাই করেছে।" একই কথা বলেন শরদ পওয়ারের এনসিপি-র মুম্বই প্রধান নরেন্দ্র বর্মা। তিনি বলেন, "প্রতিবাদ করার ভাষা আছে। কিন্তু শিবসেনা-বিজেপি সেই ভাষা ব্যবহার করে না।"

দিল্লিতে বিজেপি নেতা মুখতার আব্বাস নাকভি বলেন, "এটি গণতন্ত্র বিরোধী রায়। বন্‌ধ চালাকালীন যদি দুর্ঘটনা ঘটে, তা দুঃখজনক। কিন্তু বন্‌ধ ডাকা যাবে না, এমন সিদ্ধান্ত রাজনৈতিক অধিকার খর্ব করছে।"

আর কলকাতার সিপিএম? বামফ্রন্টের চেয়ারম্যান তথা সিপিএম নেতা বিমান বসু বলেন, "সাংবাদিকদের মুখে কিছু শুনে আমি কোনও প্রতিক্রিয়া জানাই না।"

আশা করা যায়, বিমানবাবু সব জেনে পরে প্রতিক্রিয়া জানাবেন।

Explain, SC tells Centre

PRESS TRUST OF INDIA
NEW DELHI, JULY 14

THE Supreme Court today issued notices to the Centre while admitting a petition challenging the removal of four governors before expiry of their tenure.

A three-judge bench headed by Chief Justice R.C. Lahoti admitted the petition filed by former BJP MP B.P. Singhal challenging the removal of the governors of Uttar Pradesh, Gujarat, Haryana and Goa.

The UPA government had removed Vishnu Kant Shastri (UP), Kailashpati Mishra (Gujarat), Babu Parmanand (Haryana) and Kidar Nath Sahni (Goa), all with BJP-RSS background, on July 2, citing their "ideological background".

Union Home Minister Shivraj Patil had said in Parliament on Monday that it was within the government's constitutional and legal rights to remove the governors. Patil had recently said that the removal of the governors, who were appointed by the previous BJP-led NDA government, was due to their ideological differences with the present government.

REMOVAL OF GOVERNORS

The petitioner who challenged the Centre's decision, requested the court to direct the UPA government "to produce the files and papers before the court on the basis of which the President was satisfied before passing the notification."

Singhal said in his petition that the dismissal of any governor must be based on bonafide use of power which should be transparent and in keeping with the Constitution and the Union government must be made accountable for any misuse of power in this regard.

It is more so as there was no allegation against any of the four governors of violating the Constitution nor any material to show that they were misusing their offices, he said.

The petitioner said the framers of the Constitution were of the definite view that the governor's office must be kept above politics and they should be allowed to continue in office for a period of five years. Calling the dismissal of governors as an "indicator of things to come", the petitioner apprehended that the democratically elected governments in these four states could be dismissed.

CRISIS IN ARUNACHAL PRADESH

Governor's reports under study: Patil

By Vinay Kumar

NEW DELHI, JULY 9. The Centre can take action in Arunachal Pradesh only if President's rule is imposed there, the Union Home Minister, Shivraj Patil, told the Rajya Sabha today.

He said the Home Ministry was examining the reports sent by the Governor, V.C. Pande, and ascertaining the facts before taking any action in the State where swift developments saw the Apang Cabinet recommending the dissolution of the Assembly three months ahead of its term.

Mr. Pande had on July 7 recommended President's rule in the State after the Chief Minister, Gegong Apang, recommended the dissolution of the Assembly. The crisis began with the downsizing of the 41-member Ministry, which had to be brought down to 12 because of the Constitutional requirement. Sensing trouble from the potential rebels in the ruling BJP-led coalition, Mr. Apang recommended the dissolution but the Governor's recommendation for President's rule has put him in a fix.

"I cannot give you any assurance whether President's rule will not be imposed in the State. I cannot say yes or no at present," Mr. Patil said even as the Opposition Bharatiya Janata Party members were on their feet seeking an assurance that the Centre would not intervene any further in the State. He was replying to clarifications in the House on his statement regarding the dissolution of the Assembly.

Mr. Patil said the Governor had sent three letters to the President between July 7 and 8 on the political developments in the State with his recommendations. On allegations that the Governor was under duress while writing to the President, he said the Ministry was gathering information on who had drafted the letter and who had put the signatures on it. Though an FIR had been filed and the police were looking into it, the Ministry was seeking clarifications on why the police were not called when the Governor had been "gheraoed."

Mr. Patil said the first letter was sent on July 7 to the President on the developments in the Assembly and its dissolution. The crisis began on July 6 when the exercise for downsizing the Ministry was undertaken. The Governor's second letter, recommending action under Article 356 (1) (c) of the Constitution, was sent on the evening of July 7 after a group of about 25 former members of the Assembly belonging to different parties met him and alleged that the dissolution was illegal and undemocratic.

On July 8, the Governor wrote another letter to the President stating that he had further reviewed the situation in the light of the representations submitted by various groups of the Assembly and after taking into considerations the constitutional aspects of the issue. The Governor said the dissolution of the Assembly already notified was final. The law and order situation was normal and there was no constitutional breakdown and, therefore, his earlier recommendation to invoke Article 356 (1) (c) may be ignored.

Replying to a query, Mr. Patil said the Governor's aide-de-camp (ADC) was "tipsy" during the meeting with the former MLAs.

The House was adjourned twice, first when the Home Minister himself came late and then after the Minister's statement when both the BJP and the Congress members traded charges.

The Chairman ruled that in keeping with the traditions and rules, there could not be any discussion on the statement made by the Minister but only clarifications.

The BJP members, M. Venkaiah Naidu, Arun Jaitley, S.S. Ahluwalia, M.M. Joshi and Sushma Swaraj, alleged that the former MLAs had indulged in "high-handedness, used threats and abusive language and forced him to write the letter to the President."

Later, Mr. Patil made a similar statement in the Lok Sabha.

THE HINDU 10 JUL 2004

Governors and Founding Fathers

We need to evolve healthy conventions with regard to removing governors.

SOLI J. SORABJEE

THE subject of the appointment and removal of governors was extensively discussed in the Constituent Assembly. The Founding Fathers did not favour the appointment of a governor by the process of election. The main reason was that under our constitutional scheme, the governor in discharge of almost all his functions, is required to act according to ministerial advice. The eminent jurist, Alladi Krishnamachari, was of the view that in the case of an elected governor "there is a danger of clash between the ministers and the governor". Jawaharlal Nehru apprehended that an elected governor could encourage separatist provincial tendencies. Ultimately, it was decided that the governor be appointed by the president for a term of five years but holding office during the pleasure of the president.

Under the Constitution, the only qualifications for a governor's appointment are that he should be a citizen of India and 35 years old. Nonetheless the Founding Fathers were deeply concerned about the criteria for the appointment of a governor. In Alladi's view, the governor should be a person of "undoubted ability and position in public life who, at the same time, has not been mixed up in provincial party struggle and factions". K.M. Munshi and T.T. Krishnamachari were emphatic that the person to be appointed as governor should be "free from the passions and jealousies of local party politics" and be able to "hold the scales impartially as between the various factors in the politics of the State". Nehru's ideal was to have "eminent people, sometimes people who have not taken too great a part in politics". It was hoped that the governor "must be acceptable to the government of the Province" and that there would be a convention of the Union government consulting the provincial cabinet in the selection of the governor and be guided by its advice.

This hope has been sadly belied. The Sarkaria Commission found that consultation with chief ministers was not taking place. The painful fact is that, in many cases, governors are foisted upon the states. Apart from some honourable exceptions, persons who do not remotely fulfil the expected criteria have been appointed as governors, some of whom have indulged in political partisanship whilst holding the high office. Every government has had its share of transgression in varying degree.

What was the Founding Fathers' conception of the position and role of a governor? Krishnamachari unequivocally stated in the Constituent Assembly that "we do not want ... to make the governor of a province an agent of the Centre at all". In May 1979, a Constitution Bench of the Supreme Court categorically ruled in *Hargovind vs Raghukul Tilak* that the governor cannot be "regarded as an employee of the Government of India...He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India".

High constitutional office holders, like the president, and judges of the Supreme Court and High Courts, can be removed under our Constitution only on the ground of proven misbehaviour or incapacity. The same position obtains in the case of the chairman or any other member of the Public Service Commission. Any member of a civil service of the Union or a state, however low in the hierarchy, cannot be removed without being accorded a reasonable opportunity of being heard. Yet, the manner in which the Constitution has been worked, it would appear that the head of a state — the governor — has no security of tenure nor any safeguard against his or her removal.

Did the Founding Fathers of the Constitution contemplate such a bizarre situation? Professor K.T. Shah, in the course of the debates, stressed that "we must not leave the governor to be entirely at the mercy or pleasure of the president and so long as he acts in accordance with the advice of the constitutional advisers of the province he should, I think, be irremovable during his term of office". Shibbanlal Saksena apprehended that in the absence of safeguards "he (the governor) will be purely a creature of the president, that is to say, the prime minister and the party in power at the Centre. When once a governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the president at his whim...Such a governor will have no independence..."

The pleasure of the president — which has to be exercised in keeping with ministerial advice — cannot be equated with that of Henry the VIII

B.R. Ambedkar's answer to these criticisms is highly significant. He emphasised that it was "quite unnecessary to burden the Constitution with all these limitations stated in express terms...I therefore think that it is unnecessary to categorise the conditions under which the president may undertake the removal of the governor". Thus Dr Ambedkar clearly visualised that the power of removal of a governor was conditional, not absolute.

The power of removal, although apparently absolute, is subject to an implied limitation, namely, that it can be exercised only in cases of violation of the Constitution or for the commission or omission of acts by the governor which render him or her unfit to occupy the gubernatorial office. The doctrine of implied limitation has been recognised by our Supreme Court.

Consequently, the pleasure of the president — which has to be exercised in keeping with ministerial advice — cannot be equated with that of Henry the VIII, the much married monarch, who cast away his wives at his own whim and fancy. Exercise of any power, be it under the Constitution or under a statute, must be informed by reason and based on rational grounds. It cannot be arbitrary or capricious. It must be preceded by a fair and meaningful opportunity of an explanation being given to the party affected by the decision. Above all, any action which is mala fide, or actuated by extraneous considerations, should be struck down.

In these matters, forensic battles and stalling of parliamentary proceedings are not the ultimate solution. The need of the hour is to evolve healthy conventions as envisaged by our Founding Fathers with regard to the appointment and removal of governors and thus ensure smooth functioning of our parliamentary democracy.

The writer is a former attorney general for India

INDIAN EXPRESS

9 JUL 2004

THE HINDU

Removal of Governors

By V.R. Krishna Iyer

THE CONSTITUTION being supreme, all powers are derived under it. The basic structure and the sublime semantic of the *Suprema Lex* circumscribe the instrumentalities of governance and when any controversy arises regarding the scope of authority, and limits of legality come in for interpretation, the Supreme Court pronounces what the law is and that declaration is binding on all authorities, civil and judicial.

The highest office under the Constitution is that of the President of India who will preserve, protect and defend the Constitution and the law. Among the powers of the President is the appointment of the Governor who shall hold office during his pleasure. What are the conditions subject to which the President's pleasure is exercised? In the Sarkaria Report, it is recommended that a person to be appointed as Governor should satisfy the following criteria:

He should be eminent in some walk of life; he should be a person from outside the State; he should be a detached figure and not too intimately connected with the local politics of the State; and he should be one who has not taken too great a part in politics generally, and particularly in the recent past.

In the selection of the Governor, the President shall act in accordance with the aid and advice of the Cabinet. In fact, the 'aid and advice' tendered by the Prime Minister shall bind the President (*vide* Samsher Singh Case (1974 SC 2192)). The Sarkaria Report recommends "that the Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too for some extremely compelling reasons. It is indeed very necessary to assure a measure of security of tenure to the Governor's office.

The Constitution is too sublime, the President and the Governor too paramount to be pettifogged about.

"While it is not advisable to give the same security of tenure to a Governor as has been assured to a Judge of the Supreme Court, some safeguard has to be devised against arbitrary withdrawal of President's pleasure; putting a premature end to the Governor's tenure. The intention of the Constitution-makers in prescribing a five-year term for this office appears to be that the President's pleasure on which the Governor's tenure is dependent, will not be withdrawn without cause shown. Any other inference would render clause (3) of Article 156 largely otiose. It will be but fair that the Governor's removal is based on procedure which affords him an opportunity to explain his conduct in question and ensures fair consideration of his explanation, if any," since it is in keeping with the principles of national justice. It is fundamental that the Court strikes down any executive action if arbitrary and the presidential pleasure if tainted by arbitrariness, malignity or frivolousness. 'Pleasure' in the context of presidential power is not mere fancy, fury nor prejudice. It has to be a rational exercise, intelligible and intelligent and consistent with the dignity of constitutional authority. We must remember that a Governor is one in whom executive power of the State is vested, and authority for selection of the Chief Minister in critical situations is also bestowed. The discretion is thus serious and solemn. To remove a Governor on sheer pleasure of (the President) the Prime Minister is to stultify the President's office and make a joke of the office of the Governor.

India is a federal state in a fundamental sense. Although there are Central features whittling down federalism and quasi-federal dilution, to undo the federal character is to violate the basic structure. The Governor is the head of the State's *ad repository* of executive power and to debunk his stature and status is to frustrate the political ethos of the Constitution.

The Constitution is too sublime, the President and the Governor too paramount to be pettifogged about. If the Prime Minister or the party in power at the Centre is allergic or anathematic *vis-à-vis* the Governor, absent sound ground, farcically jettisoning the head of the State, what is at stake is the reverence of the people for the Constitution. This shall not be. Arbitrary exercise of power, victimising and humiliating the Governor, is legally an abuse of power and will be as absurd as the Governor dismissing a Minister, rejecting the advice of the Prime Minister. The apex court is the sentinel on the *qui vive* and with a due sense of gravity enforces the authority of the Constitution.

Maybe, there is a vast discretion covered by the expression 'Presidential pleasure' in Article 156 (1) of the Constitution. Even so, the court has a constitutional vision and sees not the might of the Union, but the right writ in the federal structure.

Self-restraint is needed to transcend the politics of polarization

Governor controversy

PRATAP BHANU MEHTA

The controversy occasioned by the dismissal of the governors of four states has once again thrown up a complicated set of issues. This controversy ought to be the cause of concern amongst citizens of all political persuasions. Even citizens who loath the Bharatiya Janata Party and think of the Rashtriya Swayamsevak Sangh as an ideological menace ought at least to feel conflicted about what has just transpired. It would be unwise to settle the question of the constitutional propriety of the Centre's actions merely with reference to the ideological persuasion of the governors concerned or with unduly narrow interpretations of the Constitution. For in a democratic government, forms ought to matter since, in the final analysis, these are our only protection against arbitrary decisions.

That the office of the governor has become politicized is beyond doubt. But this politicization dates back to as early as 1952 and the first major controversy over the governor's role is still instructive. The governor and Congressman, Sri Prakash, invited C. Rajagopalachari to become chief minister. This was despite the fact that the United Front under T. Prakasam had won more seats than the Congress and Rajagopalachari had not even been elected to the legislature, but was nominated to the upper house. Jawaharlal Nehru and Rajendra Prasad both opposed Rajagopalachari's becoming chief minister.

Nehru made two points. First, that the Congress must avoid giving the impression that "we stick to office and want to keep others out at all costs". His second worry was that inviting a "nominated member to form a government is open to the criticism of being against the spirit of the parliamentary system, for the member has no support and therefore no mandate from the electorate". But Nehru and Rajendra Prasad were unable to undo events.

This controversy highlighted in miniature the issues that have subsequently dogged the office of the governor. The first issue is: to what extent ought governors to exercise their discretion? What should be the norms that govern the conduct of governors? The second issue is: what should be the Central government's relationship to governors already appointed? Although related, these are, in principle, two somewhat independent issues. Nehru clearly thought that while the governor had not acted with propriety, the Centre still had no easy right to intervene, even though the governor was of his own party. Thus it is possible to hold the view that governors have not always acted with propriety and to still insist that governors be given full autonomy and constitutional protection.

Much has been made of the claim that the governors serve at the pleasure of the president, and by implication the government of the day. But this is not all there is to the story. The Supreme Court has unanimously ruled that just because the governor is appointed by the president and holds office at the president's pleasure "does not make the Government of India an employer of the Governor". In *Hargovind versus Raghukul Tilak*, the Supreme Court asserted that the governor is not amenable to the directions of the government of India, nor is he accountable to them for the manner in which he carried out his functions and duties. His is an independent constitutional office which is not subject to the control of the government of India.

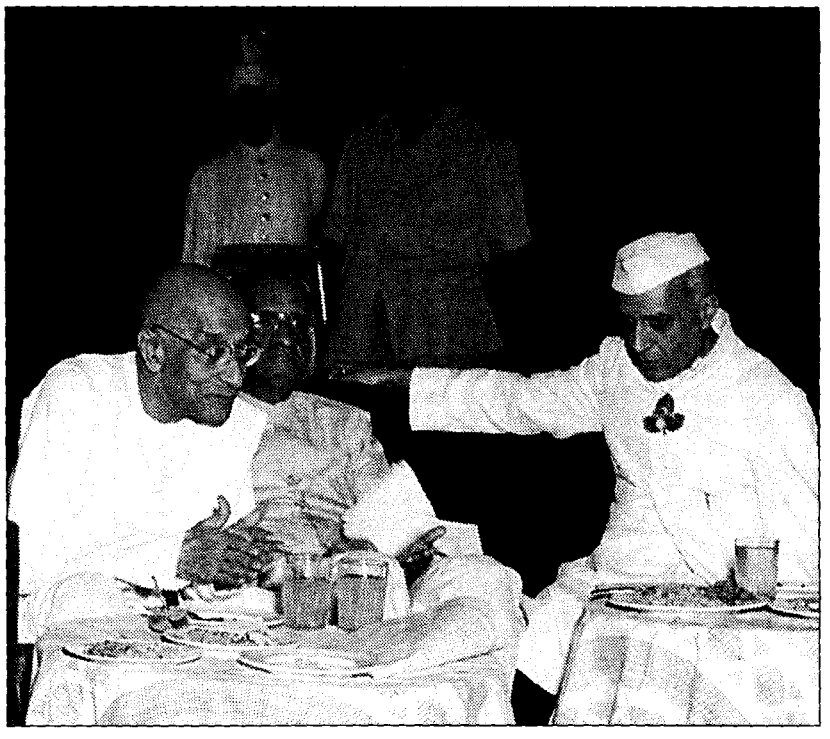
In other words, the governor is a head of a state whose independence has to be secured, both from political forces within the state and also the Centre. Many proposals — ranging from the requirement that the governor be from out of the state, to the requirement that he be given one fixed term and one fixed term only — have been discussed in numerous committees and commissions. But it is difficult to imagine that the independence and dignity of the office can be secured if the phrase "serves at the pleasure of the president" is interpreted so literally as to facilitate the removal of governors almost at will.

There are a few other bad arguments that have been used to justify the dismissal of governors. It is often claimed that changing governors is standard political practice, that the opposition has done the same. But one would have thought that a new government would want to live up to better constitutional conventions, not live down to the worst political ones. The second argument given is that the incumbents in question were political appointees. This charge is more insidious than is being recognized. First, the line between political and non-political is itself a political judgment; it is not a self-evident distinction. Second, being "political" cannot be a disqualification from office in a democracy. The issue is the conduct of the relevant person in office, the manner in which they have discharged their duties. The equation of political with bad and non-political with good is either meaningless or rests on a dangerous fallacy.

Third, the relevant governors are said to have had strong links with the RSS. But this is a tricky issue. I am as opposed to the RSS and the BJP as anyone, but it is stretching the proprieties of constitutional discourse to suggest that anyone with affiliation to these organizations is automatically disqualified from holding office. So long as these organizations are legal, and so long as the individuals concerned have not been implicated in any crime, they ought not to be automatically debarred from office. Any democracy has to wrestle with difficult questions about the extent to which it should tolerate those whose ideological persuasions are at some level incompatible with constitutional values, whether they be from the revolutionary left or virulent right. But if we make ideological persuasion a litmus test for continuance in office, we jeopardize the project of creating a free society. Freedom, if it is meaningful, has also to mean freedom for the thought we hate, provided all the constitutional values are being protected.

The bar for removing governors cannot be merely ideological leaning. We have to demonstrate how those leanings made an impact on their functioning in office. In short, there has to be some specific charge to justify removal. In the absence of such a specific charge, mockery is made of the office of the president. Admittedly, the governors serve at the pleasure of the president, but the changing pleasure of the president ought at least to refer to some specific misconduct on the part of governors, or his pleasure comes across as fickle indeed.

Besides, from a Congress point of view, the removal of governors is bad politics. It quickly took the focus off their governance agenda, including an important speech the prime minister made on decentralization. It raised the old bogey of the Congress's weakness on issues of federalism. The ubiquitous use of phrases like "purge" reminds citizens more of Stalinist politics than liberal norms. It gives the BJP and RSS the only issue they thrive on, the sense of victimhood. Most citizens ought to hope that the ideological agendas of the BJP are defeated forever, but defeating them will require not just muscle power but also political tact. And most of all it will require convincing the electorate that we finally have a government in power that thinks of long-term constitutional proprieties, whose own actions are above the taint of narrow partisanship. This government has a unique opportunity to transcend a politics of polarization. As Nehru understood, this sometimes requires self-restraint and tolerance, even of those whom we have good reason to suspect.

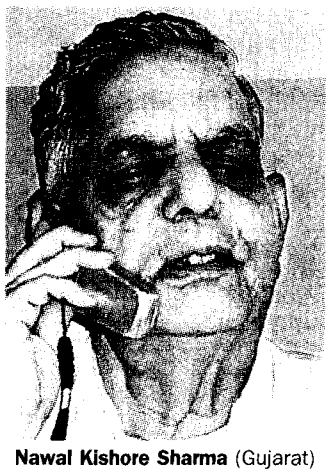


"Nehru and Rajendra Prasad both opposed Rajagopalachari's becoming chief minister"

The author is visiting professor of government, Harvard University

New Governors for four States

A.R. Kidwai (Haryana)



Nawal Kishore Sharma (Gujarat)

T.V. Rajeshwar (Uttar Pradesh)

S.C. Jamir (Goa)

By Our Special Correspondent

NEW DELHI, JULY 5. The President, A.P.J. Abdul Kalam, today appointed Governors for Gujarat, Goa, Haryana and Uttar Pradesh.

A senior Congress leader and former Union Minister, Nawal Kishore Sharma, is the Governor of Gujarat; the former Nagaland Chief Minister, S.C. Jamir, will be the Governor of Goa; A.R. Kidwai, a former Bihar Governor and now Rajya Sabha member, will take up the gubernatorial responsibilities in Haryana; and the former Intelligence Bureau chief and former Governor, T.V. Rajeshwar, will be the Uttar Pradesh Governor. "The appointments will take effect from the date they assume charge of their respective offices," a Rashtrapati Bhavan communiqué said.

Though the names of Mr. Sharma, Mr. Jamir, Dr. Kidwai and Mr. Rajeshwar were doing the rounds in the Congress and official circles, the formal announcement of their appointments came only today.

The appointments come three days after the United Progressive Alliance Government dismissed the Governors in the four States. The dismissed Governors, with a Rashtriya Swayamsevak Sangh background, were considered "political appointees" and their dismissal was defended by the Home Minister, Shivraj Patil.

চার রাজ্যে নয়া রাজ্যপাল

নয়াদিল্লি, ৫ জুলাই: বিজেপির মনোনীত রাজ্যপালদের বরখাস্ত করার পর গুজরাত, উত্তরপ্রদেশ, গোয়া ও হরিয়ানাতে নতুন রাজ্যপাল নিয়োগ করা হয়েছে। এ আই সি সি-র প্রাক্তন সাধারণ সম্পাদক নওল কিশোর শর্মা গুজরাতের, ইউ পি এস সি-র প্রাক্তন চেয়ারম্যান এ আর কিদোয়াই হরিয়ানার, নাগাল্যান্ডের প্রাক্তন মুখ্যমন্ত্রী এস সি জামির গোয়ার ও প্রাক্তন গোয়েন্দা প্রধান টি ভি রাজেশ্বর উত্তরপ্রদেশের রাজ্যপাল হচ্ছেন। এ দিকে, এই চার রাজ্যে বিজেপির মনোনীত রাজ্যপালদের বরখাস্ত করার বিরুদ্ধে আজ সুপ্রিম কোর্টে একটি জনস্বার্থ মামলা করা হয়েছে।

রাজ্যসভার সাংসদ ও বিশ্ব হিন্দু পরিষদের নেতা অশোক সিঙ্ঘলের ভাই বি পি সিঙ্ঘল আজ সুপ্রিম কোর্টে রাজ্যপালদের বিতাড়ন করাকে 'অসাংবিধানিক' জানিয়ে মামলা করেছেন। ওই জনস্বার্থ আবেদনটির বক্তব্য, সংবিধান রাজ্যপালদের নির্দিষ্ট পাঁচ বছরের কার্যকালের সময়সীমা বেঁধে দেওয়া সত্ত্বেও এ ভাবে ওই চার রাজ্যপালকে বরখাস্ত করা হয়েছে। প্রধানমন্ত্রীর নেতৃত্বে মন্ত্রিসভা রাষ্ট্রপতিকে এই ব্যবস্থা নেওয়ার পরামর্শ দিলেও সংবিধান অনুসারে রাষ্ট্রপতি তা মানতে বাধ্য নন। উত্তরপ্রদেশের রাজ্যপাল বিষ্ণুকান্ত শাস্ত্রীকে বরখাস্ত করার সিদ্ধান্তকে চ্যালেঞ্জ করে পৃথক একটি মামলা হয়েছে ইলাহাবাদ হাইকোর্টে।

বিজেপি অবশ্য জানিয়ে দিয়েছে, বি পি সিঙ্ঘলের মামলার সঙ্গে দলের কোনও সম্পর্ক নেই, এটি তাঁর ব্যক্তিগত সিদ্ধান্ত। প্রসঙ্গত, আর এস এসের সঙ্গে ঘনিষ্ঠ যোগাযোগের অভিযোগে চার দিন আগে ওই চারটি রাজ্যের রাজ্যপালকে বরখাস্ত করেন রাষ্ট্রপতি। — পি টি আই

রাজ্যপাল ও রাজনীতি

শেষ পর্যন্ত উত্তরপ্রদেশ, গুজরাত, হরিয়ানা ও গোয়ার রাজ্যপালদের বরখাস্তই করা হইল। কেন্দ্রে কংগ্রেস ক্ষমতাসীন হইবার পর পূর্বতন বিজেপি সরকার নিযুক্ত এই রাজ্যপালদের আগেই ইস্তফা দিবার অনুরোধ জানানো হয়। তাঁহারা সে অনুরোধ প্রত্যাখ্যান করেন। এ বার তাঁহাদের চাকুরি গেল। এই রাজ্যপালরা সকলেই আর এস এস-এর বরিষ্ঠ সদস্য। ইহাই ছিল তাঁহাদের প্রধান যোগ্যতা। বিজেপি নেতারা এবং বরখাস্ত রাজ্যপালরা কোনও বিশেষ মতাদর্শে বিশ্বাসী হওয়ার অপরাধে চাকুরি খোয়ানোর এই ঘটনাকে নজিরবিহীন এবং অসাংবিধানিক আখ্যা দিয়াছেন। ভারতীয় রাজনীতিতে সব দলই ক্ষমতায় আরোহণ করিয়া পছন্দসই রাজ্যপালদের বসায়। বিজেপি নিজেও অতীতে বসাইয়াছে। তাহা করিতে গিয়া বিরোধী দলের নিয়োগ করা রাজ্যপালদের সরাইয়াও দেয়। বিজেপিও দিয়াছে। সুতরাং এমন কাণ্ড এই প্রথম ঘটিতেছে, এমন ভান করা হাস্যকর। আর এস এসের মতাদর্শ কোনও সাধারণ মতাদর্শও নয়, ইহা এমন সাম্প্রদায়িক বিভেদপন্থায় কলুষিত যে ধর্মনিরপেক্ষতায় দীক্ষিত একটি রাষ্ট্রের রাজ্যপালের মতো সাংবিধানিক পদাধিকারীদের এই মতাদর্শে অনুগত থাকিতে দেওয়া চলে কি না তাহা লইয়া গুরুতর প্রশ্ন ওঠা স্বাভাবিক। প্রসঙ্গত, হরিয়ানার রাজ্যপাল বাবু পরমানন্দ লোকসভা নির্বাচনে বিজেপিকে ভোট দিবার জন্য প্রকাশ্যে ভোটারদের আহ্বান জানাইয়াছিলেন। তা ছাড়া তাঁহাদের নিয়োগকর্তারা গদিচ্যুত অর্থাৎ জনাদেশে প্রত্যাখ্যাত হওয়ার সঙ্গে সঙ্গে রাজ্যপালদের উচিত ছিল স্বতঃপ্রণোদিত হইয়া ইস্তফা দেওয়া। নৈতিকতার বড়াইটা তখন করা যাইত।

তাহার অর্থ এই নয় যে মেয়াদ ফুরাইবার আগেই রাজ্যপালদের এ ভাবে বরখাস্ত করা নীতিগত ভাবে উচিত কাজ। বরং আদর্শ ব্যবস্থায় পূর্ণ মেয়াদ অবধি তাঁহাদের চাকুরি করিতে দেওয়াই বাঞ্ছনীয়। কিন্তু রাজ্যপালরা যদি রাজ্যে-রাজ্যে কেন্দ্রীয় শাসক গোষ্ঠীর রাজনৈতিক 'এজেন্ট' মাত্র হন, রাজভবনগুলি যদি অবসরপ্রাপ্ত দলীয় রাজনীতিকদের বারাণসী বা প্রতীক্ষালয় হয় কিংবা বিক্ষুব্ধ অথচ প্রভাবশালী নেতাদের সক্রিয় রাজনীতির ক্ষমতাকেন্দ্র হইতে দূরে সরাই রাখার বিশ্রামাগার হয়, তবে এমনটা হওয়া অস্বাভাবিক নয়। সরকারিয়া কমিশনের কিন্তু সুপারিশ ছিল— সক্রিয়, স্থানীয় রাজনীতিতে লিপ্ত নহেন, শাসক দলের প্রতি আনুগত্যে নিরপেক্ষ, স্ব-স্ব ক্ষেত্রে দক্ষ ও বিশিষ্ট জনদের রাজ্যপাল পদের জন্য বিবেচনা করা এবং উপরাষ্ট্রপতি, লোকসভার স্পিকার প্রমুখের সহিত পরামর্শ করিয়া প্রধানমন্ত্রী রাজ্যপালের নাম স্থির করিবেন, রাজ্যের নির্বাচিত সরকারের মুখ্যমন্ত্রীর সহিত আগাম শলাও যে ক্ষেত্রে আবশ্যিক। কমিশনের সুপারিশ গ্রাহ্য করা হয় নাই, তাহা কার্যকর করার জন্য সংবিধানের প্রয়োজনীয় সংশোধন করা তো দূরস্থান। ফলে রাজ্যপালরা কেন্দ্রীয় শাসক দলের এজেন্টই থাকিয়া গিয়াছেন, তাঁহাদের পদের সাংবিধানিক মর্যাদার বিষয়টি নিছক তর্ক করার জন্য উত্থাপন করা হইয়া থাকে। কমিশনের সুপারিশে বলা হইয়াছিল, কেন্দ্রীয় শাসক দলের কোনও রাজনীতিক যেন বিরোধী দল শাসিত রাজ্যে রাজ্যপাল নিযুক্ত না হন। অথচ বিজেপি কংগ্রেস-শাসিত রাজস্থানে এবং রাষ্ট্রীয় জনতা শাসিত বিহারে অনুগত দলীয় রাজনীতিকদের রাজ্যপাল নিয়োগ করিয়াছিল। একই ভাবে কংগ্রেস ইতিমধ্যেই বিজেপি-শাসিত রাজ্যে লোকসভায় পরাজিত দলীয় রাজনীতিক বলরাম জাখরকে রাজ্যপাল নিয়োগ করিয়াছে। রাজ্যপাল নিয়োগে রাজনীতিকে অগ্রাধিকার দিবার দুষ্টচক্রটি অতএব অব্যাহত। তবে আর পদটির সাংবিধানিক মর্যাদা লইয়া প্রগল্‌ভতা কেন?

রাজ্যপাল পদটির মর্যাদা পুনরুদ্ধার করার একমাত্র উপায় হইল, বিরোধী দল শাসিত রাজ্যগুলিকে নিয়ন্ত্রণ করার জন্য পদটিকে ব্যবহার না করা। কিন্তু কোনও দলই কি তাহা করিতে সম্মত? আজ বিজেপি বিরোধী দল বলিয়া তাহার নিযুক্ত রাজ্যপালদের অপসারণে পবিত্র ক্রোধে উদ্দীপ্ত হইয়াছে। অন্য দিকে কংগ্রেস অপসারিত রাজ্যপালদের আডবাণী ও বেঙ্কাইয়া নায়ডুর দরবারে হাজিরা দিবার বিষয়টি উত্থাপন করিয়াছে। কিন্তু কংগ্রেসও তো উত্তরপ্রদেশের রাজ্যপালকে সরাইতেছে মুলায়ম সিংহ যাদবকে ভবিষ্যতে বেকায়দায় ফেলিবার জন্যই। আবার জয়পুরের রাজভবন হইতে মদনলাল খুরানাকে সরায় নাই পাছে তাঁহাকে ঘিরিয়া দিল্লিতে বিজেপি নবজীবন লাভ করে। দলীয় রাজনীতিই এখনও অগ্রাধিকার পাইতেছে। সত্য, সত্তর ও আশির দশকের মতো এখন কথায়-কথায় রাজ্যপাল বদল হয় না। ৩৫৬ অনুচ্ছেদ প্রয়োগ করিয়া নির্বাচিত সরকারকে বরখাস্ত করার ঘটনাও ক্রমে বিরল হইয়াছে। এতটাই বিরল যে মমতা বন্দ্যোপাধ্যায় নিরবচ্ছিন্ন ভাবে পশ্চিমবঙ্গে তাহা করাইতে চাহিয়াও পারেন নাই। তবু আবার দেখা গেল, রাজ্যপালের নিয়োগ বা বরখাস্তের ঘটনা কী ভাবে শাসক বনাম বিরোধী পক্ষের রাজনৈতিক তরজার উপলক্ষ হইতে পারে। সংসদের বাজেট অধিবেশন এই প্রশ্নেই সরগরম হইবে। এই ঘটনা প্রমাণ করিবে কেন গণতন্ত্রের স্বার্থেই রাজ্যপাল পদটিকে রাজনীতির বৃত্তের বাহিরে স্থাপন করা উচিত।

Government misinterpreting Constitution, says Advani

By Manas Dasgupta

GANDHINAGAR, JULY 4. The Leader of the Opposition in the Lok Sabha, L. K. Advani, today warned the Congress-led United Progressive Alliance Government of "serious consequences" for the way it had dismissed the Governors in four States.

Replying to felicitations from Bharatiya Janata Party workers on his first visit to his home constituency since winning the elections, Mr. Advani said the UPA was "misinterpreting" the Constitution.

While Article 156 of the Constitution said that the Governors functioned at the "pleasure" of the President, Article 156 (3) made it clear that the Governors were appointed for a term of five years.

He said that the President may have been misled by some Union Ministers.

He did not say what "consequences" the Congress-led Government might have to face but hinted that the Budget session of Parliament could be as stormy as the one last month, disrupted on the issue of "tainted" Ministers.

Mr. Advani said the "first impression" of the UPA Government was "not very good." After inducting "tainted" Ministers, which he described as the "criminalisation of the Government," it had now taken the controversial decision of dismissing four Governors.

Their dismissal, he claimed, was "against the people's mandate."

He also expressed concern over the change of stress in the talks with Pakistan. While the National Democratic Alliance Government did not proceed till terrorism was considered an "issue" by Pakistan, with the change of Government the stress was more on the United Nations' Charter and the Shimla Agreement.

Describing it as "party-based politics," Mr. Advani hoped that the Prime Minister, Manmohan Singh, would address the country's concerns over the issue.

He also wanted Dr. Singh to look into a point raised by the Gujarat Chief minister, Narendra Modi, in a recent letter. Mr. Modi had pointed out that a map in circulation in Pakistan showed Junagadh district and the erstwhile Manavadar estate, in Gujarat's Saurashtra region, as part of Pakistan.

About the NDA's defeat in the Parliamentary elections, Mr. Advani said, "something was lacking in our performance" in the last six years.

The defeat had made him to realise that "good governance and development" alone could not win votes. Good governance and the commitment to development must be accompanied by "prudent politics," he said.

Pointing out that voters always took "prudent decisions," he said he had no complaints. Mr. Advani claimed that a large section of the people were shocked at the NDA's defeat. The pilot of the plane in which he travelled from Delhi to Ahmedabad this morning told him that what happened in the elections was "very bad" and wished that the BJP-led Government would return to power.

Stressing the importance of the support of the Sangh Parivar, Mr. Advani said the BJP's task in the coming days would be to win back the people's confidence.

Not only would the partymen have to properly nurse their constituencies, they would also have to look into the principles of the Sangh Parivar.

During the visit, Mr. Advani attended a meeting of the Somnath temple trust chaired by the former Gujarat Chief Minister, Keshubhai Patel, a meeting of the BJP Members of Parliament and a felicitation by partymen in Ahmedabad.

MONDAY, JULY 5, 2004

A FLAWED INSTITUTION

THE CENTRE'S DISMISSAL of four Governors has focussed attention on the long-term distortions that have characterised the appointment, performance and replacement of those who have occupied the constitutional office of Head of State. Statements made by the Union Minister of State for Home, Prakash Jaiswal, and the Congress spokesperson, Anand Sharma, suggest that the reason for axing the four Governors was their closeness to the Rashtriya Swayamsevak Sangh. The Home Minister, Shivraj Patil, has gone on record with the explanation that the United Progressive Alliance Government has "taken action in States where the incumbents had different ideologies, and also where there is [a] history of trouble" and that "removing them was a precautionary measure." The new Government did make an effort to secure resignations by exerting pressure through leaks in the media and perhaps by other means but when the Governors dug in, evidently under instructions from those who had appointed them, dismissal was politically unavoidable. The whole episode raises an issue of wide-ranging constitutional and political import — one that relates to the conventions and practices that should govern the choice of Governors.

There can be no justification for cashiering Governors merely because they are 'political appointees': to do so would set a bad precedent and result in the unhealthy practice of virtually all Governors being replaced every time there is a change of government at the Centre. If the Government had substantive reasons to feel dissatisfied with the manner in which the Governors of Uttar Pradesh, Gujarat, Haryana and Goa were performing their constitutional functions, it would have been appropriate to spell them out before effecting the dismissals. A transparency rule must be laid down for all such cases; Mr. Patil's contention that there should be no public discussion or debate on the high office of Governor doesn't wash. It is the failure to reveal the reasoning behind such acts that fuels rumour and speculation, lowering the dignity of the office. Will the axe fall next on Madan Lal Khurana, a former Bharatiya Janata Party Chief Minister who is Governor of Rajasthan, and Rama Jois, Governor of Bihar who is a *Sangh Parivar* sympathiser? Was Mr. Khurana kept in place because his removal might see him return to active politics in Delhi, now ruled by the Congress? What was the real intention behind dismissing four Governors in Opposition-ruled States? Was the decision to replace the Head of State in Uttar Pradesh — where the Congress is engaged in a psychological war with Chief Minister Mulayam Singh Yadav's Samajwadi Party-led Government — to pre-empt trouble or to create fresh trouble by exploiting the services of a new pliant Governor? Such questions will remain unanswered given the shroud of opacity the Home Minister has placed over the dismissals as well as the non-dismissals.

The larger and more significant question is why the institution of Governor, supposedly designed for maintaining links and building harmony between the Centre and States within a framework of 'cooperative federalism', has become a hotbed of controversy. The central issue relates to the capabilities and attributes of those who have been appointed to gubernatorial office over the long term. Article 157 of the Constitution merely lays down two basic qualifications: Indian citizenship and a minimum age of 35. Article 158 prescribes a couple of technical conditions: a Governor shall not hold an office of profit and shall not be a member of Parliament or a State Legislature. Unfortunately, no qualitative criteria for appointment have been laid down by the Constitution; nor have they evolved in practice over half a century. Over the years, a number of committees, commissions and legal experts have called for some kind of criteria to govern appointments. The Sarkaria Commission, for instance, recommended that the Governor should be a "detached figure," someone who has "not taken too great a part in politics generally and particularly in the recent past." Given the long-term misuse of the power of appointment and the consequent notoriety achieved by many a Governor, such a reformist notion is a pie in the sky. But the malaise runs much deeper. In fact, the answer does not seem to lie in looking for detachment from active politics. Experience suggests that political leaders of integrity, objectivity and respect for the Constitution can make good Heads of State: witness the salutary example set by Dr. Shankar Dayal Sharma in the mid-1980s when he went to Andhra Pradesh as Governor and cleared up, in no time at all, the constitutional mess created by his predecessor. On the other hand, some Governors with a civil service, police, Army or even judicial background have made a hash of the job, committing blunders or improprieties that have brought the office into disrepute. The performance of one Governor with a foreign service background at the Raj Bhavan in Lucknow is a telling case in point.

What the Governor's office really requires is not political detachment but integrity, independence and sobriety rooted in constitutional values. Above all, the constitutional office of Governor must transform itself into something that cannot be converted into an agency of the Centre, to be used, where deemed politically necessary, against opposition State Governments. But given the constitutional power of appointment and removal by the Centre, is this notion also a pie in the sky? Given the circumstances, the best way of finding the right men and women for the job is to go beyond mechanical formulae and evolve a serious consultative mechanism for the selection. The Sarkaria Commission had something like this in mind when it recommended "the Vice-President of India and the Speaker of the Lok Sabha should be consulted by the Prime Minister in selecting a Governor." But that clearly would not be enough. In a federal or quasi-federal political system, it is necessary to establish a method by which the Chief Minister is always consulted before the Governor of the State is chosen. The debates in the Constituent Assembly suggest that its members felt that such a convention must be adhered to. The Sarkaria Commission went so far as to recommend a constitutional amendment to make such consultation mandatory. Sadly, the idea failed to take root. Instead, Central Governments of varying political hue have preferred to select and use Governors as "agents of the Centre" rather than as vital links between the Centre and the States working with a federal spirit.

Can Governors be removed before their normal term of five years? The answer seems to be that there is no constitutional bar to this. Article 156 provides that the Governor "shall hold office during the pleasure of the President" and that a Governor may, in a signed letter addressed to the President, resign his or her office at any time. It is only "subject to... [these] provisions" that the Constitution prescribes that a Governor should have a five-year term of office. And since "the President's pleasure" is determined exclusively by the political decision of the government of the day, there can be no reasonable doubt about the constitutionality of the latest dismissals. Political realism suggests that the issue of replacement of Governors, either through forced resignation or dismissal, is integrally linked to the process of appointment. If the selection is institutionally flawed, and against the spirit of the Constitution, a Governor's normal term in office is increasingly likely to be co-terminus with the political rule of those who appointed him or her — on the basis of no transparent criteria or standards.

Sacking of governors cannot be challenged in court

By Rakesh Bhatnagar
TIMES NEWS NETWORK

New Delhi: *Since His* Excellencies Governors' gubernatorial position solely depends on the pleasure of the President who acts on the advice of the Union cabinet, their removal from the constitutional positions cannot be challenged in a court of law.

The Manmohan Singh government's Friday decision to sack the four governors appointed by its predecessor NDA administration may cause a debate over imparting some job-safety to the governor's post, the affected Excellencies can't turn to court for redress even on the ground of denial of natural justice. Natural justice means that a person must be heard before he is punished or his fate is decided by any authority.

Articles 155 and 156 of the Constitution envisage that a governor shall be appointed by the President "by warrant under his seal" for "a term of five years". He shall "hold office during the Pleasure of the President". The unexplained pleasure doctrine was scrutinised both by the Sarkaria commission in 1983 and later the NDA government's national commission headed by former supreme court chief justice M N Venkatachaliah which reviewed the Constitution in 2002 to find out who failed the national charter.

Both the commissions strongly recommended that only non-political persons should be appointed governors with a fixed tenure of five years. The Vajpayee government failed to appreciate its high powered commission's significant recommendations which are based on what Justice Sarkaria had said two decades ago.

Sacked UP governor Vishnu Kant Shastri addresses the media at Raj Bhavan in Lucknow on Friday

The commission had recommended deletion of "pleasure" condition for the appointment of a governor. It also said that only an eminent person who does not belong to the same state and who has not participated in active politics at least for some time before becoming a governor be appointed as such.

The commission also advocated for providing the process of "impeachment" for removing a governor by the state legislature on the same lines as the impeachment of the President by Parliament.

Emphasising that the term of office of a governor must be guaranteed for five years, the commission said it should not be disturbed except for "extremely compelling" reasons. If any action is to be taken against a governor, he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed.

In case of such termination or resignation by the governor, the government should lay before both the Houses of Parliament a statement explaining the circumstances leading to such removal or resignation, as the case may be, the commission said.

Importantly, the commission also said that it would be "desirable" that a politician from the ruling party at the Centre is not appointed as governor of a state which is being run by some other party or a combination of other parties.

রাজ্যপাল প্রশ্নে দ্বন্দ্ব তীব্র বিজেপি, কংগ্রেসের

স্টাফ রিপোর্টার, নয়াদিল্লি, ৩ জুলাই: রাজ্যপাল অপসারণ ঘটনাটিকে কেন্দ্র করে বি জে পি'র সঙ্গে ইউ পি এ সরকারের বিরোধ এখন সরাসরি সংঘাতের দিকে এগোচ্ছে। বিরোধীরা যে সংঘাতের পথে এগোচ্ছে তার ইঙ্গিত দিয়েছেন প্রাক্তন প্রধানমন্ত্রী অটলবিহারী বাজপেয়ী। আজ লখনউয়ে বাজপেয়ী বলেছেন, যে ভাবে রাজ্যপালদের বরখাস্ত করা হয়েছে, তাতে রাজ্যপালের পদকে দিনমজুরের পর্যায়ে নামিয়ে আনা হয়েছে। অন্য দিকে, আজই প্রথম কেন্দ্রীয় স্বরাষ্ট্রমন্ত্রী শিবরাজ পাটিল সরকারের তরফে রাজপালদের বরখাস্ত করার সাফাই দিয়েছেন। সঙ্ঘ পরিবারের নাম উল্লেখ না করেই পাটিল জানিয়েছেন, তাঁদের ভিন্ন মতাদর্শের জন্যই চার রাজ্যপালকে বরখাস্ত করতে হয়েছে। কালই কেন্দ্রীয় সরকার গোয়া, উত্তরপ্রদেশ, গুজরাত ও হরিয়ানার রাজ্যপালকে বরখাস্ত করেছে।

ঠিক এই প্রসঙ্গেই বি জে পি'র তরফে সরকারের বিরুদ্ধে তোপ দেগেছেন বাজপেয়ী। গত ক'দিন এই প্রসঙ্গে নীরব থাকার পর এই প্রথম তিনি মুখ খুলেছেন। এবং সরাসরি বলেছেন, সঙ্ঘ পরিবারের সঙ্গে যুক্ত থাকার কারণেই এই রাজ্যপালদের সরিয়ে দেওয়া হল কি না, তা কেন্দ্রীয় স্বরাষ্ট্রমন্ত্রীকে বলতে হবে। বাজপেয়ীর দাবি, যদি সেটা কারণ না হয়, তা হলে স্বরাষ্ট্রমন্ত্রীর প্রকাশ্যে সে'কথা জানানো উচিত। সঙ্ঘ পরিবারের নাম জড়িয়ে অভিযোগ দেওয়ার জন্য আর এস এসের কাছে ক্ষমা প্রার্থনাও করা উচিত। বাজপেয়ীর মতে, এ ভাবে রাজ্যপালদের বরখাস্ত করে সরকার আসলে গণতন্ত্রকেই আঘাত করেছে।

কিন্তু শিবরাজ পাটিলের বক্তব্য থেকে পরিষ্কার, কেন্দ্রীয় সরকার ক্ষমা চাওয়ার কথা ভাবছে না। আজই নিজের বাসভবনে সাংবাদিকদের ডেকে পাটিল জানিয়ে দিলেন, "যাঁরা আমাদের মতাদর্শ বুঝতে চান না, তাঁদের এখানে কোনও জায়গা হতে পারে না।" তাঁর দাবি, এই চার রাজ্যপালকে বরখাস্ত করার পিছনে ব্যক্তিগত ভাবে তাঁদের প্রতি সরকারের কোনও দ্বেষ ছিল না। এমনকী, বরখাস্ত করার আগে তাঁরা নিজেরাই যাতে ইস্তফা দেন, সে জন্য তাঁদের সরকার থেকে পরামর্শও দেওয়া হয়েছিল। সরকার বদলের সঙ্গেই রাজনৈতিক কারণে নিযুক্ত রাজ্যপালদের বরখাস্ত করার সিদ্ধান্তের সপক্ষে যুক্তি দিতে গিয়ে পাটিল ১৯৭৭ সালের নজির টেনে আনেন। '৭৭-এর ভোটে ইন্দিরা সরকারের পতনের পর জনতা পার্টির সরকার ক্ষমতায় এসে নয় রাজ্যে ক্ষমতাসীন কংগ্রেস সরকারকে বরখাস্ত করেছিল।

কেন্দ্রের এই অনমনীয় মনোভাবের পরে বি জে পি যে গোটা বিষয়টিকে নিয়ে সংসদে ও সংসদের বাইরে আন্দোলনে নামতে প্রস্তুত, তা নেতারা বার বার জানিয়ে দিয়েছেন। বি জে পির বক্তব্য, রাজ্যপাল বরখাস্তের সাংবিধানিক বৈধতা নিয়ে সুপ্রিম কোর্টের দ্বারস্থ হওয়ার কথা ভাবছে না। বরং বিষয়টিকে রাজনৈতিক হাতিয়ার করার দিকেই তারা বেশি আগ্রহী বলে সভাপতি বেঙ্কাইয়া নায়ডু ও মুখপাত্র বিজয়কুমার মলহোত্র ইঙ্গিত দিয়েছেন।

HAND IN GUV

Congress demeans Constitution

MORALLY-challenging political decisions should at least make political sense. Otherwise, why court the opprobrium? It is baffling in the extreme, therefore, that the Congress applied such pressure on the President to sack four NDA-appointed governors. The government is drawing plenty of deserved flak for this action. But there seems to be no political gain derived from it. The replacement for these ousted governors has not been not decided. So, it isn't jobs for boys-in-a-hurry.

There is no on-going or impending crisis in the four states — Gujarat, Goa, UP and Haryana — where the action is taken. So, having your own man to interpret laws and rules, a prime motivation in gubernatorial appointments, wasn't a priority. Was the Congress trying to send a message to the BJP? If that was the case, what difference would a delay of a few more days have made. Especially because the President had reportedly agreed.

The President's logic, as reported, was that directly sacking four governors would leave an unpleasant impression. None of the four governors who were dismissed had perpetrated anything remotely linked to a crisis or a major scandal. In the absence of substantive apolitical cause, Abdul Kalam had at least wanted government to lend a little dignity to the process by appointing new governors. That would have avoided a presidential warrant to remove existing incumbents.

Kalam's reported discomfiture is well-grounded. The stink of political vendetta apart, there is the interpretation of Article 156 (1) of the Constitution. There are no technical grounds that bar government from removing a governor by advising the President, who accepts that advice. But in high constitutional matters, propriety and being seen to do the right thing are equally, if not more, important. Since Article 156 (1) says governors hold their office at the pleasure of the President, the head of state must be kept above political controversy.

Ergo, it can be argued that if the fine traditions of constitutional governance are the benchmark, Article 156 (1) enjoins the government not to be arbitrary in gubernatorial appointments. The Congress has clearly been arbitrary. To say that governors with "RSS background" will be sacked does not answer the charge of arbitrariness. Indeed, it is a dangerous argument. This newspaper, as the RSS will testify, has plenty of questions and doubts but this does not mean that a clearly improper course of action should be tolerated. Tomorrow, governors with "Marxist background" may be anathema, and that would be wrong in equal measure.

Indeed, given the absurd hurry and poor logic that the Congress has displayed in this affair, governors with "Congress background" should logically be looked at with suspicion!

THE STATESMAN 4 JUL 2001

Dismissal of Governors vindictive: BJP chief

By Our Special Correspondent

CHENNAI, JULY 3. "The dismissal of four Governors by the Congress-led United Progressive Alliance (UPA) Government is not only anti-democratic but also diabolical," the Bharatiya Janata Party (BJP) president, M. Venkaiah Naidu, said here today.

Describing the decision as "vindictive," Mr. Naidu said that it was a reversal of healthy changes introduced by the Vajpayee Government in the appointment and functioning of Governors.

Talking to newsmen, he said that the Sarkaria Commission on Centre-State relations devoted a major part of its recommendations to preventing the misuse of the office of Governor by the ruling party at the Centre. It had clearly stated that the Governor's tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons. If any action was to be taken against a Governor, he /she must be given a reasonable opportunity for showing cause against the grounds on which the removal had been sought. The Commission's recommendations were approved by the Inter-State Council in its meeting in New Delhi in 2001.

But the UPA Government had not sought any explanation from the sacked Governors, which meant that the Congress did not believe in a healthy democracy and had given a burial to the Commission's recommendations.

Not only was the sacking of four Governors wrong, but also the political rationalisation given by the Centre was "pernicious," he said. Some Congress functionaries had hinted that the Rashtriya Swayamsevak Sangh background of the Governors disqualified them from occupying the office. Was their RSS background a crime? If so, what about those who had the Congress or communist background, he asked.

Visualising a "deeper and diabolical" game plan in the Government's decision, Mr. Naidu said that the Congress seemed to be back at its "old game" of using the office of the Governor for advancing its "nefarious" strategy of toppling non-UPA Governments in States such as Goa, Gujarat, Haryana and Uttar Pradesh. In this connection he wanted the Communist parties and the DMK to clarify their stand over the action taken by the UPA Government.

Asked whether the BJP would legally challenge the Government's decision, Mr. Naidu said that it was for the affected Governors to take up the issue, as they were not party functionaries.

Asked whether the BJP would attend the budget session, Mr.Naidu said that constituents of the National Democratic Alliance would meet in New Delhi to take a decision. But the NDA would continue to raise the issue of "tainted" Ministers in Parliament.

Charging that the Government had a "bad beginning" with the induction of "tainted" MPs as Ministers and change of history textbooks, Mr. Naidu said the Government had removed Constitutionally set up committees. A committee set up by the previous Government to provide reservation for the economically backward students in forward communities was wound up.

Similarly, another panel which was asked to study the conditions of the nomadic tribes was disbanded.

Referring to the Centre's decision to directly fund panchayats, Mr. Naidu said that when he was the Union Minister for Rural Development he suggested that funds earmarked for the panchayats should be routed through the State Governments. If necessary a time frame could be drawn for the funds to reach the panchayats.

THE HINDU

4 JUL 2004

শেষ পর্যন্ত বরখাস্তই হলেন চার রাজ্যপাল

স্টাফ রিপোর্টার, নয়াদিল্লি, ২ জুলাই: বিজেপি-র বিরোধিতাকে তোয়াক্কা না করে মনমোহন সরকার আজ গুজরাত হরিয়ানা, গোয়া ও উত্তরপ্রদেশের রাজ্যপালকে বরখাস্ত করল। সরকার বলে দেওয়া সত্ত্বেও এই চার রাজ্যপাল ইস্তফা দিতে রাজি হননি। সরকারি ভাবে এই সিদ্ধান্তের কোনও কারণ দেখানো না হলেও কংগ্রেস বলেছে, মূলত আর এস এস-এর সঙ্গে জড়িত থাকার জন্যই রাজ্যপালদের বরখাস্ত করা হয়েছে। তবে একই অভিযোগ থাকা সত্ত্বেও রাজস্থানের রাজ্যপাল মদনলাল খুরানাকে বরখাস্ত করা হয়নি। সরানো হয়নি বিহারের রাজ্যপাল রাম জয়েসকেও। চার জনের জায়গায় কারও নাম ঘোষণা করা হয়নি। নওলকিশোর শর্মার মতো কংগ্রেস নেতাদের নাম রয়েছে তালিকায়।

বিজেপি নেতাদের অভিযোগ, যে চার রাজ্যে রাজ্যপালদের বরখাস্ত করা হল, সেখানে রাজ্য সরকার ভেঙে দেওয়ার চক্রান্ত করছে সরকার। গুজরাত বাদে বাকি তিনটি রাজ্যে অত্যন্ত কম সংখ্যাগরিষ্ঠতায় সরকার চলছে। উত্তর প্রদেশে অজিত সিংহ কংগ্রেসের দিকে চলে গেলে মুলায়ম সংখ্যালঘু হয়ে পড়বেন। সি পি এম মুলায়মকে সমর্থন করলেও অজিত সিংহকে সঙ্গে নিয়ে চতুর্থ মোর্চা গঠনের চেষ্টা চলছে। কংগ্রেস, সিপিআই, রামবিলাস এবং শরদ পওয়ারকে নিয়ে এই মোর্চা গঠনের উদ্যোগ শুরু হয়েছে। কংগ্রেস এবং অজিত সিংহ সমর্থন প্রত্যাহার করলে উত্তরপ্রদেশে রাজ্যপালের ভূমিকা অত্যন্ত গুরুত্বপূর্ণ হয়ে যাবে। উত্তরপ্রদেশে বিষ্ণুকান্ত শাস্ত্রীর রাজ্যপাল পদের মেয়াদ ছিল ডিসেম্বর পর্যন্ত। তার জন্য অপেক্ষা না করে বিষ্ণুকান্তকে সরিয়ে দেওয়া হল।

একই অবস্থা গোয়া ও হরিয়ানাতেও। গোয়ায় বিজেপি-র ও হরিয়ানায় চৌটালা সরকারের সামান্য সংখ্যাগরিষ্ঠতা রয়েছে। বিজেপি-র অভিযোগ, নির্দলদের নিজেদের দিকে টেনে এই দুই সরকারকে ফেলে দিতে চাইছে কংগ্রেস। আর গুজরাতে নরেন্দ্র মোদীকে সরাতে গেলে তো রাষ্ট্রপতি শাসন জারি করতে হবে। এটা করতে গেলে নতুন রাজ্যপাল নিয়োগ কংগ্রেসের পক্ষে জরুরি। গুজরাতে রাষ্ট্রপতি শাসনের দাবি ইউ পি এ-র মধ্যে প্রথম থেকেই আছে। এবং এই একটিমাত্র ক্ষেত্রে রাষ্ট্রপতি শাসন জারির জন্য বামেদেরও আপত্তি নেই। খুরানা এবং রাম জয়েসকে না সরানোর কারণ, রাজস্থানে এই ধরনের কোনও সম্ভাবনা নেই। আর বিহারে লালুর সঙ্গে রাম জয়েসের সম্পর্ক ভাল।

যে চার রাজ্যপালকে বরখাস্ত করা হয়েছে, তার মধ্যে উত্তর প্রদেশের বিষ্ণুকান্ত শাস্ত্রী, গুজরাতের কৈলাসপতি মিশ্র, গোয়ার কেদারনাথ সাহনি এবং হরিয়ানার ভাই পরমানন্দ আর এস এসের স্বয়ংসেবক ছিলেন। এই যুক্তি দেখিয়েই তাঁদের রাজ্যপাল পদ থেকে সরানোর কথা বলছিল সরকার। রাজ্যপালদের সরানো নিয়ে কংগ্রেস ও বিজেপি-র মধ্যে সম্প্রতি রীতিমতো টানাপোড়েন চলছিল। কংগ্রেস চাইছিল, আর এস এসের সঙ্গে সম্পর্ক আছে, এমন রাজ্যপালরা নিজে থেকে পদত্যাগ করুন। কিন্তু বিজেপি সরাসরি জানিয়ে দেয়, তাঁদের আমলে যে সব রাজ্যপালরা নিযুক্ত হয়েছিলেন, তাঁরা কেউই পদত্যাগ করবেন না। এমনিতে রাজ্যপালদের কার্যকালের মেয়াদ পাঁচ বছর। কিন্তু সংবিধান বলা হয়েছে, রাজ্যপালদের পদে থাকাটা নির্ভর করছে রাষ্ট্রপতির ইচ্ছার উপর। রাষ্ট্রপতি যেহেতু এই সব ক্ষেত্রে কেন্দ্রীয় সরকারের পরামর্শ মেনে চলেন, তাই রাজ্যপালদের পদে থাকা কেন্দ্রের উপরেই নির্ভরশীল।

কিন্তু বিজেপি-র যুক্তি ছিল রাজ্যপালদের সরানোর একটা কারণ থাকতে হবে। বিজেপি মুখপাত্র অরুণ জেটলি আজ প্রশ্ন তুলেছেন, শুধু রাজনৈতিক উদ্দেশ্যে কেন তাঁদের সরানো হবে? আর কংগ্রেসের পাল্টা মত হল, বাজপেয়ী সরকার তো রাজনৈতিক উদ্দেশ্যেই সঙ্ঘের লোকেদের রাজ্যপাল নিয়োগ করেছেন। বাজপেয়ী সরকার দু'জন রাজ্যপালকে বরখাস্ত করেছিল। বিশ্বনাথ প্রতাপ সিংহের আমলে ১৮ জন রাজ্যপালকে সরিয়ে দেওয়া হয়। ইন্দিরা গাঁধীর আমলেও প্রচুর রাজ্যপালকে সরিয়ে দেওয়া হয়।

— B R Ambedkar

Goodbye Guv'nor

Post does not serve any purpose. Do away with it

The row over 'governors with an RSS background' is getting worse by the day. When subtle attempts to seek their resignations failed, the Centre on Friday sacked some of them. The BJP has accused the Congress of politicising the governor's post. The BJP argument is valid, except that the party itself is guilty of the very same politicisation. Article 153 of the Constitution requires that "there shall be a governor for each state", who shall hold the post, according to Article 156, "during the pleasure of the president". The governor is expected to preserve, protect and defend the Constitution. The Sarkaria Commission, which studied Centre-state relations in the 1980s, argued for continuing with governors, but clarified that they should be "persons who have not taken too great a part in politics generally, and particularly in the recent past". A decade later, the National Commission to Review the Working of the Constitution supported Justice Sarkaria's recommendations but wasn't exactly charitable about the state of the institution: "By and large, the picture has not been an inspiring one. This is because very often active politicians, politicians defeated at the polls and men lacking in integrity and fairness and individuals not possessing an understanding of the constitutional system — persons who were more interested in their personal career than public good — were chosen for this office".

Bhai Parmanand, Kailashpati Mishra, Kidar Nath Sahni, Vishnukant Shastri, and perhaps the other BJP appointees, will be replaced by a new lot of jaded politicians and bureaucrats. Will that make any difference? Unlikely. The political class will continue to milk the governor's job as a sop for pliable babus, or to accommodate disgruntled politicians. With Article 356 empowering the Centre to seek the dismissal of any state government, the governor will always be New Delhi's hand puppet, surely not an edifying prospect for a federal polity. Frankly, we don't need governors at all. It will save the state substantial expenditure and free prime real estate for better uses. The constitutional roles envisaged for a governor can well be executed by the chief justice of high court. Recent history reveals that it is far-fetched to expect governors with strong political affiliations to play an independent role in the event of a constitutional breakdown. That is why Sundar Singh Bhandari, an RSS leader turned Gujarat governor, found no problem with Narendra Modi's handling of the communal riots. Let reforms in government begin with abolishing the post of the governor.

THE TIMES OF INDIA

Governors issue: Congress, BJP trade charges

By Our Special Correspondent

NEW DELHI, JULY 2. A war of words has broken out between the Congress and the Bharatiya Janata Party over the sacking of four Governors appointed during the National Democratic Alliance (NDA) regime. The face-off is expected to cast its shadow on next week's budget session.

The Congress charge was that the BJP had "politicised" the demand for Governors' resignations by the United Progressive Alliance Government when, in fact, the continuation of those Governors had become "untenable."

The Congress spokesperson, Anand Sharma, pointed out that not only had the Leader of the Opposition, L.K. Advani, and others met the President, A.P.J. Abdul Kalam, but they had made public that they had instructed the Governors not to put in their papers and directed them "not to follow the established practice of offering to resign" but to "defy" the Government.

"We cannot have a situation where Governors, who are appointed by the President, take instructions from those who lost power in the recent elections," Mr. Sharma said.

"The Governors identified were the appointees of the previous regime. Their appointments had been made because of their strong affiliations to the Sangh Parivar."

That the BJP was not ready to accept the dismissal of the Governors through a Presidential communiqué came when the party general secretary and former Law Minister, Arun Jaitley, described the move as a "constitutional impropriety" within minutes of the announcement by the Rashtrapati Bhavan. He indicated that the party would fight this out inside and outside Parliament.

"What is the logic in replacing the so-called political appointees by other political appointees? And, moreover, under the Constitution, the Governor enjoys a fixed five-year tenure and nowhere does it say that those with political backgrounds cannot be appointed to this post," Mr. Jaitley said.

The Opposition's view was that the President cannot "withdraw his pleasure" without giving some cogent reason. When it was pointed out that the Haryana Governor, Babu Parmanand, had, perhaps, committed a political indiscretion when during the recent elections he had displayed his political partisanship, Mr. Jaitley admitted that the President had asked him for an explanation. He said that the BJP and the NDA leaders would explore "all the options open to us — legal and constitutional" to protest against the dismissal of Governors.

For the last several days there had been speculation that besides the four Governors dismissed today, the axe would also fall on the Governor of Rajasthan, Madan Lal Khurana, and the Bihar Governor, Rama Jois.

However, when Mr. Sharma was asked how and why these two had been spared, he said it was the Home Ministry that takes a view. The Congress, he said, had never made a case for a general dismissal of Governors.

He said the Government of the day has the right to appoint Governors and reminded that in 1998, the then National Democratic Alliance Government had asked four Governors, A.P. Mukherjee (Mizoram), Krishan Pal Singh (Gujarat), T.R. Satish Chandra (Goa) and Romesh Bhandari (Uttar Pradesh) to resign and appointed its own men as Governors.

The claim by the BJP that such a thing (removal of Governors) had happened for the first time and that the Constitutional conventions had not been respected was "completely wrong." "If anyone has brought this office into controversy, it is the BJP alone," he emphasised.

Mr. Sharma said that for Mr. Advani to state that the move went against the federal structure was not correct.

When Mr. Advani and Atal Bihari Vajpayee were Ministers in the Morarji Desai Government in 1977, they were party to a decision to sack several State Governments with one single order, he pointed out.

Sahani questions rationale behind recall

By Anil Sastry

PANAJI, JULY 2. The Union Home Minister, Shivraj Patil, calls up the Goa Governor at 10.45 pm on Wednesday and asks his opinion on the news reports about the "recall" of some Governors.

Governor Kidar Nath Sahani (as he then was) asks why this question was being posed to "a person who is discharging his constitutional duties." Mr. Patil says "Thank you" and puts the phone down.

Then followed the statement by the Union Minister of State for Home, Prakash Jaiswal, on Thursday that the UPA Government did not have problems with all the Governors appointed by the previous regime, but with those with a Rashtriya Swayamsevak Sangh background.

"This pained me a lot," Mr. Sahani told *The Hindu* on Friday, narrating the sequence of events. In an interview after he got the news of his removal from the office of the Chief Secretary, Mr. Sahani said he faxed a letter to the President this morning objecting to Mr. Jaiswal's statements. He said that being a member of the RSS should be neither a factor for appointment nor for termination.

He asked the President-whether the RSS was a banned outfit or whether there were any restrictions on it. Besides setting a wrong precedent, such an approach would have repercussions on society and on politics.Asked whether he was asked to resign, Mr. Sahani said that the Congress had said that some Governors had refused to resign. "Neither was I asked to resign nor was I asked not to resign [by the BJP]," he said. The manner in which the whole exercise was undertaken was anti-democratic and smacked of an autocratic tendency. "It is a fascist act and reminds me of the Gestapo or the Emergency," he alleged.

At a press conference later, Mr. Sahani said he was not angry but sad because the cherished conventions of democracy had been scuttled.

He was proud of being in the RSS as it made him serve society. Though he had got selected to the Royal Air Force, he did not want to serve the British and remained in social service. Either corruption or treason should be the reason for removing a Governor.

"I did not care for my personal comfort during six decades of social service. I do not have a house anywhere in India to move in now. I do not know where to keep my luggage tomorrow." Mr. Sahani, who was earlier Governor of Sikkim from May 18, 2001, became Governor of Goa on October 26, 2002. Since then, he had been guiding the Government and was a strong advocate for rural self-employment.

Born on October 24, 1926 at Rawalpindi (now in Pakistan), Mr. Sahani was Deputy Mayor and Mayor of the Delhi Municipal Corporation. He worked as General Manager, Secretary and Managing Director of the Bharat Prakashan Ltd., which publishes the *Organiser* and the *Panchajanya*, mouthpieces of the RSS.

A negation: Shastri

By J.P. Shukla

LUCKNOW, JULY 2. The Uttar Pradesh Governor, Vishnu Kant Shastri, today said that the Union Government's decision to dismiss him was a negation of democratic propriety.

He had done nothing wrong as Governor and that was the reason why he had refused to resign. His dismissal would set a bad precedent.

Talking to newspersons at the Raj Bhavan following reports that four Governors had been dismissed, Mr. Shastri said he was leaving as a satisfied person and had no regrets.

To a question, Mr. Shastri said he had refused to resign and it was not a decision of the Bharatiya Janata Party. Was it a good tradition to ask Governors to resign after a change of government? Would it not lead to a situation where Governors appointed by the present Government could be asked to resign by a succeeding government? he asked.

When told that the Congress leaders had referred to his Rashtriya Swayamsevak Sangh background as the reason for his dismissal, Mr. Shastri said he was proud of his association with the RSS.

Is the RSS a banned organisation? If persons associated with the RSS can become the Prime Minister and the President, what was wrong in a RSS person becoming a Governor? If the logic of dismissing Governors with RSS background could be accepted, by the same logic persons with Congress background could also be dismissed by a succeeding government, he said.

Asked if he would now involve himself in party activities, Mr. Shastri said he would certainly do something.

He would go back to Kolkata and take up writing. Mr. Shastri said that as the U.P. Governor, he had earned the goodwill of all sections.

He had done what was proper and acted in an impartial manner with the leaders belonging to all parties.

During the Shiladan' programme, he had taken strict measures to maintain peace and no complaints had been made against any of his decisions.

4 Governors dismissed

● M.M. Lakhera, Lt. Governor of Pondicherry

By Vinay Kumar

NEW DELHI, JULY 2. The Centre today dismissed four Governors — Kidar Nath Sahani of Goa, Kailashpati Mishra of Gujarat, Babu Parmanand of Haryana and Vishnu Kant Shastri of Uttar Pradesh. It announced that Lt. Gen. (retd.) M.M. Lakhera, would replace N.N. Jha, who recently resigned, as the Lt. Governor of Pondicherry.

The United Progressive Alliance Government has not immediately named successors to the sacked Governors. Instead, additional responsibilities have been given to the Governors of Maharashtra, Madhya Pradesh, Punjab and Uttaranchal.

In official and Congress circles, the names of the former Nagaland Chief Minister, S.C. Jamir, the former Intelligence Bureau chief, T.V. Rajeshwar, the former Bihar Governor and Rajya Sabha member, A.R. Kidwai, and the former Union Minister and Congress leader, Nawal Kishore Sharma, are being mentioned for possible gubernatorial assignments.

Today, the President, A.P.J. Abdul Kalam, directed that the Governors of Goa, Gujarat, Haryana and Uttar Pradesh "shall cease to hold office of Governor of their respective States," a Rashtrapati Bhavan communiqué said.

This has ended one phase of the controversy over gubernatorial assignments in which some of the Governors appointed by the erstwhile Bharatiya Janata Party-led National Democratic Alliance Government refused to put in their papers even though they had been given more than a hint that the Government wanted them to do so.

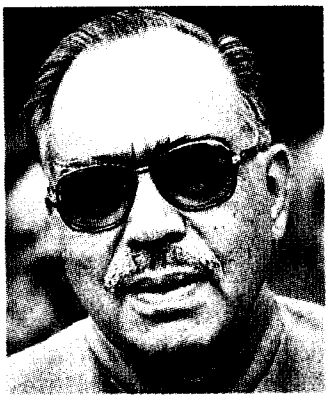
The presidential communiqué stated that Mohammad Fazal, Governor of Maharashtra, would discharge the functions of the Goa Governor; Balram Jakhar, Governor of Madhya Pradesh, would oversee Gujarat; Justice Om Prakash Verma (retd.), Governor of Punjab, would be in-charge of Haryana; and Sudarshan Agarwal, Governor of Uttaranchal, would take care of Uttar Pradesh.

Today's dismissal ends days of speculation that began with the resignation of Delhi's Lt. Governor, Vijai Kapoor, who had completed his tenure. He was replaced by B.L. Joshi, a former Rajasthan police officer. The Union Home Minister, Shivraj Patil, had indicated that the Government expected "political appointees" in the Raj Bhavans to quit on their own.

Over the last few days, a BJP delegation led by the Leader of the Opposition, L.K. Advani, met the President and the Prime Minister separately to press home its point that Governors should be allowed to complete their five-year tenure.

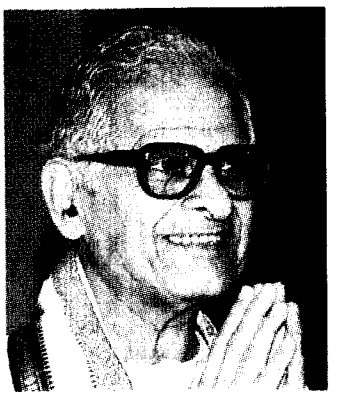
Apparently, the subject also came up for discussion when the Prime Minister, Manmohan Singh, accompanied by Mr. Patil, called on the President on Wednesday. The same night Mr. Patil rung up Mr. Advani, seeking his help in securing the resignations of the Governors the new Government wanted to replace. Besides Delhi and Pondicherry, the Government has so far made two other gubernatorial appointments — Dr. Jakhar in Madhya Pradesh and R.L. Bhatia in Kerala — against the vacancies caused by the deaths of Ram Prakash Gupta and Sikander Bakht.

Reactions on Page 11



Kidar Nath Sahani (Goa)

Kailashpati Mishra (Gujarat)



Vishnu Kant Shastri
(Uttar Pradesh)

Babu Parmanand
(Haryana)

THE HINDU

3 JUL 2004

'Governors cannot be removed arbitrarily'

By J. Venkatesan

NEW DELHI, JULY 1. The President's "pleasure" in the appointment of Governors cannot be exercised arbitrarily merely because of a change of government at the Centre, say some legal experts.

They say that normally Governors have a tenure of five years, though under Article 156 (1) of the Constitution they hold office during the "pleasure" of the President.

According to senior Supreme Court lawyer M.N. Krishnamani, the "pleasure" doctrine under Article 156 could be exercised only if a Governor's action or conduct was unbecoming of the high office of the Governor, corruption or violation of the Constitutional provisions.

He says that under Article 310 of the Constitution, persons serving the government either at the Centre or the State hold office during the "pleasure" of the President or Governor as the case may be, but they cannot be removed arbitrarily as several procedures have to be followed. "It is not contemplated in the Constitution that a Governor must automatically resign if there is a change of government.

There is also no such convention followed in the last 50 years," says Mr. Krishnamani.

The framers of the Constitution provided for a fixed tenure of five years for a Governor of a State to ensure that there are checks and balances. The Governors therefore cannot be thrown out on whimsical or political reasons, he feels. He points out that a petition filed by an advocate and office-bearer of the Congress that Governors should not be removed on the "pleasure" of the President is pending adjudication before a five-Judge Bench of the Supreme Court.

According to lawyer Prashant Bhushan, "it is true that the office of Governor should not be subjected to the whims and fancies of the party in power at the Centre. Any mala fide action of the government is bad in law." But as per the present system, the government in power can change Governors.

"If the present government wants to change the Governors, it should convince the people that those appointed by the Bharatiya Janata Party-led Government were not qualified to hold office as Governors since they were all committed to the ideology of the RSS.

Anyway, it is not a satisfactory system and the law on this aspect should be changed," says Mr. Bhushan.

However, he says the BJP, which replaced the heads of various autonomous bodies even before they completed their tenure, cannot have any grievance on the removal of Governors.

K. Subramaniam, senior lawyer, is of the opinion that while the Constitution provides for impeachment of the President, no such provision exists for the Governor, the reason being that as the Governor holds office during the pleasure of the President, the Central Government can always recall him if the circumstances so required.

He cites a judgment of the Rajasthan High Court in the case of Raghukul Tilak, wherein it was held that the presidential pleasure contemplated in Article 156 was not justiciable.

In view of this he says, the President is the best judge to decide as to when and in what circumstances the term of the Governor should be replaced. And Article 156 does not require that reasons be disclosed for the removal of a Governor.

The president of the Supreme Court Bar Association, P.H. Parekh, agrees with the view expressed by Mr. Subramaniam.

"There is no legal impediment for the removal of a Governor as he holds office during the pleasure of the President, who acts on the aid and advice of the government at the Centre.

Therefore, whenever there is a change of party in power at the Centre, it will be justified in removing a Governor, particularly if the government feels that such a Governor is not an independent person or one who is committed to a philosophy of particular political party or an organisation," says Mr. Parekh.

Shivraj Patil calls up Advani

By Our Special Correspondent

NEW DELHI, JULY 1. Amid the first-rate political controversy brewing over gubernatorial appointments, the Union Home Minister, Shivraj Patil, has reportedly sought the help of the Leader of the Opposition, L.K. Advani, in securing the resignations of five Governors the Government wants to replace.

According to sources close to the top Bharatiya Janata Party leadership, Mr. Patil telephoned Mr. Advani last night and requested him to ask the Governors of Goa, Rajasthan, Bihar, Uttar Pradesh and Gujarat to put in their papers.

However, Mr. Advani, it is learnt, flatly refused to do so, pointing out that they were Governors holding a constitutional office and were no longer under the discipline of the BJP.

"They are not BJP men, they are Governors," he is reported to have told Mr. Patil. Earlier, BJP leaders declared that the Governors appointed during the Vajpayee administration were not going to oblige the Government by tendering their resignations. Following the "tainted" Ministers' controversy, the party sees this as yet another "issue" with which to try and pin down the Government during the coming Budget session.

THE HINDU

A code for governors

Keep politics out of Raj Bhavans. Bring expertise, integrity, independence into them

GOVERNORS are once again in the news. This, perhaps, is inevitable. A change of guard in New Delhi, brings with it the temptation to install "friendly" incumbents in the various Raj Bhavans of the country. Eminences get pushed out or pulled in, depending on their equations with the party in power at the Centre. This has, sadly, been the case for a number of years.

The BJP has now assumed the high moral ground on the issue, with its leaders petitioning the president against the UPA government's reported move to remove governors perceived to be close to the BJP. Its stand that the Constitution provides for a five year term for governors — "during the pleasure of the president" — and that the president cannot withdraw his pleasure arbitrarily has merit. But it nevertheless must be stated that the six years of NDA rule also witnessed some extremely partisan appointments. Several party and sangh parivar faithfuls, as governors, have brought discredit to their high office, undermining both the Constitution and political practice in the process. Over the last six months, this newspaper has highlighted several instances of gubernatorial high-handedness and partisanship, whether it was M. Rama Jois's biased tone in his Republic Day address, M.L. Khurana's attempts at shoring up his political profile by holding public durbars, Bhai Parmanand's open appeal to an audience to vote for Atal Bihari Vajpayee. And now has come news of the cloud over Goa's Raj Bhavan presided over by Kedar Nath Sahni.

Which brings us to the vital observation made by the Sakaria Commission that people in active politics — especially leaders of ruling parties — should not be appointed as governors. This post should not be considered as an extension of a particular government's patronage network. Of course, this principle can be restated till we are blue in the face, even as Central governments happily carry on appointing their favourites as governors. Therefore we need here to reiterate another principle, a non-negotiable one: that once people are appointed as governors, they must in every way be above partisan and egregious conduct. Only then do they earn their right to a full term in office. We urgently need to keep politics out of our Raj Bhavans and bring expertise, integrity, independence into them.

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রাজ্যপালদের না-সরাতে রাষ্ট্রপতির কাছে দরবার

স্টাফ রিপোর্টার, নয়াদিল্লি, ২৮ জুন: রাজ্যপাল নিয়ে কংগ্রেস বিজেপি-র তৎপরতা তুঙ্গে। আজ বিরোধী দলনেতা লালকৃষ্ণ আডবাণী-সহ বিজেপি-র শীর্ষ নেতাদের একটি প্রতিনিধিদল রাষ্ট্রপতির সঙ্গে দেখা করেন। এন ডি এ আমলে নিযুক্ত রাজ্যপালদের বর্তমান সরকার যাতে 'রাজনৈতিক কারণে' না সরিয়ে মেয়াদ পূর্ণ করতে দেয়, তা দেখার জন্য তাঁরা রাষ্ট্রপতিকে অনুরোধ করেন।

অন্যদিকে কংগ্রেসের বক্তব্য, যে সব রাজনীতিককে বিজেপি আমলে নিয়োগ করা হয়েছিল, তাঁদের নিজেদেরই এখন সরে যাওয়া উচিত। কংগ্রেসের মিত্র বামপন্থীরাও একই কথা মনে করেন। ইতিমধ্যে উত্তরপ্রদেশের মুখ্যমন্ত্রী মুলায়ম সিংহ যাদব প্রধানমন্ত্রী মনমোহন সিংহের সঙ্গে দেখা করেন। মনমোহন প্রধানমন্ত্রী হওয়ার পর এটাই তাঁর সঙ্গে মুলায়মের প্রথম সাক্ষাৎ। পরে মুলায়ম জানান, উত্তরপ্রদেশের রাজ্যপাল বদল নিয়ে তাঁর সঙ্গে প্রধানমন্ত্রীর কোনও কথা হয়নি।

একটি সরকার চলে যাওয়ার পর অনেক সময়েই তাঁদের নিযুক্ত রাজনীতিকেরা বিভিন্ন পদ থেকে ইস্তফা দিয়ে থাকেন। পন্ডিচেরির লেফটেন্যান্ট গভর্নর এন এন ঝা নিজেই পদত্যাগ করেন। পশ্চিমবঙ্গের রাজ্যপাল বীরেন শাহকে অবশ্য রাজ্যের বামফ্রন্ট সরকার রেখে দেওয়ার কথা বলেছে। কিন্তু যাঁদের নিয়ে বিতর্ক, সেই রাজ্যপালেরা পদত্যাগ করেননি। উত্তরপ্রদেশের রাজ্যপাল বিষ্ণুকান্ত শাস্ত্রী তো লখনউতে বলেই দিয়েছেন, তিনি স্বেচ্ছায় পদত্যাগ করবেন না। কেন্দ্র যদি তাঁকে জোর করে সরায় তো সরাক। এই সবের ফলেই এখন বিতর্ক দানা বেঁধে উঠেছে।

রাষ্ট্রপতির কাছে গিয়ে আডবাণী-সহ বিজেপি-র শীর্ষ নেতারা অভিযোগ করেন, বিভিন্ন রাজ্যে রাজ্যপাল সরানোর জন্য সরকার চাপ তৈরি করছে। বিশেষত উত্তরপ্রদেশ হরিয়ানা, গুজরাত, গোয়ায়। তাঁরা বলেন, তাঁদের সরকার ক্ষমতায় আসার পরে আগের আমলের কোনও রাজ্যপালকে সরানো হয়নি। সকলকেই মেয়াদ পূর্ণ করতে দেওয়া হয়েছিল। বর্তমান সরকারেরও রাজ্যপালদের ক্ষেত্রে সেই ঐতিহ্য মেনে চলা উচিত। রাজনীতিক রাজ্যপালেরা পদত্যাগ না করলে কেন্দ্রীয় সরকার যে তাঁদের বরখাস্ত করার পরিকল্পনাও করেছে, এ কথা রাষ্ট্রপতিকে জানিয়েছেন আডবাণী নিজেই। আডবাণী বলেন, রাষ্ট্রপতি তাঁদের আশ্বাস দিয়েছেন, এ সম্পর্কে কোনও সিদ্ধান্ত নেওয়ার আগে তিনি সংবিধান, আইন এবং সমস্ত নজির খতিয়ে দেখবেন।

Governors: Advani leads BJP delegation to Kalam

By Our Special Correspondent

NEW DELHI, JUNE 28. A Bharatiya Janata Party delegation led by the Leader of the Opposition, L.K. Advani, met the President, A.P.J. Abdul Kalam, and complained that the Government was "pressuring" some Governors to put in their papers. Two days ago, Mr. Advani and some BJP leaders met the Prime Minister, Manmohan Singh, on the same issue.

Mr. Advani told reporters after the 30-minute meeting with the President that the delegation had impressed upon Mr. Kalam that the Government was trying to remove some Governors "for political reasons" and that this was not acceptable. "It seems that those [Governors] who had relations with the BJP are being informed that they should resign, and if they don't, they will be removed," he said.

Mr. Advani claimed that during the Vajpayee Government's term the ruling National Democratic Alliance had "established a tradition" of not disturbing Governors.

An exception was made in the case of two Governors (Goa and Mizoram) who had been appointed "after" the notification of the 1998 Lok Sabha polls.

The delegation comprised the Leader of the Opposition in the Rajya Sabha, Jaswant Singh, the former Union Ministers, Murli Manohar Joshi, Sushma Swaraj, Arun Jaitley and B.C. Bhanduri, the deputy leader of the BJP in the Lok Sabha, V.K. Malhotra, and the party vice-president, Mukhtar Abbas Naqvi.

They told Mr. Kalam that they had brought this matter to the notice of the Prime Minister two days ago. The Governors enjoyed a "fixed tenure" and while the President could at any time "withdraw his pleasure" and thus bring their tenure to an abrupt end, this should be done only for substantive reasons such as allegations of corruption or treason against them. Simply because a Governor had links with a political party should not be sufficient reason for his dismissal.

Party leaders told reporters that the President said that he would study the precedents and the constitutional and legal position.

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সঙ্গত হস্তক্ষেপ

যাহা আইন প্রণেতাদের কাজ, আইন বিভাগ তাহার বিপরীত কাজ করিয়াছিল। তাই সর্বোচ্চ আদালতকে হস্তক্ষেপ করিতে হইল। ভূতপূর্ব সরকার এই মর্মে একটি বিল পাশ করিয়াছিল যে রাজ্যসভার সাংসদদের আর নিজ-নিজ রাজ্য হইতে নির্বাচিত হইয়া আসিতে হইবে না, যে-কোনও রাজ্য বা কেন্দ্রশাসিত অঞ্চল হইতেই তাঁহারা সংসদে আসিতে পারিবেন। সুপ্রিম কোর্টের দুই বিচারপতি এই আইনকে 'অসাংবিধানিক' আখ্যা দিয়া রাজ্যসভার ৭৫টি আসনে আসন্ন নির্বাচন স্থগিত করিয়া দিয়াছেন। দুর্ভাগ্যের বিষয়, নির্বাচন কমিশন ইহার বিরুদ্ধে সুপ্রিম কোর্টে আবেদন করিয়াছে। কমিশনের এমন কার্যক্রম সত্ত্বেও বলা চলে এই রায়ে কিন্তু ভারতীয় গণতন্ত্রের দীর্ঘ দিনের একটি বিকৃতি পরিশুদ্ধ হইবার আশা জাগিয়াছে। বিকৃতিটি হইল— খিড়কির দরজা দিয়া জনাদেশ-রহিত রাজনীতিকদের কেন্দ্রীয় মন্ত্রিসভায় ঠাঁই করিয়া দেওয়া। সংবিধানপ্রণেতারাই এই বিকৃতির সম্ভাবনাটি রচনা করিয়া যান। এমনিতে সরাসরি নির্বাচনের মাধ্যমে কেন্দ্রীয় আইনসভায় প্রেরিত জনপ্রতিনিধিদের সমান্তরালে পরোক্ষ ভাবে নির্বাচিত রাজ্যসভা থাকার প্রয়োজন লইয়াই তর্ক তোলা যায়। মার্কিন যুক্তরাষ্ট্রে যে যুক্তিতে ইউনিয়ন বা কেন্দ্রে রাজ্যগুলির স্বার্থ রক্ষা করার জন্য সেনেট রহিয়াছে, ভারতে তা প্রযোজ্য নয়। ভারতীয় অঙ্গরাজ্যগুলির জন্ম ও বিবর্তন মার্কিন যুক্তরাষ্ট্রের অনুরূপ নয়। মার্কিন সেনেটে আয়তন ও জনসংখ্যা নির্বিশেষে সব রাজ্যেরই প্রতিনিধিত্ব সমান, যেখানে ভারতীয় রাজ্যসভায় আনুপাতিক প্রতিনিধিত্ব চালু। তা ছাড়া, ভারতীয় রাজ্যসভা আবার ব্রিটিশ পার্লামেন্টের 'হাউস অফ এল্ডার্স'-এর অনুরূপও বটে। সব মিলাইয়া মার্কিন ও ওয়েস্টমিনিস্টার ধাঁচের এক 'হাঁসজারু' সংস্করণ আমাদের এই রাজ্যসভা।

আইন প্রণয়ন যেহেতু লোকসভাই করে, তাই রাজ্যসভার প্রয়োজন নাই বলিলেই চলে। তবু যদি রাখিতেই হয়, তবে তাহার সদস্যদের নিজ-নিজ রাজ্য হইতেই নির্বাচিত হওয়া কাম্য। অথচ রাজ্যসভায় এমন অনেকেই আছেন, যাঁহারা স্বরাজ্যে ভোটে জিতিতে অপারগ, অথচ যাঁহাদের মন্ত্রিসভায় রাখা জরুরি। তৎকালে লোকসভাকে এড়াইয়া তাঁহাদের রাজ্যসভা মারফত মন্ত্রিত্বে বরণ করা হয়। বিদায়ী সরকারে প্রধানমন্ত্রী মনমোহন সিংহ ছাড়াও আইনমন্ত্রী এইচ আর ভরদ্বাজ ইহার দৃষ্টান্ত। মনমোহন সিংহ তো অসমের একটি ভাড়াবাড়ির ঠিকানা দেখাইয়া ওই রাজ্য হইতে রাজ্যসভায় নির্বাচিত। এই বন্দোবস্ত সাংবিধানিক ফাঁকিবাজি, এবং তাহা ভরাট করা কর্তব্য। তর্ক উঠিতে পারে, যিনি সারা দেশের মন্ত্রী, তাঁহাকে নিজ রাজ্যের সীমানায় আবদ্ধ থাকিতে হইবে কেন, বিশেষত 'বসুধৈব কুটুম্বকম্'-এর মন্ত্র যখন সংসদে খোদিত। এই কুতর্ক প্রকারান্তরে শাসকের প্রতিনিধিত্বহীনতাকেই বৈধতা দেয়। ভারতের পরিষদীয় গণতন্ত্র কিন্তু কঠোরভাবে প্রতিনিধিত্বমূলক এবং দলীয়। এখানে মনোনয়নের কোনও স্থান নাই। যিনি নির্বাচনে জিতিতে পারেন না, তাঁহার মন্ত্রী হওয়া কঠিন। তাঁহাকে যদি রাজ্যসভার খিড়কি পথে মন্ত্রিত্বে অভিষিক্ত করিতেই হয়, তবে তিনি যে রাজ্যের মানুষ, সেই রাজ্য হইতেই তাঁহার নির্বাচিত হওয়া উচিত।

যদি পাটীগণিতের জটিলতায় কোনও রাজনীতিক বা মন্ত্রিত্বপ্রত্যাশী অন্য বিশিষ্টজন স্বীয় রাজ্যের রাজ্যসভা আসনে প্রার্থী হিসাবে মনোনীত ও নির্বাচিত হইতে না পারেন, তবে তাঁহার দল তাঁহার জন্য লোকসভার নিরাপদ বা 'জেতা' আসনের একটি ছাড়িয়া দিক (সব দলেরই এমন কিছু আসন থাকে)। তাহা না করিয়া দলীয় সাংসদ-বিধায়কদের নিশ্চিত ভোটে জিতিয়া সংসদে আসিতে পঞ্জাবের রাজনীতিকের গুয়াহাটিতে বাসা ভাড়া লওয়া, তামিলনাড়ুর বিজেপি নেতার রাজস্থান কিংবা পশ্চিমবঙ্গের কংগ্রেস নেতার গুজরাত হইতে নির্বাচনে লড়া সর্বৈব অনৈতিক। ইহা সেই বিপজ্জনক রাজনৈতিক প্রবণতাকে উৎসাহিত করে যাহা শাসনব্যবস্থার জনপ্রতিনিধিত্বের অপরিহার্যতাকে পাশ কাটাইতে চায়। ইহা আসলে একটি স্বৈরতান্ত্রিক প্রবণতাকেই প্ররোচিত করে। যেন কেন্দ্রে মন্ত্রী হইবার জন্য, কোটি-কোটি মানুষের ভাগ্যনিয়ন্তা হইবার জন্য জনসমর্থন থাকার কোনও প্রয়োজনই নাই, কেবল দলীয় শীর্ষ নেতৃত্বের আশীর্বাদ এবং বিধায়ক-সাংসদদের অনুমোদনই যথেষ্ট। সুপ্রিম কোর্ট অতএব একটি সঙ্গত প্রশ্নই তুলিয়াছে। এ ক্ষেত্রে অন্তত শীর্ষ আদালতের বিরুদ্ধে অতি-সক্রিয়তার কিংবা আইন বা শাসন বিভাগের কাজে অনাবশ্যক নাক-গলানোর অভিযোগ তোলা যাইবে না। বরং এই অবসরে বসবাসের রাজ্য ব্যতীত অন্য রাজ্য হইতে [illegible] জিতিয়া আসার অসাংবিধানিক আ[illegible]

Commission contests SC stay on election

Poll panel steps into RS debate

OUR BUREAU

New Delhi, June 5: The Election Commission today moved the Supreme Court against the order of a vacation bench that had stayed the Rajya Sabha polls questioning the practice of electing members from states they did not belong to.

In an application filed in the apex court, the commission contended that the notification for the June 21 elections had already been issued and that under the Constitution, "once the election process" has been initiated, no court could intervene.

The interim order came yesterday on a public interest litigation by columnist Kuldip Nayar, a retired nominated member of the Upper House, who argued that the practice of electing members from states other than their own was unconstitutional and sought their disqualification.

In their order, Justices Ruma Pal and B.N. Agarwal directed the commission not to issue a notification for the biennial polls. "If the notification is not published in the gazette, it shall not be published and if it is already published, it shall not be given effect to," the bench had said and fixed June 14 as the next date of hearing.

Seeking vacation of the order, the poll panel pointed out that the notification for the elections had been issued on Friday morning and the election process was already on.

The commission said under Article 324, "superintendence, direction and control of elections" were "vested" with it and pointed out several earlier verdicts of the apex court by which an election petition could be brought only after the elections were over.

Manmohan Singh does not want his photograph staring out of advertisements.

On Friday, the Prime Minister's Office sent a directive to all ministries and government departments which said: "The Prime Minister has desired that his photo need not be inserted in advertisements released by various ministries except in the case of events of national importance or national occasions (Independence Day or Republic Day)."

A standing counsel for the commission said the poll panel's application might be taken up on Monday itself, "given the urgency of the matter".

He said an unprecedented constitutional impasse would arise out of the apex court's interim stay order as a few Union ministers are yet to be elected to either House of Parliament.

Shivraj Patil, who lost the Lok Sabha election from Latur in Maharashtra, has been made home minister. He has to be elected to the Rajya Sabha within six months.

Congress veteran P.M. Sayeed was defeated from Lakshadweep but made a minister. He, too, has to be elected to the Rajya Sabha.

PMK chief S. Ramadoss' son, Anbumani Ramadoss, is also a minister and has to be elected to the Upper House.

Another Congress casualty could be Gandhi family loyalist Satish Sharma, who vacated the Rae Bareli constituency for Sonia Gandhi and was expected to be brought to the Rajya Sabha from Andhra Pradesh.

But Congress sources do not see any threat to Prime Minister Manmohan Singh — who is from Punjab but was elected from Assam. They said the court's order is unlikely to have retrospective effect.

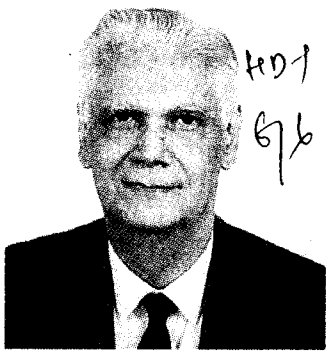
Asked to comment on the interim order, Congress spokesperson Anand Sharma said: "The matter is sub judice. The Government of India will place its views before the court when the matter comes up for hearing. We hope the issue will be resolved soon."

The CPM today issued a statement saying the Rajya Sabha is the council of states and the members elected should be from the states concerned.

THE TELEGRAPH 6 JUN

Milon Banerjee is Attorney General

By Our Legal Correspondent



NEW DELHI, JUNE 5. The Union Government today appointed senior advocate Milon Kumar Banerjee as the next Attorney General of India. He succeeds Soli Sorabjee, who resigned following the change of guard at the Centre.

Mr. Banerjee, 74, was enrolled as an advocate in 1955 and designated senior advocate in May 1972. Besides regular appearances in the Supreme Court and other courts in the country, he has appeared in several international arbitrations.

Mr. Banerjee was appointed the second Additional Solicitor-General of India in August 1979, was Solicitor General from 1986 to 1989 and Attorney General from November 1992 to July 1996.

In the Ayodhya case, as Attorney General he was faced with a case of far- reaching significance. The day he took over (November 24, 1992), Mr. Banerjee cautioned the Supreme Court that the situation had reached a boiling point and any inaction would make the situation irreversible and the court would be faced with a fait accompli. The judgment in the Ram Janambhoomi case, upholding the validity of the Acquisition of Certain Areas in Ayodhya Act, 1993, was another landmark in his career.

The national awards, viz., Bharat Ratna and the Padma awards, were revived by the Supreme Court after a long break, accepting Mr. Banerjee's arguments and suggestions.

THE HINDU 6 JUN 2002

Supreme Court stops notification for Rajya Sabha elections

By J. Venkatesan

NEW DELHI, JUNE 4. The Supreme Court through an interim order today restrained the Election Commission from issuing a notification to fill 65 vacancies to the Rajya Sabha arising in June and July. The notification was to be issued today to pave the way for filing of nominations.

A vacation Bench, comprising Justice Ruma Pal and Justice B.N. Agrawal, passed the order on a petition filed by the former Rajya Sabha member and journalist, Kuldip Nayar, challenging the amendments made to the Representation of the People Act, 1951, dispensing with the requirement of domicile for candidates contesting the Rajya Sabha elections.

Today's order has the potential to blow up into a constitutional crisis if the court does not vacate the stay at the earliest, as several Union Ministers are to be elected against these vacancies. The Ministers have to be elected to either House of Parliament within six months of assuming office.

The States from where vacancies (including five which arose after the recent Lok Sabha polls) are to be filled are: Andhra Pradesh (7); Karnataka (4); Chhattisgarh (2); Madhya Pradesh (4); Tamil Nadu (6); Orissa (4); Maharashtra (6); Punjab (3); Rajasthan (5); Uttar Pradesh (11); Uttaranchal (1); Bihar (7); Jharkhand (2); Haryana (2) and West Bengal (1).

In its order, the Bench said that if the Commission had not already issued the notification, the same should not be issued. If the notification had been issued, it should not be given effect to. Since there was some confusion over whether the Commission had been made a party to the case or not, the Bench said it would be made a party now and issued notice returnable by June 14. It would be open to the Commission to seek modification of the order before the next vacation Bench on June 14. Mr. Nayar, appearing in person, submitted that he had written to the Commission on June 2 asking it to defer issuing the notification for the Rajya Sabha election till the matter was heard by the Supreme Court and had requested the Commission to send counsel to be present during the hearing. However, none from the Commission's side was present during the hearing, he said.

'Far-reaching consequences'

Appearing for the Centre, senior counsel Kailash Vasudev pleaded with the Bench not to pass the interim order as it had far-reaching consequences and ramifications of stalling the election process. The Bench, however, observed that if such an important question was put before it where the basic structure of the Constitution was alleged to have been altered, then it could issue ex-parte orders for stay of the action. "It is a fit case for interference," the Bench observed.

A three-judge Bench, comprising the then Chief Justice of India, V.N. Khare, Justice S.B. Sinha and Justice S.H. Kapadia, had on April 28 issued notice to the Centre and all the States after hearing Mr. Nayar, whose letter to the CJI was treated as a public interest petition.

'Federalism part of basic structure'

Mr. Nayar submitted that federalism was a part of the "basic structure" of the Constitution and the amendment to the Representation of the People Act made in August 2003 being contrary to the basic structure was unconstitutional and liable to be struck down. Article 84 (c) of the Constitution dealing with qualification for membership of Parliament either prescribed on that behalf or under any law made by Parliament. Accordingly, under the RP Act, a candidate for being elected to the Council of States should be ordinarily a resident of the State concerned.

However, this requirement had been done away with in the amended Act and by this, Parliament had sought to change the basic structure of the Constitution.

He said that if this amendment was given effect to, States need not have their own people and the objective of the Council of States would be defeated. He asked the Court to strike down the amendment and restore the original provision in the Act, and grant an interim stay against issuance of notification for filling the vacancies. Mr. Nayar also assailed another amendment by which voting had been made through open ballot instead of secret ballot.

'Amendment affects federal character': Page 13

THE HINDU 5 JUN 2004

Lahoti justifies Supreme Court's intervention in Gujarat riot cases

By J. Venkatesan

NEW DELHI, JUNE 2. The new Chief Justice of India, R.C. Lahoti, today justified the Supreme Court's intervention in the Gujarat riot cases, particularly the Best Bakery case [the trial has been shifted to Maharashtra], and said the cases were extraordinary in nature, which called for extraordinary measures.

In an interview to *The Hindu* on assumption of office, Mr. Justice Lahoti said the Supreme Court had risen to the occasion in dealing with the cases in the discharge of its constitutional obligations and duties.

The intervention had raised the image of the court across the world "going by the letters and response we have received."

Asked about the criticism of judicial activism, he said: "Judicial activism is a misnomer. The judiciary is supposed to be active under the Constitution. The day it is not active, it ceases to be judiciary."

Public interest litigations were like alarm clock. "We only make the legislature or the executive wake up and make them to do what they are supposed to do. The PIL jurisprudence is useful and effective and serves its purpose." But by way of caution, he said: "Courts should not take over the job of the legislature or the executive."

Asked about the recent incident of 25 judges of the Punjab and Haryana High Court going on mass leave, and a reported move to transfer some of them, he denied there was any such move. "No such decision has been taken and not even any thought process ever initiated," he said.

"It is not a serious issue. The Chief Justice and the judges of the High Court are sensible and responsible persons. Only some minor misunderstandings have got enlarged into serious problems but they are all within manageable limits. With the help of my senior colleagues in the Supreme Court and by taking the Chief Justice and all other judges of the Punjab and Haryana High Court into confidence, the congenial atmosphere and smooth working in the High Court will be restored."

'No place for erring judges'

By way of a warning to judges of other High Courts, Mr. Justice Lahoti said: "Any instance of conduct unbecoming of the holder of a judicial office shall not go unnoticed and shall be dealt with a firm hand. There shall be no place for any deviant or erring judge in the judicial system of the country."

Asked about the need for more powers to the CJI to deal with alleged incidents of indiscipline among judges, he said the CJI had the moral authority to deal with such situations.

On whether he would recommend to the Government to enact legislation to deal with such a situation, he said: "At present, there is no need for any such legislation for giving more powers to the CJI. But if such a situation arises requiring such legislation, we shall certainly make such a request to the Government to legislate." Asked whether he agreed with the view of the former Chief Justice, V.N. Khare, on the Uniform Civil Code, he said he had no different view than the one expressed in the Directive Principles of the Constitution, asking the state to strive for such a Code. "It is already there in the Constitution. The Supreme Court in its judgments has only reminded the Government about the Directive Principles. There is nothing new in it."

On steps to clear arrears in courts, Mr. Justice Lahoti said: "Cases relating to corruption, criminal cases in which accused are in jail, matrimonial, labour and service disputes, cases of senior citizens and cases which have remained pending in the courts for over a specified number of years calculated from the date of first institution in the lower court" would be given preference in disposal. The judges' strength in the judiciary should be increased in a phased manner as per the recommendations of the Law Commission. A Constitution Bench would sit regularly in the Supreme Court till the cases referred to larger Benches were cleared.

খুরানা-শাস্ত্রীরা সরছেন, তবে বুদ্ধের অনুরোধেই শাহকে সরাচ্ছে না কেন্দ্র

জয়ন্ত ঘোষাল ● নয়াদিল্লি

২ জুন: রাজস্থানে মদনলাল খুরানা এবং উত্তরপ্রদেশে বিষ্ণুকান্ত শাস্ত্রীকে সরানোর আলোচনা শুরু হয়ে গেলেও পশ্চিমবঙ্গের রাজ্যপাল বীরেন জে শাহকে সরাচ্ছে না কেন্দ্র। মুখ্যমন্ত্রী বুদ্ধদেব ভট্টাচার্যও দিল্লিকে জানিয়ে দিয়েছেন যে, রাজ্য সরকার এখনই এই বদল চাইছে না। বীরেন শাহের কার্যকালের মেয়াদ শেষ হচ্ছে ডিসেম্বরে। তবে তার পরেও তাঁকেই রাজ্য সরকার রাখতে চাইবে কি না, সে ব্যাপারে কোনও চূড়ান্ত সিদ্ধান্ত হয়নি। সি পি এম নেতৃত্বেরও একটা বড় অংশ রাজ্যপাল বদল করতে উৎসাহী নন।

ডিসেম্বর মাস পর্যন্ত বীরেন শাহের সরে যাওয়ার সম্ভাবনা না-থাকলেও উত্তরপ্রদেশ, রাজস্থান, এমনকী, জম্মু ও কাশ্মীরের রাজ্যপালদের ক্ষেত্রে এই পরিবর্তনের সিদ্ধান্ত নেওয়া হতে পারে। কাশ্মীরে রাজ্যপাল জেনারেল এ কে সিনহার সঙ্গে মুখ্যমন্ত্রী মুফতি মহম্মদ সঈদের বিরোধ তুঙ্গে। অমরনাথ যাত্রার সময়সীমা বাড়ানো নিয়েও দু'জনের বিরোধ প্রকট হয়ে গিয়েছে। মুফতি-কন্যা মেহবুবা আজ দিল্লি এসে কেন্দ্রীয় সরকারের কাছে রাজ্যপাল বদলের দাবি জানিয়ে গিয়েছেন।

বাজপেয়ী সরকার ক্ষমতায় আসার পর বহু 'প্রাচীন' বিজেপি নেতাকেই রাজ্যপাল করে দেওয়া হয়েছিল। রাজস্থানে মদনলাল খুরানা, উত্তরপ্রদেশে বিষ্ণুকান্ত শাস্ত্রী, বিহারে রমা জয়েস, গোয়াতে কেদারনাথ সাহনি, গুজরাতে কৈলাশপতি ত্রিপাঠি, হরিয়ানার বাবু পরমান্দ রাজ্যপাল হন। কেরল ও মধ্যপ্রদেশে রাজ্যপালদের মৃত্যুর পরে ওই পদদু'টি আপাতত খালি। তবে এই দুই রাজ্যেও বিজেপি নেতা রামপ্রকাশ গুপ্ত (মধ্যপ্রদেশ), সিকন্দর বখত (কেরল)-কে নিযুক্ত করেছিলেন প্রাক্তন উপ-প্রধানমন্ত্রী লালকৃষ্ণ আডবাণী। মিজোরামের রাজ্যপাল এ আর কোহলি এবং সিকিমের ভি রামারাও-ও বিজেপি-র নেতা।

মনমোহন সিংহের সরকার ক্ষমতায় আসার পরেই সি পি এম-সি পি আই নেতৃত্ব সনিয়া গাঁধীর কাছে দাবি পেশ করেন যে, এই সব বিজেপি নেতাকে রাজ্যপালের পদ থেকে সরিয়ে দিতে হবে। কারণ, এ সবই রাজনৈতিক নিয়োগ। সি পি আই নেতা এ বি বর্ধনও সনিয়ার সঙ্গে বৈঠকের পরে সাংবাদিকদের কাছে মন্তব্য করেন যে, এই সব 'গৈরিক' রাজ্যপাল আরও কিছু দিন রাজভবনের স্বাচ্ছন্দ্য উপভোগ করে নিন।

অনেকগুলি রাজ্যে রাজ্যপালদের মেয়াদ এমনিতেই শেষ হয়ে যাচ্ছে। অরুণাচল প্রদেশের রাজ্যপাল বিনোদ পাণ্ডে অবসর নেবেন নভেম্বরে। বিশ্বনাথপ্রতাপ সিংহ যখন প্রধানমন্ত্রী ছিলেন, তখন পাণ্ডে ছিলেন তাঁর প্রিন্সিপাল সেক্রেটারি। তিনি জ্যোতিষচর্চাও করতেন। আডবাণী তাঁকে প্রথমে বিহারের রাজ্যপাল করেন। কিন্তু পরে লালুপ্রসাদ যাদব ও বিজেপি-র একাংশের আপত্তিতে তাঁকে সরিয়ে অরুণাচলে পাঠিয়ে দেওয়া হয়। বিনোদ পাণ্ডে আবার বর্তমান ক্যাবিনেট সচিব কমল পাণ্ডের বড় শ্যালক। এ হেন বিনোদকে নভেম্বরের পর বিদায় জানানো হবে— এমনটাই চাইছেন স্বরাষ্ট্রমন্ত্রী শিবরাজ পাতিল। ঝাড়খণ্ডের রাজ্যপাল বেদ মারোয়া অবসর নিচ্ছেন ডিসেম্বরে। মহারাষ্ট্রের রাজ্যপাল মহম্মদ ফজল নভেম্বরে অবসর নেওয়ার পরেই রাজ্য সরকার তাঁকে সরাতে চান। মহারাষ্ট্রে বিধানসভা নির্বাচনের আগে তাঁরা নতুন রাজ্যপাল চাইছেন। মণিপুরে প্রাক্তন র-প্রধান অরবিন্দ দাভে অবসর নেবেন অগস্টে। ওড়িশায় প্রাক্তন আমলা এস এম রাজেন্দ্রন অবসর নিচ্ছেন নভেম্বরে।

এ বার নতুন সরকার বেশ কিছু নতুন রাজ্যপাল নিয়োগের সুযোগ পাচ্ছেন। এর মধ্যে ব্যতিক্রম বীরেন শাহ। তিনিও একদা বিজেপি-র জাতীয় কর্মসমিতির সদস্য ছিলেন। রাজ্যপাল হিসাবে নিয়োগের সময় তৎকালীন মুখ্যমন্ত্রী বীরেন শাহের পক্ষে থাকলেও সি পি এমের একাংশ তাঁর বিরুদ্ধেই ছিলেন। মমতা বন্দ্যোপাধ্যায়ও এক সময় তাঁর নিয়োগের বিরোধিতা করেছিলেন। কিন্তু দায়িত্বভার গ্রহণ করে রাজ্যপাল কলকাতায় সকলের সঙ্গেই ভাল সম্পর্ক গড়ে তোলেন। এখন তাই দিল্লিতে পালাবদলের পর অন্য রাজ্যপালদের সরানোর দাবি উঠলেও রাজ্য সরকার বীরেন শাহকে সরিয়ে কোনও 'ভুল রাজনৈতিক সঙ্কেত' পাঠাতে চাইছেন না।

Lahoti takes over as Chief Justice of India

By J. Venkatesan

Ramesh Chandra Lahoti being greeted by the Prime Minister, Manmohan Singh, after being sworn in as Chief Justice of India by the President, A.P. J. Abdul Kalam, at Rashtrapati Bhavan in New Delhi on Tuesday. — Photo: V.V. Krishnan

NEW DELHI, JUNE 1. Justice Ramesh Chandra Lahoti, the senior-most Supreme Court judge, was today sworn in the 35th Chief Justice of India, succeeding Justice S. Rajendra Babu, who retired after a brief tenure of 31 days.

The President, A.P.J. Abdul Kalam, administered the oath of office to Mr. Justice Lahoti at a brief ceremony in the Ashoka Hall of Rashtrapathi Bhavan. Mr. Justice Lahoti will have 17-month tenure till November 1, 2005. Soon after the swearing-in, he touched the feet of his mother seeking her blessings. "I owe everything to my parents. God blesses people through their parents," he later said.

The Vice-President, Bhairon Singh Shekhawat, the Prime Minister, Manmohan Singh, the Congress president, Sonia Gandhi, the outgoing CJI, Mr. Babu, former CJIs, including V.N. Khare and A.S. Anand, the Union Home Minister, Shivraj Patil, the Human Resource Development Minister, Arjun Singh, the Finance Minister, P. Chidambaram, the Law Minister, H.R. Bhardwaj, the Parliamentary and Urban Affairs Minister, Ghulam Nabi Azad, the Petroleum Minister, Mani Shankar Aiyar, the Social Justice Minister, Meira Kumar, the Minister of State for Law, K. Venkatapathy, former and present Supreme Court and High Court judges and eminent lawyers attended the function. The Opposition party leaders were conspicuous by their absence.

Enrolled in 1961, Mr. Justice Lahoti was elevated as a judge of the Madhya Pradesh High Court in May 1988 and in February 1994 he was transferred to the Delhi high Court. He was appointed judge of the Supreme Court on December 9, 1998.

As a Supreme Court judge, Mr. Justice Lahoti has rendered several landmark judgments. In one such judgment, he observed that "senior officers occupying key positions are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way at the behest of politicians for carrying out commands having no sanctity in law."

In the Kesoram Industries case, Mr. Justice Lahoti interpreted several legislative Entries in the Seventh Schedule of the Constitution leaning in favour of the States' power to levy tax and fee unless it was specifically taken away. While dealing with the issue of prompt and speedy justice, he once observed: "The obligation of the presiding judge to hold the proceedings so as to achieve the dual objective — search for truth and delivering justice expeditiously — cannot be subdued."

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Justice Lahoti takes over as CJI

Press Trust of India

NEW DELHI, June 1.— Mr Justice Ramesh Chandra Lahoti today became the new Chief Justice of India taking oath in the name of God and immediately thereafter took blessings of his mother at the glittering Ashoka Hall of Rashtrapati Bhavan.

Mr Justice Lahoti, who succeeds Mr Justice S Rajendra Babu and has a tenure of nearly 18 months as CJI, was administered oath of office by President Mr APJ Abdul Kalam in the presence of Vice-President Mr Bhairon Singh Shekhawat, Prime Minister Dr Manmohan Singh and Congress leader Mrs Sonia Gandhi.

On the completion of the brief oath taking ceremony, the 63-year-old CJI rushed to his mother and touched her feet seeking blessings before 200-odd dignitaries that included Cabinet ministers, Judges of Supreme Court and the High Court.

"I owe everything to my parents. God blesses people through their parents," Justice Lahoti told PTI.

Among the dignitaries were home minister Mr Shivaraj Patil, HRD minister Mr Arjun Singh, finance minister Mr P Chidambaram, law minister Mr HR Bhardwaj, parliamentary and urban affairs minister Mr Ghulam Nabi Azad, petroleum minister Mr Mani Shankar Aiyar and social justice minister Meira Kumar.

The Opposition party leaders were conspicuous by their absence.

This is probably the first time when Mrs Sonia Gandhi as the Congress President attended the swearing-in ceremony of a Chief Justice of India. However, she said she had attended such functions before. "I think I have attended the swearing-in ceremony of a Chief Justice before," she told PTI.

Born in Guna in Madhya Pradesh in 1940, Mr Justice Lahoti got enrolled as an advocate in 1962 and was recruited directly from the Bar to the State Higher Judicial Service to be appointed as a District and Sessions Judge.

After a year, he resigned in May 1978 and went to practise in the Madhya Pradesh High Court before being appointed as the Additional Judge there in May 1988 and was made Permanent Judge in August 1989.

After being transferred to the Delhi High Court in February 1994, Mr Justice Lahoti was elevated as the Judge of the Supreme Court in December 1998.

A humble, down-to-earth human being and a brilliant gentleman judge, Mr Justice Lahoti possesses a robust common sense, insight into law, courage of conviction and a visionary yet humane approach which are reflected in his judgments that have profoundly and positively impacted the country.

In a landmark judgment in Javed versus State of Haryana, Mr Justice Lahoti uhpeld a law disqualifying those with more than two children from standing for Panchayat elections. When it came to reservation in PG courses in prestigious AIIMS, Mr Justice Lahoti held that beyond the basic level of education in medical sciences, wherein reservation can be understood as fulfillment of societal obligation of the State towards the weaker segments, "reservation is a reversion or diversion from the performance of primary duty of the State". In the same ruling, he upheld the constitutional validity of the law assigning weightage to doctors who have served in rural and tribal areas for the purpose of admission in post graduate medical courses.

In many of his decisions, Mr Justice Lahoti cautioned against the abuse of power by public officials and in one such judgment, he observed "senior officers occupying key positions are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way at the behest of politicians for carrying out commands having no sanctity in law".

Mr Justice Lahoti, as a Judge of the Delhi High Court, had also headed the Court of Inquiry investigating into causes of mid-air collision between a Saudi Arabian Boeing-747 and a Kazakh plane at Charkhi-Dadri near Delhi in 1996. As a one-man Inquiry Commission to investigate into the claims of frustrated buyers of flat

Law officers' resignations accepted: The government has accepted the resignation of all the law officers of the Union, including that of the Attorney General for India and the Solicitor General. Law Ministry sources said that a hunt was on for their successors and that the process of selecting them had already begun. "Except the Additional Solicitor General, Mr Altaf Ahmed, who has not resigned, the resignation of all law officers have been accepted," ministry sources said. All the Union law officers had resigned soon after the UPA government had taken over in keeping with convention.

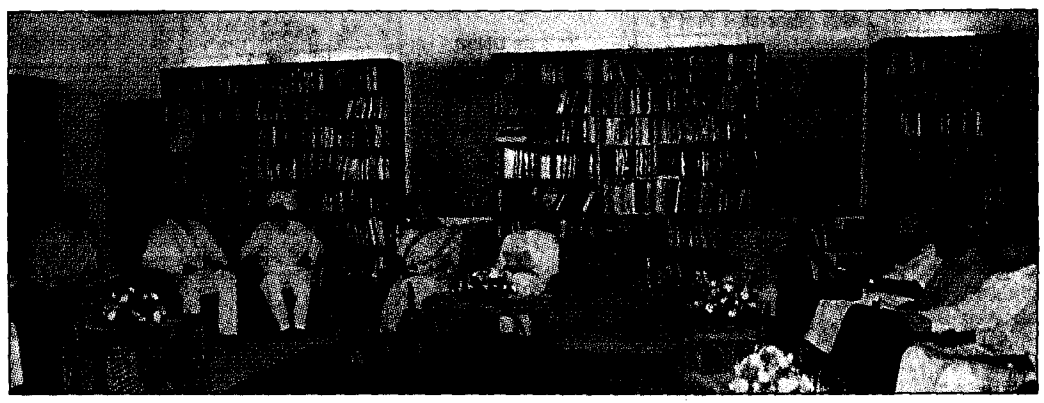
"I owe everything to my parents. God blesses people through their parents"

Mr Justice Ramesh Chandra Lahoti seeks his mother's blessings soon after taking oath as the new Chief Justice of India. — AFP

স্পিকার-পদে সোমনাথ কি না, সিদ্ধান্ত মঙ্গলবার

বাম দাবিতে সরতে হচ্ছে কিছু রাজ্যপালকে

স্টাফ রিপোর্টার, নয়াদিল্লি, ২৩ মে: মনমোহন সিংহের নতুন সরকার এ বার এন ডি এ সরকার মনোনীত বেশ কিছু রাজ্যপালকে সরিয়ে দিতে চলেছে। উত্তরপ্রদেশে বিষ্ণুকান্ত শাস্ত্রী, রাজস্থানে মদনলাল খুরানা-সহ বেশ কিছু আর এস এস, বি জে পি নেতাকে বাজপেয়ী সরকার নিয়োগ করেছিল । বাম দলগুলি এ বার দাবি তুলেছে যে এই রাজ্যপালদের অপসারণ করা প্রয়োজন। সি পি আই সর্বভারতীয় সাধারণ সম্পাদক এ বি বর্ধন আজ বলেছেন "আর এস এসের বেশ কিছু রাজ্যপাল আরও কিছুদিন রাজভবন উপভোগ করুন।" সরকার বদল হওয়ার পর রাজ্যপাল বদলের এই প্রয়াস নতুন নয়। বি জে পি ক্ষমতায় আসার পর তৎকালীন স্বরাষ্ট্রমন্ত্রী এল কে আডবাণী গোয়া এবং মণিপুরের রাজ্যপাল বদল করে দিয়েছিলেন।



প্রধানমন্ত্রী মনমোহন সিংহ ও কংগ্রেস নেত্রী সনিয়া গাঁধীর সঙ্গে আলোচনায় শরিক দলের নেতারা। রবিবার। —পিটিআই

রাজ্যপাল বদলের দাবি তোলার পাশাপাশি অভিন্ন ন্যূনতম কর্মসূচী রূপায়ণের ক্ষেত্রে বামেদের দাবি শিক্ষাকে গৈরিকীকরণের হাত থেকে সম্পূর্ণ মুক্ত করা হোক। ইতিহাসের বিকৃতি এবং লেখকদের প্যানেল পরিবর্তনের বিষয়টিকে খতিয়ে দেখা হোক। আপাতত স্থির হয়েছে অভিন্ন কর্মসূচি নিয়ে সি পি এম, সি পি আই, আর এস পি, ফরোয়ার্ড ব্লক প্রত্যেকে নিজের দলের মধ্যে আলোচনা করবে। ২৫ মে কলকাতায় সি পি এমের পলিটব্যুরো বৈঠকে বসছে। তার পর অন্য বাম দলগুলির সঙ্গে আলোচনায় বসে এ ব্যাপারে চূড়ান্ত আলোচনা হবে। আজ সমস্ত বাম দলগুলি নিজেদের মধ্যে বৈঠকে বসে রাজধানীতে এই সিদ্ধান্তে পৌঁছেছে। একই সঙ্গে সোমনাথ চট্টোপাধ্যায়কে স্পিকার করার বিষয়টি নিয়েও আলোচনা চলছে। সি পি এম অন্য বাম দলগুলিকে জানিয়েছে তাদের কাছে সোমনাথ চট্টোপাধ্যায়কে স্পিকার করার প্রস্তাব এসেছে। তারা নিজেরা এই বিষয়টিও খতিয়ে দেখে মঙ্গলবার সিদ্ধান্ত জানাবে।

বিজেপি-র শাসনকালে মুরলীমনোহর জোশীর নেতৃত্বে শিক্ষার গৈরিকীকরণ ঘটেছিল। এ জন্য স্কুলপাঠ্য বইয়ে, বিশেষ করে ইতিহাস পাঠে 'ভারতীয় দৃষ্টিভঙ্গি' আনার অজুহাতে এন সি ই আর টি-র টেক্সটবইয়ে অনেক পরিবর্তন আনা হয়। তাতে রোমিলা থাপারের মতো অনেক ঐতিহাসিকই ইতিহাসকে বিকৃত করার অভিযোগ আনেন। শুধু এন সি ই আর টি নয়, বিশ্ববিদ্যালয় মঞ্জুরি কমিশনও (ইউ জি সি) বিশ্ববিদ্যালয়ের শিক্ষাক্রমে জ্যোতিষচর্চা ইত্যাদির প্রচলন করতে শুরু করেছিল। অন্য দিকে, কেন্দ্রের অর্থে পুষ্ট বিভিন্ন সমাজবিজ্ঞান সংক্রান্ত গবেষণা প্রতিষ্ঠানেও বি জে পি মনোভাবাপন্ন লোকজনকে ঢোকানো হয়েছিল।

মুরলীমনোহর জোশী হস্তক্ষেপ করে আই আই এমের ছাত্র-ফি হ্রাস করতে চাপ দিচ্ছিলেন। এ সব নিয়েই বিতর্ক উঠেছিল। আজ সীতারাম ইয়েচুরি সনিয়া গাঁধীর সঙ্গে দেখা করে বামপন্থীদের তরফ থেকে এ সবের কথা মনে করিয়ে দিয়ে প্রয়োজনীয় ব্যবস্থা নিতে অনুরোধ করেন। প্রিয়রঞ্জন দাশমুন্সিও সনিয়ার সঙ্গে দেখা করে একই বিষয়ে একটি লিখিত নোট দিয়ে বলেছেন, বি জে পির মনোনীত লোকজনকে এই সব প্রতিষ্ঠান থেকে বার করার জন্য অবিলম্বে সাফাই অভিযান চালানো দরকার। প্রিয়বাবুর আশঙ্কা, এটা অবিলম্বে করা না হলে সরকারের কাজে অন্তর্ঘাতের বিপদ থেকে যাবে।

SC raps Patna HC for remarks

TIMES NEWS NETWORK

New Delhi: The supreme court has severely castigated the Patna high court for making "derogatory, disparaging and totally uncalled for" remarks against it and said, "Our embarrassment stands multiplied when we notice that the division bench of the HC which passed the order was headed by the chief justice."

It was a rare case in which the HC had questioned the propriety of the supreme court, that too in a judicial order. The HC had taken affront to the apex court's query about proceedings on certain applications pending before it (HC).

A bench comprising Justices R C Lahoti and Ashok Bhan, while expunging the adverse remarks made by the HC on December 3, 2003, said: "There was absolutely no occasion for the HC to feel annoyed and disturbed, much less to feel perturbed and react in the manner in which it has unfortunately done."

On the objectionable portions, the bench said, "Such an order of the HC, which has done no good either to this court or the HC itself, having been brought to our notice, we are constitutionally obliged not to blink our eyes but to act and so we do."

The apex court had sought details about the hearing of certain applications as a grievance was made out before it that they were not being heard by the HC despite the apex court's directions. When the matter was placed before the HC, the division bench took it on the judicial side and strongly deprecated the order seeking information from it and termed it as a "sad day for the judiciary".

Justice Lahoti made it clear that under the Constitution, a lower forum could be called upon to "certify its record of case and proceedings to the superior forum". The judgment penned by Justice Lahoti expunged the remarks which were derogatory, disparaging and totally uncalled for. "Such remarks should not continue to be retained on the record of the HC," the apex court said. It said it was necessary to maintain the dignity of its institution as the apex court of the country and undo the mistaken assumption of the HC that "any order of this court was intended to undermine the HC's status as a constitutional court or court of record".

Rajendra Babu takes over as new CJI

By J. Venkatesan

NEW DELHI, MAY 2. S. Rajendra Babu, the senior-most Judge of the Supreme Court, was today sworn in the 34th Chief Justice of India, succeeding Justice V.N. Khare, who retired after a tenure of over 16 months.

The President, A.P.J. Abdul Kalam, administered the oath of office to Mr. Justice Rajendra Babu at a brief ceremony in the Rashtrapathi Bhavan. He will have a short tenure of office till June 1, 2004.

The Prime Minister, Atal Bihari Vajpayee, the former President, K.R. Narayanan, the Speaker of the dissolved Lok Sabha, Manoj Joshi, the outgoing Chief Justice of India, Khare, former CJIs, including Justice A.S. Anand, Chairperson of the National Human Rights Commission and the Union Law Minister, Arun Jaitley, the Communications Minister, Arun Shourie, the Attorney-General, Soli Sorabjee, the Solicitor-General, Kirit Raval, former and present Supreme Court and High Court Judges, eminent lawyers were among those who attended the function.

Erolled as an advocate in January 1965, Mr. Justice Rajendra Babu was appointed permanent Judge of the Karnataka High Court on February 19, 1988, and a Judge of the Supreme Court on September 25, 1997.

As a Supreme Court Judge, he has given landmark judgments in civil, criminal, constitutional, environmental, taxation, corporate laws, and the intellectual property matters.

He analysed the mob psychology in the case relating to anti-Sikh riots, which broke out after the assassination of former Prime Minister, Indira Gandhi. He also interpreted the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986.

In the HPCL/BPCL disinvestment case, Mr. Justice Rajendra Babu held that parliamentary approval was required for disinvestment of the shares in the two major public sector undertakings and thereby put on hold the disinvestment process in the case of the two oil majors.

Upholding the provisions of the Prevention of Terrorism Act, he defined that to attract Sec. 21 (3) (extending support to a banned terrorist organisation), there must be criminal intention to commit a terrorist act and as a result of this interpretation, the MDMK general secretary, Vaiko, and eight others were baled out of the POTA charges by the Central POTA Review Committee.

In the Anand Margi's case, he held that Anand Margis have no right to take out a procession carrying human skulls and 'trishul.' Known for his has quick grasp, humane nature as also wit and humour, Mr. Justice Rajendra Babu participated in international seminars of Supreme Court judges held at Geneva this year and in the U.S. last year.

He is credited with delivering several lectures on important legal issues, including women's rights, the IPRs, freedom of speech and expression and judicial accountability at various national and international fora.

THE HINDU : 3 MAY 2004

'There was no prosecution at all'

Apex Court Stepped In To Protect Post-Godhra Victims: CJI

New Delhi: In a stinging attack, Chief Justice of India V N Khare on Saturday said the Supreme Court had stepped in to protect the victims and witnesses of the post-Godhra riot cases as there was "complete collusion" between the accused and prosecution.

"There was no prosecution in the riot cases at all. Therefore, the Supreme Court stepped in to break the collusion between the prosecution and the accused," he said. The concern for the victims and the witnesses came to the fore when Justice Khare, who retires on Sunday, said, "What will happen to the victims and witnesses if the prosecution and the accused collude throwing the rule of law to the wind?"

He was both anguished and pained by the turn of events during the trial but determined to salvage the justice delivery system. "I gave a new dimension to criminal jurisprudence as on the one hand one bench of the Supreme Court monitored the progress of prosecution in riot cases while another bench decided on the judicial side the correctness of the HC order (in acquitting the accused in Best Bakery case)," he said.

Asked whether the judiciary was facing a serious problem of corruption, he replied in the affirmative but refused to quantify the percentage of honest judges. Referring to the recent incident of "indiscipline" shown by judges of the Punjab and Haryana HC, he regretted that he did not have powers to deal with corrupt and indisciplined judges. "I feel exasperated that the CJI has no powers under the Constitution to even ask for an explation from deviant judges," he said. Agencies

THE TIMES OF INDIA 2 MAY 2004

Jailbirds have no right to contest polls: Patna HC

TIMES NEWS NETWORK

Patna: In a historic order that might affect the ongoing poll process in Bihar, the Patna high court on Friday said absconders and persons in lawful custody have no right to participate in (parliamentary) elections.

However, it left it to the Election Commission "to act and act with speed before the declaration of results" in those constituencies from where such candidates are contesting. Several candidates in the poll fray in Bihar are in jail. They include Mohd Shahabuddin (RJD) in Siwan, Dr Ranjit Don (Independent) in Begusarai, Pappu Yadav (LJP) in Purnia, former Ranvir Sena boss Brahmeshwar Singh (Independent) in Ara and Rajan Tiwari (Independent) in Bettiah.

A division bench, comprising Chief Justice Ravi S Dhavan and Justice Shashank Kumar Singh, passed the order on two writ petitions. One was filed by an organisation, Jan Chowkidar (People Watch), and the other by Om Prakash Yadav, JD(U) nominee from Siwan (from where history-sheeter Shahabuddin is seeking re-election to the Lok Sabha).

Hospitality Inc

Mohd Shahabuddin, RJD: Seeking re-election from Siwan Lok Sabha constituency; 17 criminal cases pending against him, including the one related to kidnapping and murder of CPI(ML) worker Munna Choudhary; shifted to Siwan jail on April 28 after a long stay in a hospital.

Rajesh Ranjan alias Pappu Yadav, LJP: Seeking re-election from Purnia; main accused in the murder of CPM MLA Ajit Sarkar; undergoing 'treatment' at Patna Medical College Hospital (PMCH).

Dr Kumar Suman Singh alias Ranjit Don: Independent candidate from Begusarai; chargesheeted by CBI for his alleged involvement in CAT question-paper leak; undergoing 'treatment' in PMCH.

"It is entirely up to the EC to decide what action to take, even if it be countermanding the elections wherever such persons have participated as candidates," the HC order said.

In its petition, Jan Chowkidar had challenged the right of candidates under judicial custody to contest the parliamentary election. Yadav's petition had expressed doubts about the legitimacy of elections if a jailed person like Shahabuddin was allowed to campaign by getting himself shifted to a hospital.

The bench also took serious note of absconding Lok Janshakti Party MLA Rama Singh—wanted by the police of Bihar, Jharkhand, Madhya Pradesh and West Bengal in several criminal cases—casting his vote at a booth in Hajipur in the presence of cops. The bench instructed the DGP to immediately arrest him.

Meanwhile, the EC has decided to hold repolling in 25 polling stations in Siwan on Saturday, rejecting the BJP demand for countermanding of elections.

THE TIMES OF INDIA 1 MAY 2004

SC issues notice in 'judges' strike' case

HT Correspondent
New Delhi, April 26

A day after Chief Justice of India V.N. Khare pulled up Punjab and Haryana High Court judges who went on leave en masse, the Supreme Court issued notice to the registrar of the high court in response to a public interest petition urging the apex court to call for records to unearth the reasons for their action.

President A.P.J. Abdul Kalam had earlier written to Khare to express "great anguish" over the action of the judges, some of whom were summoned by Khare at his residence on Sunday.

Three high court judges — Justices G.S. Singhvi, V.K. Bali and H.S. Bedi — met Khare and the CJI-designate, Justice S. Rajendra Babu, on Sunday. Punjab and Haryana High Court Chief Justice B.K. Roy had a separate meeting with the CJI and Babu.

The Chief Justice of India is understood to have taken a serious note of the matter and conveyed to the judges that the " trade unionism" adopted by them had caused irreparable loss to the judiciary.

The Chief Justice of India is known to have told the judges that their action amounted to a strike and the Supreme Court and various high courts had on several occasions ruled against strikes. The CJI is also said to have shown the President's letter to the judges and impressed on them the need to maintain the stature of the judiciary.

He asked them to desist from such actions in future.

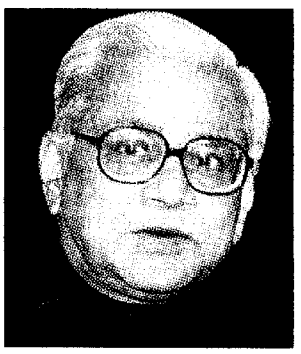
The public interest petition, filed by lawyers S.C. Dahiya and R.K. Rathore, said the decision taken by 25 out of the 28 judges after holding a meeting on the court premises was against legal ethics and judicial propriety.

"Such a decision of the judges amounts to strike," the petition said.

The judges went on leave on April 19 after the Chief Justice of Punjab and Haryana High Court asked for two of them for an explanation about getting memberships of a controversial club in Chandigarh.

Work at Punjab and Haryana High Courts was hampered on April 19 as 25 of 28 judges went on leave, reportedly after a stand-off with Chief Justice B.K. Roy.

The judges had decided to go on leave after nearly four months of differences with Roy. They had been accusing him of interference in their administrative functioning. About 21 judges had written to the chief justice against the issuance of notice to two of the sitting judges for accepting free membership of the controversial Forest Hill Club, accusing him of bias and mala fide. Some of the judges have reportedly also conveyed that acceptance of honorary membership of clubs by the judicial members was not unusual.



V.N. Khare

APJ Abdul Kalam

THE HINDUSTAN TIMES 27 APR 2004

SC refuses to ban exit polls

Our Legal Correspondent

NEW DELHI, April 26. — The Supreme Court (coram, Babu, Mathur, Balakrishna, JJ) today rejected a plea to ban all exit polls till the last phase of polling is complete on 10 May, but issued notices to the Centre, the Election Commission and the Press Council of India so that the legal point could be settled.

The court order came after it had heard out the petitioners' counsel, Mr PP Rao.

At the outset the court was not inclined to hear the petition, filed by the Supreme Court lawyer, Mr DK Thakur. "Please don't waste our time," Justice Rajendra Babu, who's also the Chief Justice-designate, observed.

But Mr Rao insisted that the issue was crucial to democracy. He pointed out that the Election Commission and the Press Council of India have not been able to do anything on the issue. The court then observed that a ban "would not be possible for this elections", but agreed to hear the matter.

Mr Rao argued that the Supreme Court had already held that democracy was part of the basic structure of the Constitution and free and fair polls were an essential part of democracy. Exit poll predictions were affecting free and fair polls, he contended.

"These tend to mislead people. They are also used by motivated groups to mislead voters," he said. Justice Rajendra Babu interjected to ask whether candidates can appeal to voters to vote in a particular way or not. Mr Rao said that appealing for votes and declaring probable results that would affect the way the others voted were two different cases.

Mr Rao also cited instances of several countries where exit polls are banned till the end of polling. Since polls are staggered in India, exit polls should be banned during the entire span of polling, he said.

He also said that Article 324, that empowers the Election Commission to conduct the elections, should be read together with Article 19 (1) (a). Both of them read together would make it possible to have reasonable restrictions on the right to freedom of speech and expression during the election process, he said.

"This requires some consideration," he said, adding that vast sections of the country were still illiterate. The court also directed the petitioner to make Star TV, Aaj Tak, NDTV and Sahara, who have all either conducted or are conducting exit polls, parties to the petition.

THE STATESMAN
27 APR 2004

A case for rethinking

Text of the speech on constitutional reforms as a follow-up to the recommendations of the National Commission to review the working of the Constitution, delivered in New Delhi by JS VERMA

THE apprehension of some individuals and a few political parties about the real purpose of appointing the National Commission to review the working of the Constitution was soon allayed by the official clarification that the task of the Commission was only to review the working of the Constitution, and not to review the Constitution itself. After the decision of the Supreme Court in *Keshavananda Bharti*, there can be no doubt that the amending power of the Parliament does not extend to altering the "basic structure", which is indestructible. The recommendations of the NCRWC having been given, it is now time for the follow-up action to be taken.

Considerable time having elapsed since submission of the recommendations, and there being no visible signs of a comprehensive follow-up action by the concerned authorities, this national forum organised by the Rashtriya Jagran Sansthan for a serious debate thereon is timely and welcome. I consider it timely, because it is on the eve of the next general elections, when the political parties are expected to announce their agenda for governance; and they should be made to indicate their definite stand on emerging issues of national importance. I do hope this exercise generates sufficient public interest to direct the focus of electoral contest to significant issues of public importance instead of diffusing it towards personal vendetta. I intend to focus attention on some issues, which relate to areas in the working of which I have had some experience. After all, it is the working of the Constitution which concerns everyone. For some years, there has been divided opinion about the working of some provisions of the Constitution. While a few find faults with the provisions of the Constitution, many believe that the working has been defective, which requires the loopholes to be plugged to prevent distortion or misuse of some provisions. One such provision is Article 356; and amongst others are Articles 124 and 217 relating to the appointment, etc. of judges of the superior judiciary. These examples suffice to illustrate the point.

In December 1999, a Workshop on the Constitution of India: A case of Rethinking was organised in collaboration with the Rashtriya Jagriti Sansthan. The former President of India, R Venkataraman, inaugurated it; and presiding over the inaugural session, I had quoted the pious hope of Dr Rajendra Prasad at the concluding session of the Constituent Assembly, thus: "Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it... a Constitution, like a machine, is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them."

And, I then concluded: "It must, however, be emphasised that the entire exercise of whatever kind must be in conformity with the basic structure of the Constitution which is sound and in line with the constitutional promise in the Preamble which is the lodestar by which we must chart our course. A case of rethinking is made out only to this extent. In essence, a change necessary to effectively alter the course of working of the Constitution by preventing a possible distortion of the machinery by its operation is the need of the hour."

I intend to focus attention on certain areas of which I have had a closer look by virtue of the offices I have held. One such area relates to the electoral process for the electoral verdict to represent the true will of the people, which is essential for effective participation of the people in governance. The political sovereignty vests in the people in a republican democracy. For this reason, free and fair elections are a basic feature of the Constitution. Rule of law is another basic feature; and it is the bedrock of democracy. Judiciary is entrusted the task of upholding the rule of law, which makes judicial review another basic feature. Independence of judiciary, of which judicial accountability must be treated as one facet is necessary to discharge the constitutional obligation. Federalism has similar significance indicating the importance of Article 356. A fortiori, all aspects related to these areas need particular focus, and they need to be debated along with other important issues in the light of the recommendations made by the NCRWC.

The first area of concern is that of electoral reforms. A free and fair election to ensure true representation of the people in governance is the essence of republican democracy. "We the People of India" are essentially good, and yet, good governance is eluding us. This is because a significant section of those elected do not depict the values cherished by the people. It is well known that a number of elected candidates have criminal record, and money and muscle power continue to have considerable influence on the electoral verdict. In reality, the unaccounted black money and other undesirable factors seem to be decisive... A much more suitable candidate without the help of these factors has seldom any prospect of success. This is a dismal scene and needs to be corrected. Religion, parochialism, caste and other similar factors weigh with political parties in the choice of candidates and the outcome. Defection after election for personal gain continues to increase the tribe of AyaRams and GayaRams. Multiplicity of candidates results in a candidate being elected with votes much less than half of the votes polled, under the existing first-past-post system. These are some obvious evils, which need to be eradicated to ensure a truly representative form of governance.

A woman casts her vote in a village near Bodh Gaya. — AFP

Many of the needed electoral reforms do not require constitutional amendment and they can be done through ordinary legislation. I will deal with a few aspects only, as the NCRWC recommendations are fairly comprehensive.

I had suggested for consideration, two alternative voting systems, both requiring the returned candidate to obtain majority of the votes polled. The voter's right of rejection through a negative vote to be counted, was also suggested. A fresh poll, in case no candidate gets more than half the votes polled, with elimination of the rejected candidates is one method. The other method is of a single transferable vote, requiring the returned candidate to obtain more than half the votes polled. Either of these methods would ensure that the elected candidate was approved by majority of the votes polled.

'We the People of India' are essentially good, and yet, good governance is eluding us. This is because a significant section of those elected do not depict the values cherished by the people

An effective Anti-Defection Law is needed in place of the existing 10th Schedule to the Constitution. The changes made do not meet the full requirement. The need for a new comprehensive law on the subject was indicated by me in my dissenting opinion in *Kihota Hollohan* (AIR 1993 SC 412), where I also pointed out the need for a judicial authority to adjudicate the disputes, instead of the Speaker because of his political affiliation; and the consequent danger of conflict between the legislature and the judiciary. The unfortunate episode relating to the Manipur Speaker soon after the majority decision in that case made my apprehension come true. The recommendation made to attack disqualifications to the defector, and the need for him to resign and seek fresh election, if he wants to continue as a member is welcome.

There is also the need to codify the privileges of members of Parliament and the legislatures. The privileges being claimed under the existing arrangement without the visualised legislation, under Articles 105 and 194, are not people friendly, and some of them appear to conflict with the guaranteed fundamental freedoms under the Constitution. The Supreme Court decision in the JMM Bribery case has created a piquant situation. While there is need to judicially correct the majority opinion in that case, it is time to cure the aberrations by the much needed and long overdue legislation contemplated by Articles 105 and 194 and, if need be, by suitable amendments in the provisions.

There is also the need to improve the working of legislatures and the Parliament by suitable legislation and needed constitutional amendments, instead of unduly taxing the presiding officers to maintain discipline and decorum. The wastage of time needed for parliamentary work is phenomenal and effective measures to check it are long overdue. It is time that "public service" should cease to be more of a slogan than reality. It should be made the true hallmark of people's representatives, with measures for accountability. A distinguished member of Parliament told me recently that his suggestion that no payment should be taken for the period of no work received scant attention. The lightening speed with which measures granting benefits to members are carried through is an indication of the available energy and inclination to legislate, when interested. The same speed and inclination needs reflection in performance of other tasks of public welfare.

It is time to study and deliberate on the recommendations for electoral reforms with this aim. These are some of the issues in the area of electoral reforms, which need urgent attention. I would now refer to the area relating to the judiciary. None doubts the importance of the judiciary in a democracy. However, there is a growing perception for the need of an effective mechanism to enforce judicial accountability at the higher level, and for a re-look at the procedure for appointment of judges after the Second Judge's case. The demand for a National Judicial Commission to deal with the appointment and removal of superior judges is increasing. Huge backlog of cases in the courts is frustrating the cry for speedy justice, notwithstanding the interpretation of Article 21 to include the right to speedy justice. Growing corruption even in law courts, with deficient judicial accountability is an area of concern. In short, the justice delivery system is being seen to fail to fulfilling its purpose. The recommendations are to be viewed in this context. The aim of this forum must be to fill the deficiencies, if any.

The first issue relates to the appointment of judges to the Supreme Court and the High Courts. Some extracts from that article bear repetition. I had earlier said: "The provision for appointment of judges in the Supreme Court and High Courts, contained in Articles 124 and 217, remain the same as originally enacted, but the need for a change is being debated primarily on account of the manner in which the provision is seen to be worked... A convention has developed that without express use of such language, the opinion of the Chief Justice of India, formed in consultation with the executive, was given primacy... As it is, the power given to both the wings by the constitutional provisions is not to be treated as personal empowerment but imposition of a responsibility to find the most suitable person for appointment. Only the correct perception of the purpose for which the power is given can avoid confrontation. The absence of express provision of primacy to either appears to have been to emphasise that it is the joint responsibility of both wings to work together to make the best possible selection which really is the object of enactment of the provision. Perhaps the present situation warrants a review in the light of the experience gained so far to indicate clearly what was implicit throughout in these provisions which were so enacted to avoid the possibility of strict postures being adopted by either side with a view to promote a spirit of moderation in each to appreciate the value of the other's opinion... A database containing profiles of all judges to provide an objective basis for selection amongst them is needed. A National Judicial Commission representing all wings, headed by the Vice-President/Prime Minister/Chief Justice of India to make the selections/appointments to the Supreme Court and the High Courts, transfer of High Court judges and their removal when necessary is being debated..."

I may also quote from the majority opinion in the Second Judge's case reported in AIR 1994 SC 268, which I had written. A caveat at the beginning therein has to be read along with the conclusion reached on the question of primacy, to get the proper perspective of that view. It was said:

"The primacy of one constitutional functionary qua the others, who together participate in the performance of this function assumes significance only when they cannot reach an agreed conclusion... The situation of a difference at the end, raising the question of primacy, is best avoided by each... remembering that all of them are participants in a joint venture, the aim of which is to find out and select the most suitable candidate for appointment, after assessing the comparative merit of all those available. This exercise must be performed as a pious duty to discharge the constitutional obligation imposed collectively on the highest functionaries drawn from the executive and the judiciary, in view of the great significance of these appointments... The aforementioned perception in all the constitutional functionaries associated in the integral participatory consultative process to achieve the avowed constitutional purpose should ordinarily prevent the situation when the question for primacy arises; and in the exceptional case in which it does arise, the functionary having primacy would do well to respect the viewpoint of others and recall that it implies the carrying by him of a greater burden. This will ensure better performance of the role with primacy, in the proper spirit, and will make it easier for the others to accept the primacy."

The decision in the Second Judge's case and the conclusion of primacy of the judiciary has to be read in this context. The decision does not wrest all the power for the judiciary but emphasises the active involvement of the executive, merely denying total power to the executive as held in the First Judge's case. The interpretation made in the majority opinion, of Articles 124 and 217, is based on the long convention, which had been followed from the beginning. It is a settled aid to interpretation of statutes, that an accepted practice, or convention, developed in the working of a provision, the requirement of which is more than that of the enacted provision, becomes a part of the law on the subject, and a lesser requirement in the enacted provision is no justification for the failure to comply with the larger requirement of the settled practice or developed convention. I am stating this, only to clear the misunderstanding about the decision in the Second Judge's case, and not to defend it, because of being its author. However, if a difference from the decision in the Second Judge's case is seen in its actual working, then there is occasion to clarify by an express provision providing for a National Judicial Commission balancing the two wings, with the vice-president, belonging to neither wing, as its head. Such an arrangement is better for the credibility of judiciary as well as the executive.

The composition of the NJC is important to serve the purpose. I am afraid, I differ from the composition suggested by the NCRWC. In my view, the vice-president has to be the chairman, as already indicated. The members should be the Chief Justice of India with the two senior-most judges and the Prime Minister with the law minister for appointments to the Supreme Court; and the appointments to the High Courts, the High Court Chief Justice and state chief minister may replace one Supreme Court judge and the Prime Minister respectively. This replacement may even be left to the Chief Justice of India and the Prime Minister to decide. The other details could be worked out, accordingly.

To be concluded.

(The author is former Chief Justice of India.)

Justice in Gujarat

By Rajeev Dhavan

The Supreme Court's judgment represents the triumph of the rule of law over communal injustice. Indian governance is both enriched and the poorer through this exposure.

THE SUPREME Court's judgment of April 12, 2004 in the Best Bakery case is its severest indictment ever of the justice and governance system of any State. The Court found that "... the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge." Who was to blame? According to the Court "the investigation ... [was] perfunctory and anything but impartial, without any definite object of finding out the truth to book those who were responsible for the crime. The public prosecutor appears to have acted more as a defence counsel ... The Court is turn appeared to be a silent spectator, mute to the manipulations and ... indifferent to [the] sacrilege being committed to justice. The role of the State Government ... [suggests] that there was no seriousness ... in assailing the trial court's judgment."

The High Court appeal, heard by Justices B.J. Sethna and J.R. Vora, failed to provide the necessary corrective justice. According to the Supreme Court, the High Court showed a "judicial obstinacy and avowed determination" to reject relevant evidence so that "[t]he entire approach of the [High] Court suffered from serious infirmities, its conclusions [were] lopsided and lack[ed] proper or judicious application of mind" ... [whereby] arbitrariness was ... writ large on the approach and the conclusions arrived at in the judgment". The antecedent bias of the State is no less apparent from the Supreme Court's view that " ... modern day Neros were looking elsewhere when Best Bakery and innocent children and helpless women were burning and were probably deliberating how the perpetrators of the crime can be saved or protected."

There could not have been a more comprehensive failure of justice — starting from a 'patently not *bona fide*' investigation and ending with an 'obstinate and lopsided' High Court judgment whilst 'modern day Neros' pre-determined the fate of justice. It would appear that, by any rule of law standards, the governance of Gujarat under Narendra Modi has generated what may be called a failed state' in which the minorities live in fear and cannot expect fairness to justice in a case in which 14 persons were roasted alive. Waiting in the pipeline are a series of other cases including those relating to Godhra, Naroda Patia, Gulbarg, Sardarpura, Kidiyad, Pandharwada, Dipda darwaja, Abasana, Ghodsagar, Sesan, Ode, Anjanwana, Santrampur and others.

Can the Gujarat justice delivery system deliver justice? Or will all these cases go up the ladder to the Supreme Court to be re-tried? Will the Modi Government interfere with the investigation and prosecution? Will there be instructions for poor prosecution? And if Gujarat courts cannot deliver justice in such cases, who will?

In 2002, Mr. Modi turned down the National Human Rights Commission's suggestion of a Central Bureau of Investigation enquiry into these cases. Atal Bihari Vajpayee's Union Government remained indifferent. Instead, in August 2002, the Union Government made a reference to the Supreme Court to try and secure an early election for Mr. Modi in Gujarat! Elections were the priority; justice took the second place.

LAW AND SOCIETY

The Supreme Court has transferred the trial in the Best Bakery case to Maharashtra. Should this be done in the other cases? Ideally, on the Court's own logic, all the other cases should also be tried outside Gujarat. The Supreme Court may be reluctant to write off the Gujarat justice delivery system; but it needs to provide guidelines for the pending Gujarat cases. Serious consideration has to be given on whether the other cases require an independent investigation, a special prosecution agency, protection of witnesses, provisions for observers by the NHRC and others, and a thorough review before matters proceed. There is still much to be feared of the Gujarat police, prosecution and justice systems.

For the Supreme Court, the Best Bakery trial failed on many counts. The trial court was oblivious to the fact that before its very eyes, four out of seven crucial witnesses turned hostile; and yet failed to protect Zahira Sheikh, its star witness. The injured witnesses who saw it all happening were not examined. Summons were issued on May 9, 2003, for a person in Uttar Pradesh to appear on May 10; and then again, fresh summons were issued on May 13 for appearance on May 16. What did the prosecution think it was doing?

Hasan Khan's evidence would have identified four of the accused. But he was declared insane and unfit to testify — contrary to the medical record — without the court even examining the issue. Shailum Pathan who could have identified three of the accused was also declared insane. The crux of the case lay in identifying the accused. Perfectly sane witnesses who could have done so were declared insane by the prosecution. Conversely, relatives of those accused of these crimes were examined by the prosecution. They sided with the accused. Eventually, the trial court exonerated the accused as having saved lives. Alleged killers became heroes! Despite all this, the Gujarat High Court saw no reason to interfere with the trial court's verdict acquitting the accused.

The injustices of the Best Bakery trial court would have lain fallow. The Gujarat Government had no intention of appealing the verdict. The NHRC, Zahira and others approached the Supreme Court. In a communally charged atmosphere, intimidated witnesses, fearful of their lives, were afraid to testify. Faced with a concerned Supreme Court, the Gujarat Government finally agreed to file and argue a half-hearted appeal. Apart from the glaring infirmities in the trial, the crux of the issue lay in the High Court considering the additional evidence of those witnesses who were "... forced not to tell the truth before the trial court, making justice a casualty." The Gujarat High Court had been adamant in not admitting this new evidence. Instead, it upheld the trial's court acquittal of the accused based on the original evidence while turning a blind eye to the new evidence on which the justice of the case depended. The Supreme Court rightly told the Gujarat High Court that it had not only had the power to look at the new evidence; but under the circumstances, had been under a legal duty to do so.

What is the role of a court when deciding on a trial about a massacre of this magnitude? The Supreme Court rightly says "crimes are public wrongs [in which] ... it is not just the accused who has must be fairly dealt with." Faced with "political patronage ... muscle and money power," the Court has an obligation to get to the truth. The hesitation of the witnesses was directly traceable to money, muscle and politics. In this situation, courts had to take a "participatory role" and were not mere "tape recorders." In ordering a re-trial, the Court was not punishing the accused but giving truth a second chance to absolve the NHRC, Teesta Setalvad and others who were assisting justice.

Legally, the stance of the Supreme Court on the powers of an appellate or revisional court is unassailable. Eventfully, the decision was as severe in its indictment as it was just in its conclusions. The relief was moulded to suit the circumstances with some baffling results. The trial was to go to the neighbouring State of Maharashtra. But although the victims had a say in the appointment of a new prosecutor, it was the Government that was to make the appointment. Witnesses were to be protected by the Gujarat Government as well as that of Maharashtra. It was the Director-General of Police of Gujarat who would monitor the investigation. But surely if it was the money, muscle and politics of Mr. Modi's Gujarat that were to be feared, some of the reliefs suggested by the Supreme Court partially take the case back to the problems in which it was enmeshed? This is like once again feeding milk to the cat — but, perhaps, this time with a difference?

The Supreme Court's judgment represents the triumph of the rule of law over communal injustice. Indian governance is both enriched and the poorer through this exposure. We are left behind with the disturbing nightmare that the inexcusable injustice of the Best Bakery case was perpetrated by an elected government, which arrogated to itself the unconstitutional mandate of governing the State along communal lines. It is for the people of Gujarat to warn its rulers that they are straying from good governance to electoral fascism. Electoral victories are not enough. The 'massacre districts' revealed increased communal voting. Democracy, rule of law and secular justice must go hand in hand. India cannot have two justice systems — one for Gujarat; and one for the rest of nation. This is unacceptable.

THE HINDU 16 APR 2004

Rajendra Babu to be new Chief Justice of India

HD-1
16/4

By J. Venkatesan

NEW DELHI, APRIL 15. The President, A.P.J. Abdul Kalam, has appointed Justice S. Rajendra Babu, seniormost judge of the Supreme Court, as the 34th Chief Justice of India with effect from May 2. He will succeed Justice V.N. Khare, who retires on that day. Mr. Justice Rajendra Babu will have a short tenure as CJI till June 1.

Mr. Justice Rajendra Babu, who enrolled himself as an advocate in January 1965, was appointed permanent Judge of the Karnataka High Court on February 19, 1988 and Judge of the Supreme Court on September 25, 1997.

Mr. Justice Rajendra Babu has delivered several landmark judgments in the Supreme Court in civil, criminal, constitutional, environmental and taxation and matters as well as corporate law, and intellectual property matters. He has analysed the mob psychology in the case relating to anti-Sikh riots following the assassination of the former Prime Minister, Indira Gandhi. He interpreted the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Justice S. Rajendra Babu

Heading a five-judge Constitution Bench, Mr. Justice Rajendra Babu held that no religious activity of any kind shall be permitted either in the "disputed" or "undisputed" sites in Ayodhya till the disposal of the title suits by the Allahabad High Court.

In the "TANSI land deal case," he acquitted the Tamil Nadu Chief Minister, Jayalalithaa, by holding that the property in question did not belong to the Government. However, he asked her to return the property to TANSI.

In the HPCL/BPCL disinvestment case, he held that parliamentary approval was required for disinvestment of the shares, thereby putting on hold the disinvestment process in the two oil majors.

Upholding the provisions of the Prevention of Terrorism Act (POTA), Mr. Justice Rajendra Babu defined that to attract Section 21 (3) (extending support to a banned terrorist organisation), there must be a criminal intention to commit a terrorist act. As a result of this interpretation, the MDMK general secretary, Vaiko, and eight others were baled out of the charges against them by the Central POTA Review Committee.

In the Anand Margis case, he held that Anand Margis had no right to take out a procession carrying human skulls and trishuls.

Mr. Justice Rajendra Babu has participated in international seminars of Supreme Court Judges held in Geneva in 2004 and in the United States in 2003. He is known for his quick grasp, humaneness and for wit and humour. Brevity is his forte.

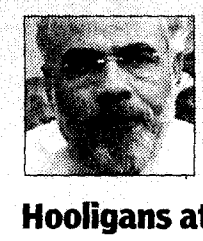
THE HINDU 16 APR 2004

Who's happy with SC order?

Heat from the Bakery

Court's stinker's

- When ghastly killings take place in the land of Mahatma Gandhi, it raises questions as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to them
- Fanatics who spread violence in the name of religion are worse than terrorists
- If one even glances through the records of the case, one gets a feeling that the justice delivery system was taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge



Modi's fury

Narendra Modi allegedly pushed a journalist "roughly" when reporters in Godhra sought his reaction to the Supreme Court's judgement. The reporter claimed he and another fellow journalist fell on the ground in the process

Hooligans at work

Some "hooligans" went looking for human rights activist Teesta Setalvad at NGO Prashant's office in Ahmedabad soon after the Supreme Court order. "They made some inquiries about me and used threatening language," she alleged. The hooligans left before the police arrived

Chandan Nandy
Vadodara, April 12

ON GROUND Zero in the Best Bakery case, where 14 people were allegedly burnt alive two years ago, the line between truth and untruth is thoroughly blurred.

To Zaheera Sheikh's sister-in-law Yasmin Nafidullah, Monday's Supreme Court order brought little cheer. "What's the use of a fresh trial and transferring the case outside Gujarat? The people who attacked the bakery were outsiders, not from this *basti*," she said.

Yasmin is full of scorn for Zaheera, her mother-in-law Sehrunissa and her husband Nafidullah, Zaheera's brother. "They left me and my two-and-a-half-year-old daughter to fend for ourselves," she said with controlled fury.

If called upon to depose before the court or investigating officials, Yasmin said she would give the "complete account" of what happened that fateful night. Yasmin's version has a different spin. "Two of Zaheera's relatives died of asphyxiation. They were not burnt alive by the mob. The others were not related to Zaheera".

However, neighbours whisper that Yasmin and Rashida have been "bought over" by the BJP. But they were unhappy over reinvestigation into the case. Other residents of the *basti* feigned ignorance about the alleged involvement of the 21 accused.

None of them are to be found living there today. A resident said: "Hindus and Muslims have been staying in harmony in the area. There should be some compromise somewhere."

An advocate for the accused said: "The accused are poor. How are they going to travel and bear other expenses?"

(With PTI inputs)

THE HINDUSTAN TIMES 13 APR 2004

Supreme Court orders re-trial in Best Bakery case

● Trial in Maharashtra ● Justice delivery system abused, misused and mutilated by subterfuge: Judges

By J. Venkatesan

NEW DELHI, APRIL 12. In a severe indictment of the Bharatiya Janata Party Government headed by Narendra Modi Government in Gujarat, the Supreme Court today ordered a fresh investigation and re-trial in the Best Bakery case in which all the 21 accused were acquitted by the High Court.

Criticising the State Government for its tardy investigation resulting in miscarriage of justice to the victims, the Court also ordered the shifting of the case — pertaining to one of the post-Godhra incidents in which 14 persons were burnt alive, nine of them belonging to the family of the key witness, Zaheera Sheikh — for trial in Maharashtra.

A Bench, consisting of Justice Doraiswamy Raju and Justice Arijit Pasayat, described the acquittal of the 21 accused as nothing but a travesty of truth and a fraud on the legal process and said the resultant decisions of the lower courts called for interference. "It is no acquittal in the eye of the law and no sanctity or credibility can be attached and given to the so-called findings," it said.

The Bench issued the directions while allowing appeals by the Gujarat Government and Ms. Zaheera, challenging the acquittal of the accused by a fast track court in Vadodara on June 27, 2003 and upheld by the High Court by its judgment dated December 16, 2003.

Expressing its shock and anguish, the Bench said: "When the ghastly killings take place in the land of Mahatma Gandhi, it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When a large number of people, including innocent and helpless children and women, are killed in a diabolic manner, it brings disgrace to the entire society."

Writing the judgment for the Bench, Mr. Justice Pasayat said: "The little drops of humanness which jointly make humanity a cherished desire of mankind had seemingly dried up when the perpetrators of the crime had burnt alive helpless women and innocent children. Was it their [the victims'] fault that they were born in the houses of persons belonging to a particular community?"

The Bench directed that the re-investigation of the case be carried out by the Gujarat police under the supervision of the Director-General of Police. It ordered that the trial proceed on a day-to-day basis under a new Public Prosecutor to be appointed by the Gujarat Government in consultation with the victims and the witnesses.

The Bench noted that the approach of the High Court suffered from serious infirmities and that its conclusions were lopsided and lacked a judicious application of mind. In this case, "the justice delivery system was allowed to be taken for a ride, abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial, without any definite object of finding out the truth and bringing to book those who were responsible for the crime."

Coming down on the Public Prosecutor, the Bench said he had acted more as a defence counsel than one whose duty was to present the truth to the court which, in turn, appeared to be a silent spectator, mute to the manipulations and preferring to be indifferent to the sacrilege being committed to justice.

On the role of the Modi Government, the Bench said: "It leaves much to be desired. One gets a feeling that there was really no seriousness in the State's approach in assailing the trial court's judgment. "Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day Neros were looking elsewhere when the Best Bakery and innocent children and helpless women were burning and were probably deliberating on how the perpetrators of the crime can be saved or protected."

The Bench said: "Criminal trials should not be reduced to mock trials or shadow boxing or fixed trials. The judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type exhibited by the mandate of the Constitution."

The Bench also expunged the critical observations made by the High Court against the social activist, Ms. Teesta Setalvad, for championing the case of Ms. Zaheera, saying there was no justification for such observations. In its judgment, the High Court had raised "serious" doubts over the claims of Ms. Zaheera that threats had forced her to turn hostile during trial and observed that "there seems to be a definite conspiracy to malign people by misusing her."

Reactions on Page 11

THE HINDU 1 APR 2004

Supreme Court bans surrogate ads on electronic media

Election Commission directed to keep vigil

By J. Venkatesan

NEW DELHI, APRIL 2. Expressing serious concern over "mudslinging" through advertisements, the Supreme Court today banned the telecast of all political or surrogate advertisements on cable networks and television channels which offended "the law of the land, morality, decency and religious susceptibility of viewers and are shocking, disgusting and revolting."

A three-Judge Bench, comprising the Chief Justice V.N. Khare, Justice S.B. Sinha and Justice S.H. Kapadia, agreed with the submissions of the Attorney-General, Soli Sorabjee, for a ban on political mudslinging through surrogate advertisements.

Mr. Sorabjee referred to advertisements being telecast against the Congress president, Sonia Gandhi, the Prime Minister, Atal Bihari Vajpayee, and the Deputy Prime Minister, L.K. Advani, and said they were disgusting and had crossed political decency. The Bench observed: "We are in the midst of watching a great cricket series and we do not want it to be substituted by a competition or a match in political mudslinging."

The Bench passed the order on a special leave petition filed by the Centre challenging an interim order of the Andhra Pradesh High Court staying the operation of Rule 7 (3) of the Cable Television Network Rules, 1994 on the ground that the rule violated the fundamental right of a person to carry on any business. (Rule 7 (3) provides that no advertisements shall be permitted, the objective whereof is of a religious or political nature and advertisements must not be directed towards any religious or political end.)

Substituting the High Court order with its own, the judges said that all those surrogate advertisements could not be shown by television channels and cable networks. They asked the Election Commission to monitor the advertisements to ensure they were in conformity with the laws of the land and with the apex court's order and also to suggest modalities for a proper implementation of the order.

The Bench asked the Commission to respond by April 5 as to whether the expenses incurred for the telecast of advertisements by candidates for the election be not added to their election expenses. It issued notice to Gemini TV and P. Kiran, on whose petition the High Court had suspended the operation of the Rule. Senior counsel, Harish Salve, appeared for the television channel.

The special leave petition by the Centre was directed against the High Court order dated March 23 suspending the operation of Rule 7 (3), which empowered the Ministry of Information and Broadcasting to ban airing of political advertisements, including surrogate advertisements.

In the SLP filed by the Information and Broadcasting Ministry, it was stated that the High Court failed to appreciate that Rule 7 (3) was enacted with the objective of ensuring that money power did not distort the electoral process. It was a known fact that the reach and impact of the electronic media far outstripped the reach and impact of all other media. Further, since the cost of advertising was more, an ordinary person or small political parties would not have the resources to advertise on TV.

The SLP contended that Rule 7 (3) was to prevent well-funded and resourceful individuals or organisations from using money power and the power of television to distort the balance of political debate and the electoral process.

The Congress had filed a complaint to the Election Commission to stop the telecast of "surrogate" advertisements issued by Kamakshi Education Society and being telecast in Aaj Tak and Zee News with oblique reference to Ms. Gandhi's foreign origin.

The BJP had complained to the Commission about the telecast of another advertisement issued by Saajhi Viraasat Trust casting aspersions on Mr. Vajpayee in Aaj Tak suggesting that he was an "informer" to the then British Government. While the Commission wanted the Government to take action against the telecast of these advertisements, the Government put the onus on the Commission to regulate them under the model code of conduct. Finally, the Centre filed the petition in the Supreme Court challenging the High Court order.

THE HINDU 3 APR 2004

SC orders transfer of 48 key fake stamp cases

Our Legal Correspondent

NEW DELHI, March 15. — The Supreme Court today handed over to the Central Bureau of Investigation 48 key cases across the country pertaining to the Rs 30,000 crore stamp paper scam and allowed the agency the right to arrest and interrogate main accused Abdul Karim Telgi, now lodged in a Karnataka jail.

Accepting the suggestion of Solicitor General Mr Kirit N Raval on behalf of CBI, a Bench comprising Chief Justice Mr VN Khare, Mr Justice SB Sinha and Mr Justice SH Kapadia asked the states, from where the cases were directed to be transferred to the CBI, to cooperate and assist the CBI in all possible manner.

The major order came on a petition filed by advocate Mr Ajay Agrawal, who today pointed out that the CBI's power to interrogate Telgi would be hampered if Karnataka government's 7 January directive was allowed to remain in operation.

The Supreme Court said the Karnataka government's order will not come in the way of CBI arresting Telgi.

Asking the CBI to submit a status report of its investigation to the Court within four months, the Bench made it clear that no High Court in the Country would entertain any petition pertaining to the 48 cases transferred to CBI for further investigations.

Of the 48 cases to be transferred to the CBI, 23 cases were from Maharashtra, 10 from Karnataka and three each from Uttar Pradesh and Andhra Pradesh, two each from Tamil Nadu and Madhya Pradesh and one each from Bihar, Delhi, Gujarat, Kerala and West Bengal.

Seizure of fake stamp papers, suspected involvement of inter-state gangs headed by Telgi and national security were the three major parameters taken into account by the CBI in identifying the 48 cases which it sought to investigate.

The Supreme Court acceded to the CBI request that the state police forces should give the CBI "complete access to all the material collected by them during investigations".

Indicating that it was facing acute resource constraints and keeping in view the wide-spread nature of field-investigations required in the cases, the CBI sought to share the state governments' resources including manpower, vehicles, camp offices and office equipment. The Court allowed this request. The CBI stated that in view of the magnitude of the task involved, it would be required to form more than one special investigation cells.

Maharashtra home minister Mr RR Patil today said that the Supreme Court decision was on expected lines. "Maharashtra Governor has been demanding a CBI probe, the Centre had also demanded the same and Mr Advani had even allege involvement of subversive forces in the scam" he said.

On the trail of Telgi

- Of the 48 cases to be transferred to the CBI, 23 are from Maharashtra, 10 from Karnataka and three each from Uttar Pradesh and Andhra Pradesh, two each from Tamil Nadu and Madhya Pradesh and one each from Bihar, Delhi, Gujarat, Kerala and West Bengal
- Seizure of fake stamp papers, suspected involvement of inter-state gangs headed by Telgi and national security were the three major parameters taken into account by the CBI in identifying the 48 cases which it sought to investigate
- The Supreme Court acceded to the CBI's request that the state police forces would give the CBI "complete access to all material collected by them during probe"

THE STATESMAN
16 MAR 2006

SC upholds Joshi's IIM fee slash

IS IT ALL ABOUT MONEY?

- Union government gives Rs 12 crore per year to the six IIMs
- Annual fee subsidy works out to Rs 2.5 lakh per student
- Educating a student costs Rs 4 lakh, which is unusually high and needs to be reviewed

TIMES NEWS NETWORK

New Delhi: Sticking to its stand that institutes of excellence should not be the exclusive domain of the elite, the Supreme Court on Friday upheld the Centre's decision to drastically reduce the admission fees of six Indian Institutes of Management (IIMs) from Rs 1.5 lakh to Rs 30,000 a year.

The apex court passed the order only after the government pro mised not to interfere in the running of these business schools. Additional solicitor-general Mukul Rohtagi also assured the court that the government would grant additional funds to make good the deficit arising from the reduction in fees.

A bench of Chief Justice V N Khare, Justices S B Sinha and S H Kapadia noted Mr Rohtagi's statement that the government's decision would in no way lead to interference in the running of these institutions. Thus, the bench disposed of a public interest litigation filed by three IIM alumni challenging the February 4 decision of HRD minister Murli Manohar Joshi.

Petitioners' counsel Harish Salve said that the fee cut was not a major issue as long as the government did not intend to tinker with the management of these institutions of global repute. During the February 16 hearing, the bench had questioned the locus standi (right) of the petitioners. "Who are you? what is your locus?" it had asked, adding: "If the IIMs were satisfied with the decision of the government, who are you to challenge it?"

The petitioners had apprehended that the fee reduction would make these institutions completely dependent on the government for funds. They had also feared that the government might interfere in the functioning of the IIMs. The Centre had said that it gives Rs 12 crore as annual subsidy to the society running the IIMs and subsidises the fee to the tune of Rs 2.5 lakh per student at present.

IIM-A to take stock on April 3

Ahmedabad: The board of IIM-A will meet on April 3 to discuss the fee reduction issue in view of the Supreme Court disposing of the PIL filed in this regard, institute director Bakul Dholakia said here.

He said: "We also need to understand the implications of the assurance regarding the autonomy given by the HRD ministry to the Supreme Court because we feel that the effective operational autonomy is an important element that determines the quality of all our activities." PTI

THE TIMES OF INDIA 28 FEB 2004

IIMs cannot be elitist, show us accounts: SC

By Rakesh Bhatnagar
TIMES NEWS NETWORK

New Delhi: Setting the tone for further hearings in a PIL challenging the Centre's decision to drastically reduce the fees of the Indian Institutes of Management, the supreme court on Monday said such institutes of excellence should not be accessible only to the elite section of society. "Who are you, what is your locus?" an SC bench hearing the matter asked the petitioners. "If the IIMs were satisfied with the decision of the government, who are you to challenge it?"

The bench of Chief Justice V.N. Khare and Justice S.H. Kapadia adjourned hearing till February 27 when the petitioners—advocate and faculty member Sandeep Parekh and two IIM student/alumnus—will try to satisfy the court that they had the right to challenge HRD minister Murli Manohar Joshi's decision. On February 5, Mr Joshi had ordered a reduction in the annual fee of Rs 1.5 lakh per student to Rs 30,000.

"We may take a view that for your (IIMs) regular expenditures, you can charge the students appropriate fee but not for capital expenditures," the bench said. "You cannot divert the funds collected from students of one institute to another. If we find that you charge fees for diversion of funds for capital expenditure, we will not allow it," the bench warned.

The petitioners have sought striking down the Centre's decision which, they said, was an encroachment on the academic affairs of the institutes.

THE TIMES OF INDIA 17 FEB 2004

JUDICIARY NEEDS REFORM

VIP Crimes Never Brought To Book

By SAM RAJAPPA

In the India that is shining, VIPs always get away. The Delhi High Court has ruled that Rajiv Gandhi was innocent of any involvement in the Bofors scandal while conceding the decision-making on the choice of howitzer involved cheating and forgery to induce the government into going in for a contract that resulted in wrongful loss. PV Narasimha Rao was exonerated in the Pathak bribery case and the St. Kitts forgery case. LK Advani was let off in the Babari masjid demolition case.

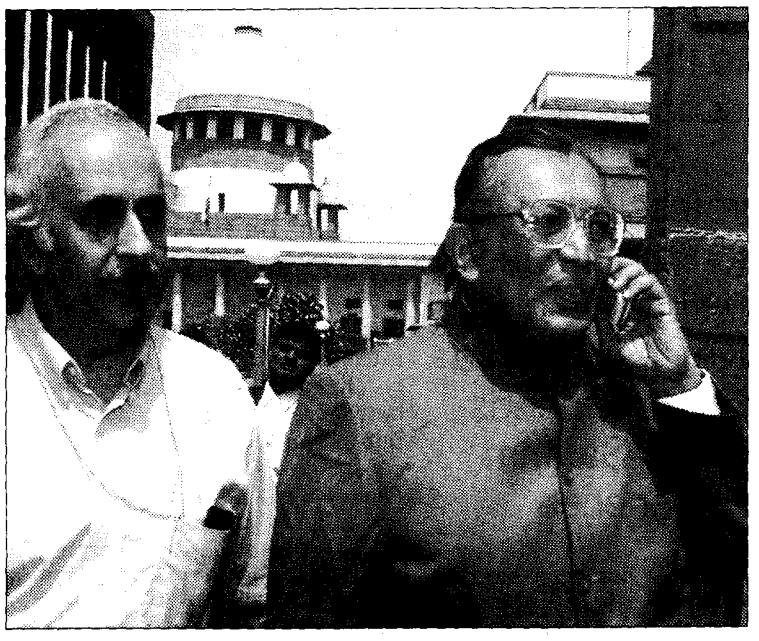
SP Bharucha, as Chief Justice of India, admitted that 20 per cent of the higher judiciary in the country was corrupt. An Ahmedabad magistrate issues bailable arrest warrants against the President, Chief Justice and two others for a consideration of Rs 40,000. A special court judge in Chennai acquits Tamil Nadu Chief Minister Jayalalitha and two others in the Rs.28.29-crore Southern Petrochemical Industries Corporation disinvestment case after the Madras High Court had found her guilty and ordered her and another to pay back the amount to the government.

No conspiracy

The SPIC case, investigated by the CBI on a directive by the Madras High Court, was that during the 1991-96 AIADMK rule in Tamil Nadu, there was a conspiracy between Chief Minister Jayalalitha and industries secretary C Ramachandran, who had abused their positions to bring back M.A Chidambaram (since deceased) as SPIC chairman and renounce the Tamil Nadu Industrial Development Corporation's rights in the 'zero interest convertible bond' of the joint sector company. Because of this decision the government suffered a loss of Rs.28.29 crores and lost management control of SPIC, according to a judgment of the Madras High Court which directed the CBI to investigate the matter and prosecute the culprits.

R Rajamanickam, special judge who heard the CBI case, in his 93-page judgment held that the decision to renounce its rights was taken by TIDCO at its duly held board meeting, the valuation of premium on the bonds was worked out by adopting the formula recommended by the state government undertaking and that after proper analysis and due consideration, the government approved TIDCO's resolution to renounce its rights for Rs.12.37 crores and keeping the number of directors on the SPIC board intact. The judge said that from the evidence of prosecution witnesses, it was clear that there was no conspiracy or misconduct in the appointment of chairman of the joint sector company. The prosecution had not proved the charges beyond reasonable doubt, he observed, and acquitted the accused.

In sharp contrast, Justice Y. Venkatachalam of the Madras High Court on whose order



dated 15-12-1997 the CBI had taken up investigation and launched prosecution in the special court established to try corruption cases against Jayalalitha, her former Cabinet colleagues and officials, had ruled that AC Muthiah, son of MA Chidambaram and present chairman of SPIC, and Jayalalitha were liable to pay Rs.28.29 crores to the government towards the loss sustained because of their "collusive deal in the SPIC matter." The government was also directed to take such steps that were necessary to maintain TIDCO's 26 per cent shareholding in SPIC at the earliest and to ensure the state chief secretary was made chairman of SPIC.

Vital questions

During the relevant period (1991-92), SPIC was the most successful joint sector undertaking promoted by TIDCO. A Rs.10 equity share of SPIC had crossed the Rs.200 mark in the Madras and Bombay stock exchanges. It was at this time SPIC came out with the rights issue of fully convertible zero interest bonds of Rs.625 each at the rate of one bond for 50 shares held. The bonds were to be converted into equity shares at Rs.25 per share in two tranches after three months and six months. Overment in the bonds was necessary to maintain the percentage of equity holding in SPIC at 26. If it did not subscribe to the bonds, its shareholding in the company would get diluted when the bonds were converted into equity shares. Therefore it sought government permission to subscribe to its right entitlement. "The market is booming and share prices are going up," the board said. Not only was permission to subscribe to the bonds denied but TIDCO was directed by the industries secretary to renounce its rights in favour of MA Chidambaram and associates.

Meanwhile, MA Chidambaram and associates persuaded the then Jayalalitha government to reverse the decision of the previous DMK government regarding having the chief secretary as chairman of SPIC. It may be of interest to note there was no direct or implied commitment in law or formal memorandum of understanding between TIDCO and SPIC or any agreement that the former should renounce its rights in favour of the chairman of SPIC. There was absolutely no negotiation between TIDCO and the SPIC chairman relating to renunciation or the price of renunciation. No alternative was considered. "This utter lack of transparency subscription was allowed to the extent of 15 per cent. The charge was that TIDCO, having 26 per cent shares in SPIC, sold its rights at a scandalously low price. Had TIDCO subscribed to its rights and sold the resultant shares at the peak price of Rs.202.50 per share after six months of allotment, it would have realised Rs.77.34 crores instead of Rs.12.37 crores it received from SPIC.

The board of directors of TIDCO had noted that investof why this group (MA Chidambaram) was favoured raises vital questions about the deal and the underlying conspiracy," Justice Venkatachalam had observed.

The High Court came to the conclusion that "there was and there must be a clear private understanding" between Chidambaram and Jayalalitha and held the impugned renunciation was directed by the government only to safeguard the interest of MA Chidambaram and his son and present chairman of SPIC, AC Muthiah, and that the government decision was not bonafide. Saying the court had no difficulty in arriving at the conclusion that there was misuse of power, the judge noted "the misuse arises when power is exercised with an improper motive to satisfy a private or personal interest." Branding Jayalalitha's action as "grave illegality," Justice Venkatachalam observed that her government's action had "shocked the judicial conscience" and that any action proved to be committed in bad faith would certainly be held to be inoperative. The Supreme Court had also held, in the Ram Manohar Lohia vs. State of Bihar case (AIR 1966 DC 740), that exercise of power for collateral purpose was sufficient reason to strike down the action.

Above law

Justice Venkatachalam ruled "This court is of the view that before signing or dealing with any paper, file or record which involves financial matters, it is necessary on the part of officials or the persons similarly placed like the sixth respondent (Jayalalitha) herein, who are voted to power, to keep in their mind that they are going to deal with huge volume of hard-earned money of the people of the state as a whole. If such a conscience is there in everybody's mind, the occurring and recurring of these painful happenings can be averted. From the way in which the direction for the impugned renouncement has been made, this court is of the view that before making such a direction, the concerned persons could have thought of themselves as above all and even above law. But nobody is above law and everybody, whoever he or she may be and whatever his or her position may be, has to bow before law and accountable and answerable before justice."

In this strange case of the trial court pulling asunder what the higher court had decreed, special court judge Rajamanickam by his judgment of 23 January has ensured that Jayalalitha is indeed above the law.

The author, a veteran journalist who retired from The Statesman, *is based in Chennai.*

Centre defends Jois stand on Address

HT Correspondent
New Delhi, February 4

THE CENTRE maintains that Bihar Governor M. Rama Jois's Republic Day speech was written by him, since he received no speech from the CM's office.

Responding to RJD leader Laloo Prasad Yadav's observations, Law Minister Arun Jaitley said in the Rajya Sabha on Wednesday no speech was given to Jois till January 25. "Since it was noy available, the Governor was free to prepare his own speech and he had committed no constitutional impropriety in delivering it," he said.

Demanding the Governor's recall, Laloo said Jois had violated the Constitution by not adhering to the speech provided to him on behalf of the Council of Ministers on January 24. An acknowledgment of the speech was available, he said. Amid commotion, Chairman Bhairon Singh Shekhawat did not allow I&B Minister Ravi Shankar Prasad to speak, since he said Jaitley was to give the government's stand. Prasad wanted to speak, since he belonged to Bihar.

The Chairman said the controversy on whether the conduct of high dignitaries like the Governor should be discussed in the House was persisting for several years. He said he would give a ruling on the matter, but only after going through the matter thoroughly.

WRONG ADDRESS

It is silly for a governor to criticize his own government. The governor of Bihar, Mr Rama Jois, did this very silly thing in his Republic Day address, lamenting the condition of law and order in the state, and commenting that no one wants to come to Bihar because of the atmosphere of terror and insecurity. The governor's role has often been the subject of much debate, but the Constitution lays down certain very clear limits to his powers. He is head of the government only nominally, the administration lies entirely with the executive. In effect, he is a signature and a ceremonial presence, not an independent agent free to express his views, political or otherwise, on formal occasions. He comes into his own only when the ruling government loses majority in the assembly. The only other time he can constitutionally use his own judgment is when the internal security of the state is so threatened that he needs to ask for president's rule. The practice of this right, too, has become controversial, but the Constitution empowers him with this right.

Mr Jois's silliness is multi-layered. He has done himself a serious disservice by acting unconstitutionally, because a governor, like the president, is supposed to uphold the Constitution. The Congress and the left parties have come down heavily on Mr Jois for using the Republic Day address to criticize the lack of governance in the state. Unfortunately, what he has said is undeniably true. But by misusing his office, he has allowed the Rashtriya Janata Dal leader, Mr Laloo Prasad Yadav, an opportunity to defend the indefensible. The political leadership has much to do with the terrible condition of law and order in Bihar. To provide that same leadership space to demolish criticism on constitutional grounds is also to allow it to fudge the issue. Mr Jois could have done one of two things: resigned, or called for president's rule. He would have been within his constitutional rights to do both. Worse, he has confirmed the suspicions that his placing as Bihar's governor had more to do with his closeness to the Bharatiya Janata Party than anything else. As the Congress has said, the governor has played the role of opposition leader. Maybe it is not all silliness, but the signal of something rather more dangerous. That the BJP president has vocally complimented Mr Jois for speaking the truth is an indication of this. Law and order have certainly broken down in Bihar, but constitutional propriety, which governs order in the whole democracy, is endangered too. A situation in which the ruling party in Delhi applauds a governor for misusing his office cannot augur well for the people.

THE TELEGRAPH 29 JAN 2004

Jois denies having received speech from govt

Statesman News Service

PATNA, Jan. 27. — A day after the controversy over Bihar Governor Mr M Rama Jois' Republic Day speech, the Raj Bhavan today described as "factually incorrect" the reports that state government had sent an approved speech which the Governor had put aside to deliver his own.

"This is factually incorrect. In fact, Raj Bhavan records show that for the last five years, at no time government-approved speeches were being sent to be delivered by the Governor on Republic Day," a Raj Bhavan release said.

The state Cabinet had not sent any written speech on the Republic Day functions to the Governor in the last five years, the release said. "The state Cabinet did not send the speech to the Governor this year too despite the requisition sent to the Cabinet", it said.

It added that Mr Jois wanted to get an approved speech from the government and a letter to this effect was addressed to the Cabinet secretary. The letter requested the speech to be prepared by the government and sent to Raj Bhavan before 20 January. But till the last moment the Raj Bhavan received no speech and the Governor prepared his own, the release said.

The row over the Bihar Governor's remark on the law and order situation in Bihar and the state's first couple's reaction on it gathered increased intensity today with the Bharatiya Janata Party demanding the imposition of the President rule in the "lawless" state.

The Leader of Opposition in the Bihar Assembly, Mr Sushil Kumar Modi demanded the President dismiss the Rabri Devi government and invoke Article 356 in the state. "We'll soon meet Dr APJ Abdul Kalam in a delegation to formally press our demand," Mr Modi said. He added that he would also lead a delegation to the Governor requesting the latter to send his report to the Centre.

Governor Mr M Rama Jois and chief minister Mrs Rabri Devi at a tea party in Raj Bhavan on Republic Day. — PTI

The main Republic Day function here yesterday got embroiled in a controversy after the Governor, Mr M Rama Jois remarked on the poor law and order situation in the state. Unfurling the tricolour at the Gandhi maidan here, Mr Jois expressed his concern over the "sense of insecurity gripping the people of the state".

It was painful to learn from the newspaper reports that the people of other states were afraid of sending their wards to Bihar, he said. He also asked the law enforcing agencies to perform their duty without fear for improving the situation.

Irked at the Governor's comments, the RJD supremo Mr Laloo Prasad Yadav said he would meet the President soon to lodge a "formal complaint" against Mr Jois for his "uncharitable comments." He said Mr Jois was of the "BJP-RSS school." The Governor was supposed to read the speech prepared by the Cabinet, he said. Mrs Rabri Devi described him as an "agent of the RSS and advocate of the Union home minister, Mr LK Advani".

Mr Modi however asked how the Governor or for that matter anyone holding a constitutional position could stay mum over kidnappings, murders and rapes in the state.

"The Patna High Court slammed the Bihar Government several times for the latter's failure to improve the law and order situation," he said. He further asked "What is wrong if the Governor expresses is grief over the danger on their lives and property being faced by the denizens of the state?" Mr Yadav took it personally if anyone commented on the poor law and order situation in the state, he said.

BJP leader abducted: Criminals abducted senior BJP leader Mr Sikandar Rai on gun point near Dehri-on-Son in Bihar's Rohtas district late last night. Police said about seven persons deflated the tires of the vehicle Mr Rai and his three supporters were riding, dragged out the leader and sped off with hin in another vehicle.

DSP sent to jail

PATNA, Jan. 27. — Patna High Court today sent deputy superintendent of police (CID) Mr Ram Niranjan Rai to jail for his "contemptuous" behaviour in the court. The officer appeared as an intervenor while a Bench of Chief Justice Mr RS Dhavan and Mr Justice SK Singh was hearing a PIL filed by a traders's forum on the state's "poor law and order" condition.

Mr Rai challenged the state government's recent order transferring a large number of police officers. The transfers were ordered by the court. Mr Rai started pouring out his grievances without the court's consent. The Bench asked Mr Rai to engage a lawyer to present his case. at which he said: "My lawyer is a fool". The Bench then sent him to jail for a day and also rejected his bail plea. — SNS

রাজ্যপাল অন্যায় করিয়াছেন

রাষ্ট্রপতির মতোই, রাজ্যপালের ক্ষমতা এবং তাহার সীমা লইয়া এ দেশে বহু বার বিতর্ক দেখা দিয়াছে। এক অর্থে সেই বিতর্কের মূলে আছে ভারতীয় সংবিধান বা শাসনতন্ত্র। রাজ্যপাল রাজ্য সরকারের আনুষ্ঠানিক প্রধান, কিন্তু আনুষ্ঠানিক প্রধান মাত্র। পরিষদীয় গণতন্ত্রে রাজ্য সরকারের প্রকৃত নিয়ন্ত্রণ মন্ত্রিসভার হাতে এবং, সেই মন্ত্রিসভার প্রধান হিসাবে, মুখ্যমন্ত্রীর হাতে। সংবিধানের ১৬৩ ধারায় বলা হইয়াছে যে রাজ্যপাল রাজ্য মন্ত্রিসভার সহযোগিতা এবং পরামর্শ লইয়া চলিবেন। ইহার গূঢ় অর্থ: রাজ্যপাল আপন ইচ্ছা বা অভিরুচি অনুসারে কাজ করিবেন না, কার্যত তিনি যন্ত্র, মন্ত্রিসভা যন্ত্রী। তবে এই প্রশ্নে সংবিধানে কিছু অস্পষ্টতা আছে, কারণ উক্ত ধারাটিতে এ কথাও বলা হইয়াছে যে ক্ষেত্রবিশেষে রাজ্যপাল আপন বিচারবুদ্ধি (ডিসক্রিশন) অনুযায়ী কাজ করিতে পারিবেন। কী ধরনের ক্ষেত্রে? যেমন, মুখ্যমন্ত্রী বিধানসভায় সংখ্যাগরিষ্ঠতা হারাইলে রাজ্যপাল তাঁহার পরামর্শ শুনিতে বাধ্য থাকিবেন না। বা, রাজ্যে সাংবিধানিক ব্যবস্থা ভাঙিয়া পড়িয়াছে বলিয়া মনে করিলে তিনি দিল্লিতে রাষ্ট্রপতির শাসন জারির সুপারিশ পাঠাইতে পারিবেন। রাজ্যপালকে এই ধরনের 'স্বাধীনতা' দেওয়া নৈতিক কি না, সংবিধানের সংসদীয় চরিত্রের সহিত সামঞ্জস্যপূর্ণ কি না, তাহা লইয়া তর্কের শেষ নাই, এমনকী শেষ বিচারে সেই তর্ক হইতে চূড়ান্ত প্রশ্নটিও উঠিয়া পড়ে যে, ভারতীয় শাসনতন্ত্রে রাজ্যপাল পদটির যৌক্তিকতা কতখানি?

কিন্তু বিহারের রাজ্যপাল এম রাম জইস যাহা করিয়াছেন তাহার নৈতিকতা বিচারের জন্য সংবিধানের ধারা এবং সেই বিষয়ে সুপ্রিম কোর্টের টীকাভাষ্য পাঠ করিবার কিছুমাত্র প্রয়োজন নাই। কারণ তিনি প্রজাতন্ত্র দিবসের সভায় দাঁড়াইয়া রাজ্য প্রশাসনের মুণ্ডপাত করিয়াছেন। তাঁহার বক্তব্য, রাজ্যের নিরাপত্তা ব্যবস্থা ভাঙিয়া পড়িয়াছে, আতঙ্ক ও সন্ত্রাস সর্বব্যাপী, কেহ এই রাজ্যে আসিতে চাহেন না ইত্যাদি। মর্মার্থ: বিহারের সরকার প্রশাসন পরিচালনায় সম্পূর্ণ ব্যর্থ। বিহারের নিরাপত্তা পরিস্থিতি বা প্রশাসনের মান লইয়া নূতন করিয়া বলিবার কিছু নাই, সমাজকর্মী মহেশ-মৈত্রীতার নৃশংস হত্যাকাণ্ড প্রশাসনের ব্যর্থতের তালিকায় নূতন সংযোজন। রাজ্যপাল যাহা বলিয়াছেন তাহার সারবত্তা লইয়া প্রশ্নাতীত। বিহারের মুখ্যমন্ত্রী ও তাঁহার পতিদেবতা রাজ্যপালের আচরণের নিন্দা করিতে গিয়া এমন একটি ভাব করিয়াছেন যেন তাঁহার কথাগুলি মিথ্যা, যেন বিহার আইনশৃঙ্খলার মরূদ্যানবিশেষ। সারা দেশের মানুষ জানেন, সত্য কিঞ্চিৎ অন্যরূপ। সম্প্রতি পটনা হাই কোর্টের ভর্ৎসনায় সেই সত্য প্রতিফলিত। (যে ভাবে হাই কোর্ট রাজ্যে রাষ্ট্রপতির শাসন জারির পরিস্থিতি তৈয়ারি হইয়াছে বলিয়া মত দিয়াছেন তাহা নিশ্চয়ই বিচারবিভাগের অবাঞ্ছিত হস্তক্ষেপ বা অতিসক্রিয়তার পরিচায়ক, কিন্তু প্রশাসনের অপদার্থতাই হস্তক্ষেপের অবকাশ তৈয়ারি করিয়া দিয়াছে।) বিহারের রাজ্যপালও সেই সত্যই প্রকাশ করিয়াছেন।

তাহা সত্ত্বেও সন্দেহ নাই যে তিনি অন্যায় করিয়াছেন। রাজ্যপাল হিসাবে রাজ্য সরকারের অমতে কোনও কাজ করা বা কথা বলা তাঁহার পক্ষে অত্যন্ত অনুচিত কাজ। তিনি যদি বেহাল বিহার লইয়া ক্ষোভ প্রকাশে ব্যগ্র হইয়া থাকেন তবে সর্বাগ্রে তাঁহার উচিত ছিল রাজ্যপালের পদে ইস্তফা দেওয়া। আর, রাজ্যপাল হিসাবে তিনি যদি মনে করেন যে রাজ্য সরকার চূড়ান্ত ভাবে ব্যর্থ, রাষ্ট্রপতির শাসন দরকার, তবে সেই সুপারিশ করিবার সাংবিধানিক প্রকরণ প্রয়োগ করা বিধেয় ছিল। সে ক্ষেত্রেও তর্ক উঠিত নিশ্চয়ই, কিন্তু তাহা অন্য স্তরের তর্ক। লক্ষণীয়, জইস সম্পর্কে প্রথমাবধি অভিযোগ শোনা গিয়াছে যে তিনি সঙ্ঘ পরিবারের ঘনিষ্ঠ বলিয়াই তাঁহাকে বিহারের রাজ্যপাল করা হইয়াছে, যাহাতে তিনি রাজ্যে ক্ষমতাসীন প্রতিপক্ষকে বিপাকে ফেলিতে পারেন। রাজ্যপাল নিয়োগকে রাজনৈতিক চাল হিসাবে ব্যবহারের কাহিনি সুপরিচিত। কিন্তু আত্মমর্যাদা ও দায়িত্ববোধ থাকিলে রাজ্যপালের কাজ হওয়া উচিত আপন রাজনৈতিক পছন্দ বা উদ্দেশ্যকে সংযত রাখিয়া নির্দিষ্ট আচরণবিধির মধ্যে কাজ করা। বিহারের রাজ্যপাল যাহা করিয়াছেন তাহা তাঁহার বিরোধীদের অভিযোগকেই অনেকাংশে বিশ্বাসযোগ্য করিয়া তোলে। তাঁহার আচরণ কেবল অন্যায়, অশোভন নহে, তাহা বিপজ্জনক। বিপজ্জনক, কারণ শাসনতন্ত্রের চালক তথা অছিরাই যদি সুশাসনের নৈতিক শর্তগুলি এই ভাবে অমান্য করিতে শুরু করেন, আপন ক্ষমতার সীমাগুলিকে যথেচ্ছ ভাবে লঙ্ঘন করেন, তবে শাসনতন্ত্রের ভিতটিই বিপন্ন, বিপর্যস্ত হয়। রাজ্যপাল যদি সত্যই বিহারের প্রশাসন লইয়া ভাবিত হন তবে তাঁহার মনে রাখা উচিত ছিল, আপন আচরণবিধি ভঙ্গ করিয়া তিনি বিহারের মানুষের উপকার করিতেছেন না।

ANADABAZAR PATRIKA 28 JAN 2004

Fear, sense of insecurity in Bihar: Governor

● Laloo to complain to Kalam

PATNA, JAN. 26. The Bihar Governor, M. Rama Jois, today criticised the State Government headed by Rabri Devi at the Republic Day function here saying "fear and terror" were the uppermost in the minds of the people in the State. This prompted an annoyed Rashtriya Janata Dal chief, Laloo Prasad Yadav, to demand his removal.

Unfurling the national flag at the historic Gandhi Maidan, Mr. Jois said that a sense of insecurity had gripped the people of Bihar and that it was painful to learn from newspaper reports that the people from other parts of the country were afraid of sending their wards to the State. He called on those responsible for maintaining law and order to act without fear or bias to change the situation and to re-establish an atmosphere of peace and security.

The Governor's remarks drew an angry response from Mr. Yadav, who told mediapersons that he would lodge a formal complaint with the President, A.P.J. Abdul Kalam, demanding the Governor's removal. "I will call on the President to complain to him about the manner in which the Governor violated constitutional norms and decorum. I will present Kalam the text of Jois' speech and request his removal," Mr. Yadav said.

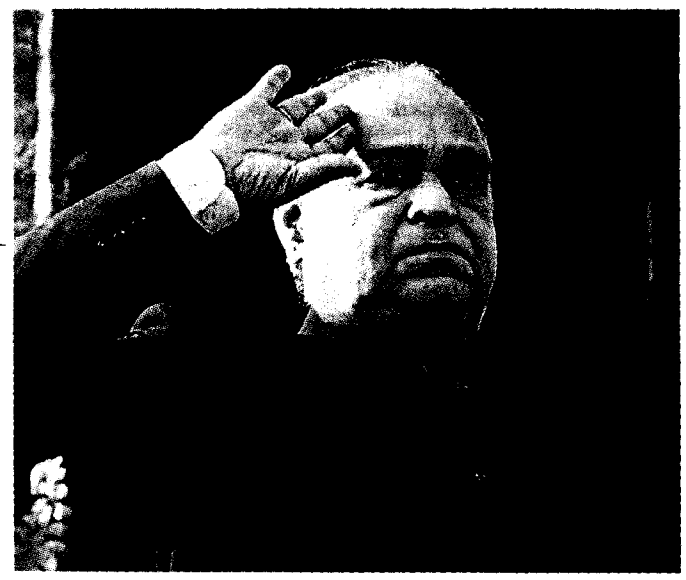
The RJD chief said he would also raise the issue in the coming session of Parliament. "The Governor has spoken the language of the Sangh Parivar. Today, when the nation is paying homage to its martyrs he has used the occasion to put across his views as an RSS man," he alleged.

Pointing out that he had opposed Mr. Jois' appointment as Governor due to "his RSS leanings," Mr. Yadav said that the Governor had used the Republic Day function to make a political speech. "This is not a political forum."

"I am deeply pained by the way in which Mr. Jois has tarnished the image of Bihar. After all it is the Biharis who get beaten up in Mumbai and Guwahati. Despite this the Governor says law and order in Bihar is bad," he said.

The Governor should know that this was the land of the Buddha and Mahavira. "It was here that L.K. Advani was put behind bars and the people of the State live in harmony. The Governor did not utter a word on this."

The RJD leader also accused the National Democratic Alliance Government at the Centre of having endangered the country's unity and integrity with what he called "its communal agenda." — PTI



The Bihar Governor, M. Rama Jois, taking the salute at the Republic Day parade in Patna on Monday.
— Photo: Ranjeet Kumar

THE HINDU 27 JAN 2004

What is a vote on account?

UNDER the Indian Constitution, all the revenue received by the Union government or loans raised by it go into the Consolidated Fund of India, barring what is put into the Contingency Fund.

Any withdrawal of money from this fund to meet the government's expenditure must be sanctioned by Parliament in the form of a law.

It is this sanction, for the withdrawal of money from the Consolidated Fund for specified expenditure, that is generally referred to as a vote-on-account. The more technical name for it is the Appropriation Bill (or Act, once it is passed).

Is a vote on account only sought by caretaker governments?

While this seems to be the popular notion, it is far from being true. As already mentioned, any expenditure that involves a withdrawal from the Consolidated Fund needs an Appropriation Bill to be passed.

Hence an appropriation Bill is part and parcel of the normal annual budget exercise too. Also, as is well known, the Union Budget each year is typically presented at around the end of February in the previous financial year.

But by the time the Budget is normally passed by Parliament, we are well into the new financial year, to which the Budget pertains. This means the government would not be able to spend any money out of Consolidated Fund after April 1, when the financial year begins, unless it has parliamentary approval to do so.

Thus, a vote-on-account becomes necessary even to cover government expenditure for the period between the Budget presentation and its implementation.

How is the vote-on-account different from the Budget?

A vote-on-account, as already explained, pertains only to the expenditure side of the government's Budget. The annual Budget, on the other hand, spells out both the manner in which the money is to be spent and how it is to be raised. One reason for the confusion among laymen is the fact that the term "vote-on-account" is used loosely to connote an interim Budget, which is a complete set of accounts, including both expenditure and receipts.

Then how is an interim Budget different from a normal one?

When we talk about an interim Budget, what we normally refer to is a statement of accounts that does not incorporate the changes in taxation rates from those prevailing at the time of the Budget presentation. This is normally what caretaker governments do.

For instance, when the Chandra Shekhar government was reduced to caretaker status in early 1991, Mr Yashwant Sinha, who was then finance minister, presented a vote-on-account (used here in the loose sense) rather than a full-fledged Budget. The rationale and principle behind this convention is simple enough: It is regarded as improper for an outgoing government to impose on its successor changes that may or may not be acceptable to the new government. In the case of an interim Budget presented just before Lok Sabha elections, this principle becomes even more compelling because the imposition stands to be forced not just on a new government, but on a new legislature as well. It is important to know, however, that this is only a matter of convention.

There is no legal bar on a caretaker government from presenting a full-fledged Budget. Indeed, strictly legally, there is no distinction between the powers of a caretaker government and a normal one, since the concept of "caretaker" does not exist in the Constitution.

It might also be worth noting in this context that while any changes in direct taxes have to be sanctioned by the legislature, changes in indirect tax rates can be made by the executive, as the government has just done with customs and excise duties.

ET IN THE CLASSROOM

The Economic Times 19 JAN 2004

A sad judgment

The Gujarat High Court verdict runs counter to the spirit of the apex court's observations

ON December 26, when the Gujarat High Court gave an oral judgment dismissing the state government's appeal and prayer for a retrial in the notorious Best Bakery case, this newspaper held back from commenting editorially on it. It chose instead to wait for the detailed order in order to understand the court's rationale in taking the stand it did. Well, the full text of the judgment came out on Monday and all that we can say is that it has both disappointed and saddened us.

We are disappointed and saddened for four reasons. One, because its tone and tenor goes against the spirit of the apex court's observations last August, when the chief justice of the country, no less, had expressed his unhappiness that the "criminal justice system is not in sound health". There was nothing to suggest that the Gujarat High Court was gripped by a similar angst, a similar drive for self-correction, a desire to ensure that justice must be done and seen to be done. Two, because this case had exercised not just the apex court, but the National Human Rights Commission, which had first sent a team to Ahmedabad to study it and followed this up with the unprecedented step of filing a special leave petition asking the apex court to set aside the judgment and call for a retrial of the case outside Gujarat. Three, because this case was one of the best documented of all the barbaric incidents that had occurred in post-Godhra Gujarat and if justice is not delivered in this case, it is unlikely that others would fare better. Four, because ultimately it concerns the lives and well-being of people who are powerless to counter not just the unspeakable atrocities perpetrated against them but the deviations, prevarications and deceits of the law and order machinery and the political system. The two-judge bench appears more outraged over the "anti-social" and "anti-national" elements (read NGOs) who reached out to Zaheera Sheikh and her family, rather than the rioters who killed 14 people. In any case, while questioning the delay in Zaheera Sheikh's demand for a retrial, the judges overlooked the possibility that it may have been the public outrage that greeted the acquittals which had given her the courage to make such a demand.

Indeed, the only deep concern that seems to come through in this verdict is that for the reputation of the judicial system in the state. As the two judges put it: "This time, the target is none else but the judiciary of the state and the system as a whole, which is a matter of grave concern." If only the judges could have looked beyond their own fraternity!

'NDIAN EXPRESS 14 JAN 2004

Nuclear veil in place with rights rider

R. VENKATARAMAN

New Delhi, Jan. 6: Clarifying that the right to information is subject to "reasonable restrictions", the Supreme Court has held that the government need not make public any report relating to nuclear installations in the country.

The judges listed nine areas (**see chart**) where "reasonable restrictions" could be imposed to deny information. The court said the restrictions are applicable to the media, too. "Right to information is certainly a fundamental right, but it is subject to reasonable restrictions," a bench of Chief Justice V.N. Khare and Justice S.B. Sinha said today.

The court dismissed a petition of the People's Union for Civil Liberties (PUCL) which sought a directive to the government to disclose the contents of a report of the Atomic Energy Regulation Board (AERB).

The petition was filed against the backdrop of charges that nuclear installations and atomic power stations across the country were endangering the life of people living in their vicinity.

NINE DOMAINS

Areas where reasonable restrictions will be applicable

- **International relations**
- **National security**
- **Investigation into and detection and prevention of crime**
- **Internal deliberations of the government**
- **Information received in confidence from a source outside the government**
- **Information violating the privacy of an individual**
- ***Matters of economic nature***
- **Professional communication like the one between a lawyer and his client and a doctor and his patient**
- **Scientific discoveries**

Former AERB chairman A. Gopalakrishnan was also a petitioner. He contended that "serious nuclear accidents" could take place at Narora plant in Uttar Pradesh and Kaita in Karnataka.

The apex court upheld a judgment of Bombay High Court, which, too, had dismissed the petition on the ground that the AERB report or any information relating to nuclear installations in the country did not come in the purview of the fundamental right to information.

Echoing this, the apex court bench said that "every fundamental right in the Indian Constitution is subject to reasonable restriction" and the only test was "how reasonable" such a restriction was imposed by the government of the day.

The court upheld attorney general Soli Sorabjee's contention that the AERB report would reveal to "enemies" data containing "inventories, spent fuel, waste, etc, facilitating the calculation of the country's nuclear programme potential". Its contents, therefore, should not be revealed even in the name of "fundamental right to information", he added.

The PUCL said "news reports of safety violations and defects in nuclear installations and power plants across the country, including the ones at Trombay and Tarapur, are alarming as nuclear degradation is feared" and, hence, the report should be made public.

THE TELEGRAPH 7 JAN 2004

Kalam seal on defection law

OUR SPECIAL CORRESPONDENT

New Delhi, Jan. 3: President A.P.J. Abdul Kalam has given his assent to the constitutional amendment that makes defections virtually impossible, ending Congress fears that the central coalition might take one last shot at destabilising its governments before the law comes into force.

Official sources said the presidential nod came last night, three days after the main Opposition party — whose government in Punjab is facing dissent — voiced concern over the "inordinate" delay in enforcing the law.

According to the amended law, a one-third split in the legislature party alone will not suffice. The national executive of the party itself has to splinter.

Apart from removing the one-third provision, the amended legislation also limits the size of ministries to 15 per cent of the strength of the Lok Sabha and Assemblies.

The Prime Minister and chief ministers have six months to adhere to the new norm.

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President's assent to Anti-Defection Bill

By Vinay Kumar

NEW DELHI, JAN. 2. The President, A.P.J. Abdul Kalam, today gave his assent to the Bill pertaining to changes in the anti-defection law and limiting the size of the Council of Ministers at the Centre and in the States, according to Rashtrapati Bhavan sources. With the Presidential assent behind it, the Bill has become an Act and it is expected to be notified in the Gazette in the next few days.

The President's assent has been eagerly awaited by the All-India Congress Committee facing heightened dissident activity in Punjab and Kerala.

The law to check defections and limit the size of the Council of Ministers both at the Centre and the States takes effect in the backdrop of rapid political developments and indications that the Bharatiya Janata Party-led coalition Government at the Centre could go in for early Lok Sabha polls, most probably in April-May.

The new law aims at limiting the size of the Council of Ministers to 15 per cent of the Lower House in the case of the Centre and in the States prune the jumbo Cabinets as in Uttar Pradesh.

On the anti-defection front, the law gives teeth to debar a defector from holding any "remunerative political post" for the remaining tenure of the legislature unless re-elected. The existing law allows bulk defections and the disqualification provision is not applicable when one-third of the members of a party split from the parent group.

The amended law describes a "remunerative political post" as any office (a) where the salary or remuneration for such office is paid out of the public revenue and (b) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remunerations for such office is paid by such body.

The President also gave his assent to the Prevention of Terrorism (Amendment) Bill empowering the Central Review Committee to decide whether there is a prima facie case for proceeding against the accused arrested under this Act and issue directions accordingly.

Under the amended Act, four sub-sections under Section 60 of the POTA have been inserted to provide more teeth to the committee, whose decisions would be binding on the Centre, the States and police.

It also says that "if the Review Committee is of the opinion that there is no prima facie case for proceeding against the accused and issues directions then proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction."

Another Bill providing for the inclusion of Bodo, Santhali, Maithili and Dogri in the Eighth Schedule has also received the Presidential assent.

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