

NDA TO OPPOSE MOVE

Quota Bill divides

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Constitution

Statesman News Service

NEW DELHI, Dec. 19. — The Centre's move to introduce a constitutional amendment Bill on education quotas is set to generate heat, given the stiff opposition to certain provisions of it from the NDA as well as from parties within the UPA.

The government requires the backing of two-thirds of the members in both the Houses to ensure the passage of the Bill to provide reservation for SCs, STs, and "socially and educationally backward" communities in private, unaided educational institutions. The government's bid to mobilise support across party lines today suffered a setback when, resolving their differences, NDA leaders "unanimously" decided to oppose the Bill on the grounds that it sought to exempt minority institutions from the legislation's purview.

"There should be reservations for SCs, STs and socially and educationally backward classes in government and non-governmental institutions, aided or unaided. It should be applicable to all institutions and we have unanimously agreed that a clause exempting minority institutions should not be allowed," the BJP spokesman, Mr VK Malhotra, said after a 75-minute meeting of NDA leaders on the issue.

Demanding that there should

be reservations for Dalits and backward classes in minority institutions as well, the NDA leaders decided to move amendments to the Bill when it would be introduced in Parliament.

The government was earlier said to be making attempts to winning over some BJP allies, like the JD-U, to have the Bill passed. The JD-U, sources said, had reservations about the BJP's opposition to the legislation since it did not want to be perceived as adopting an "anti-minority stance".

Today's NDA meeting, chaired by the Opposition leader, Mr LK Advani, and attended by leaders of the JD-U, BJD and the Trinamul Congress, appeared to have thwarted the government's bid in this regard.

Worse news for the government came from its UPA allies. The CPI has adopted a stand akin to that of the BJP, saying the Bill — exempting minority institutions from its ambit — will be "unacceptable" to it. While the CPI-M was earlier non-committal on the Bill, Mr Prakash Karat and Mr Sitaram Yechuri met the Prime Minister and Mrs Sonia Gandhi late tonight and asked the government to table the Bill in the ongoing session to "expose" the BJP which had "renege" on its stand on supporting the Bill. The Left leaders are understood to have assured their party's support for the Bill.

20 DEC 2005

THE STATESMAN

Dalit quota Bill put on hold

HT Correspondent
New Delhi, December 14

THE CONSTITUTION Amendment Bill for providing reservation for Dalits and other weaker sections in unaided, private educational institutions got deferred on Wednesday. After the BJP's red flag on the issue of keeping out bodies run by minorities, the forum for OBC MPs came out against the Bill, saying it could not support it unless it had a special provision for quota for backward classes in private bodies. Speaker Somnath Chatterjee made an announcement in the Lok Sabha that HRD minister Arjun Singh had requested for the postponement and he has acceded to it.

The BJP was the first to oppose the Bill as it had kept out the minority-run bodies from its purview. It got its allies, particularly the JD(U), to appreciate its contention that the measure would effectively bar the backwards among the minorities and enable private ones to avoid quotas by declaring themselves as "linguistic or religious" minority body. The OBC MPs forum, which has MPs from almost all parties, conveyed its reservations to the Lok Sabha Speaker on Wednesday. After the Bill got deferred, CPI-M leaders Nilotpal Basu and Basudev Acharya said the issue of regulating fees should also be taken into account.

BJP's deputy leader in the Rajya Sabha Sushma Swaraj and BJP chief whip Santosh Gangwar, one of the key leaders of the OBC forum, said about 50 MPs, including Congress MP Sachin Pilot, took part in a meeting where it was decided to forcefully demand that specific reference to the OBC/MBCs be made in the provisions of the Bill. Parliamentary affairs minister P.R. Dasgupta spoke to Swaraj and said the Bill would be introduced only after Arjun Singh talked both to the BJP and the forum.

OBC opposition

- OBC MPs came out against the Constitution Amendment Bill for providing reservation for Dalits in pvt colleges
- Speaker Somnath Chatterjee said HRD minister Arjun Singh had requested for the postponement of the bill and he has accepted it

Order on quotas, reservation stays

01 DEC 2005

Seven-judge Bench of Supreme Court dismisses review petition of Tamil Nadu Government

Legal Correspondent

NEW DELHI: The Supreme Court has declined to review its August 12 judgment scrapping State quotas and reservation in private, unaided, minority and non-minority professional educational institutions across the country.

A seven-judge Bench comprising Chief Justice Y.K. Sabharwal, Justice B.N. Agrawal, Justice Arun Kumar, Justice G.P. Mathur, Justice C.K. Thakker, Justice Tarun Chatterjee and Justice P.K. Balasubramanyam, in a brief order passed in the chambers of the CJI on Tuesday, dismissed a review petition filed by the Tamil Nadu

Government.

In its order, the Bench said: "The validity of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes [Reservation of Seats in Educational Institutions and of Appointments or Posts in the Service under the State] Act, 1993, has not been gone into in the judgment of which review is sought. In our view no case is made out to review our judgment dated August 12. Accordingly, the review petition is dismissed."

According to senior lawyers, the dismissal of the review petition with a clarification that the Tamil Nadu Reservation Act had not been gone into by the court

would enable Tamil Nadu to implement the 69 per cent reservation subject to the various interim orders passed by the apex court from time to time. But as far as "quota" is concerned, the judgment abolishing the quotas would prevail. In respect of other States, the August 12 judgment would have to be enforced.

In its August 12 judgment, a seven-judge Bench of the apex court had held that unaided minority and non-minority institutions had absolute rights to establish, administer and admit students of their choice in medicine, engineering and other professional courses without government interference.

The Bench gave this ruling while dealing with over 100 petitions filed by the States of Tamil Nadu, Kerala, Andhra Pradesh, Karnataka, Madhya Pradesh and Maharashtra, the All-India Medical and Engineering Colleges' Association and other individual colleges. It had said that imposition of State quota of seats or enforcing reservation policy of the State on available seats in unaided professional institutions were acts constituting serious encroachment on the right and autonomy of private professional educational institutions.

It had said that "merely because the resources of the State in providing professional education are limited, private educa-

However, this Act was challenged and the same was now pending adjudication before a nine-judge Bench.

During the course of arguments the seven-judge Bench had made it clear that it was not going into the question of reservation and hence no arguments were advanced on the issue of reservation.

As far as Tamil Nadu was concerned it was implementing the Act for over a decade in all educational institutions till date.

Since there was an error apparent on the face of the record the impugned judgment required reconsideration, the review petition said.

Act in IX Schedule

This Act had already been included in the IX Schedule of the Constitution (to ensure that the validity of this Act is not challenged before the court).

Handwritten notes: *Consolidation of reservation*

Judiciary has no place for diplomacy: CJI

OUR LEGAL
CORRESPONDENT

New Delhi, Nov. 26: Chief Justice of India Y.K. Sabharwal today said there was no question of the judiciary "overstepping" its limits nor of any clash with the executive.

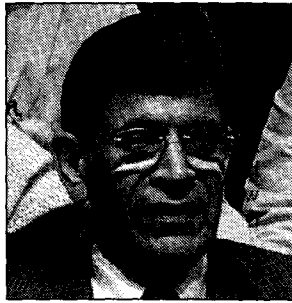
At the National Conference on Legal Empowerment on November 10, President A.P.J. Abdul Kalam had said: "How can you expect the executive to be independent when each of its actions is questioned?" The reference was to the large number of PILs filed in courts.

Sabharwal, who was in the audience when Kalam spoke, said in his Law Day address at the Supreme Court today that the judiciary is not encroaching upon the functions of either the legislature or the executive.

"I would like to only say with utmost humility that the judiciary in some cases has only emphasised on constitutional provisions... by highlighting the express as well as implied intention of (the) Constitution draftsman which for some or the other reason remained unimplemented at the hands of the executive," Sabharwal said.

The Supreme Court has amplified the scope of fundamental rights and elevated some of the directive principles of state policy, he added. He said it was "natural that everybody would not be pleased with all the decisions of the judiciary".

"In judiciary, we have no place for diplomacy. In very nature of our duties and functions, someone is bound to be displeased, but that is unavoidable," Sabharwal said, in a veiled reference to the President whose address has triggered a debate



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Justice Sabharwal



Kalam

in judicial circles.

On maintaining a balance between the three pillars of democracy — legislature, executive and judiciary — law minister Hans Raj Bhardwaj said: "Sometimes attempts are made to confuse public mind about the role of the three wings of the state. We hear criticism that the executive is running the country at the expense of Parliament or that the courts are running the country at the expense of Parliament and the executive."

'No court role on death'

It's up to legislature to decide statute provision on sentence: CJ

SAMANWAYA

New Delhi, November 2

THE JUDICIARY would play its part in dealing with the problem of terrorism, Chief Justice Y.K. Sabharwal, said at his maiden Press meet on Wednesday after he took over on Diwali.

But unlike his predecessor, justice Sabharwal stopped short of attacking the political class for lack of will to deal with the problem. "On what basis do you say that there's no political will," he asked reporters at the meet, which itself was a break from past practice of staying away from the media.

Justice Sabharwal expressed his sympathy for the Delhi blast victims and said that it would be the endeavour of the judiciary to expeditiously try such cases despite the large number of witnesses involved in therein.

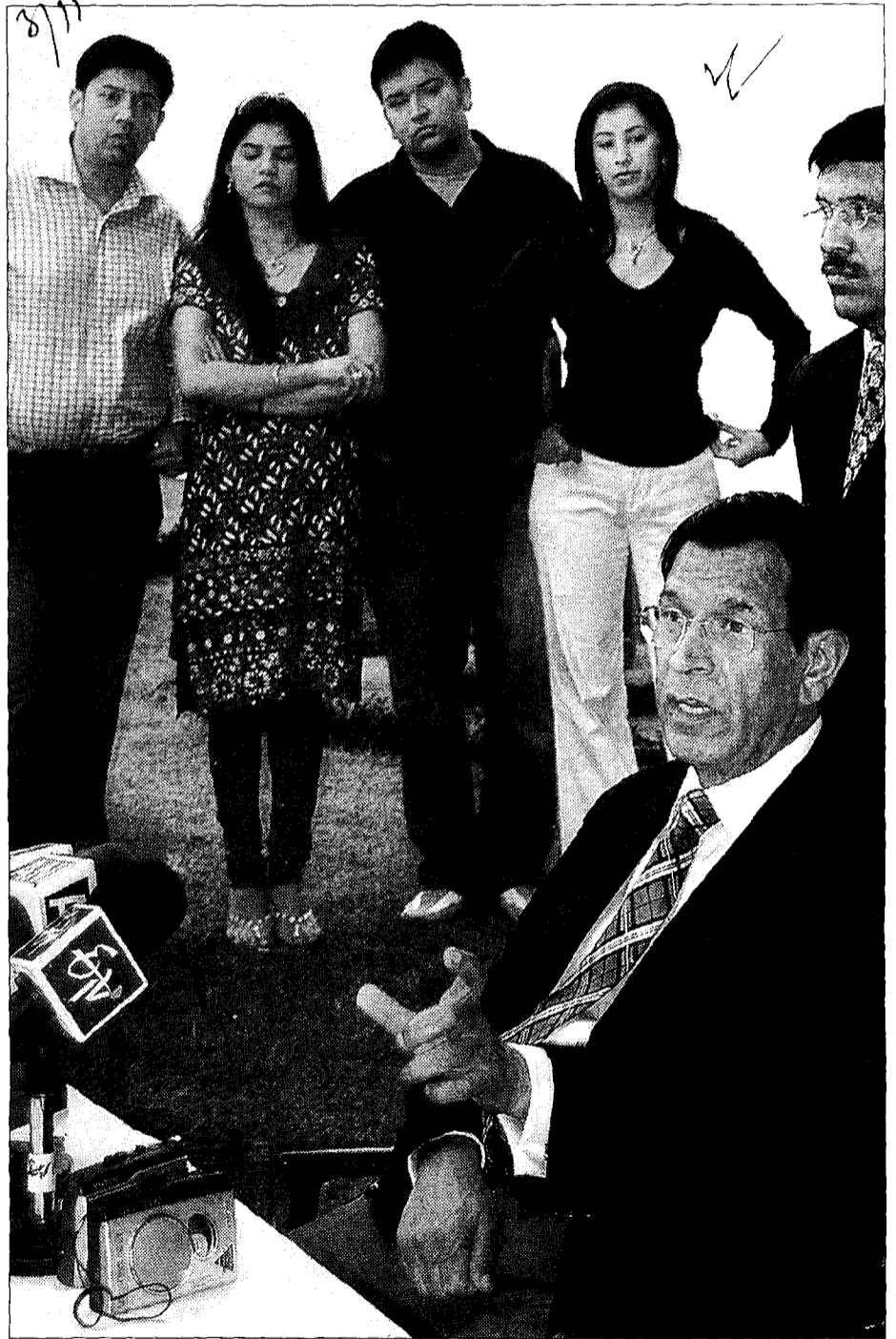
He, however, refused to go back on his personal view that death penalty should be abolished. It was up to legislature to decide whether to retain death penalty on the statute book or not, he said. It is not for the judiciary to say whether it should or should not be down away with. "That's for the legislature to decide," he said.

His remarks are in sharp contrast with the views expressed by his predecessor, justice R.C. Lahoti, who retired on October 31. Speaking out against the recent Delhi blasts, justice Lahoti had advocated death for all such heinous crimes. "What other punishment do the perpetrators of these blasts deserve?" he had asked on his last day in office.

On the proposed National Accountability/Judicial Council that law minister H.R. Bhardwaj has been speaking about, Justice Sabharwal struck an ambivalent note.

While stating that the existing in-house mechanism (based mostly on peer pressure) had so far worked out fine, he said, more powers were "needed" to deal with "the problem". Former CJI, V.N. Khare had sought more powers for the CJI to deal with the problem.

On justice B.K. Roy, transferred from Guwahati to Sikkim at the request of the bench there, however, Justice Sabharwal chose to back what Justice Lahoti said. "B.K. Roy has no leadership qualities," justice Lahoti had said. The new chief justice also tried to dispel the impression that the rate of disposal of cases was slow. He said that the delay was not due to slow disposal rate but due to high filing rate and delay in filling up vacancies in the judicial system.



SN SINHA/HT

CJI Y.K. Sabharwal at a news conference with his family in the background.

It is the job of the legislature: Chief Justice

**"To decide whether the country needed
stronger anti-terrorism laws"**

Siddharth Narrain

NEW DELHI: Newly sworn-in Chief Justice of the Supreme Court Justice Y.K. Sabharwal said on Wednesday that it was for the legislature to decide whether the country needed stronger anti-terrorism laws.

Addressing a press conference at his residence, he said: "This is for the legislature to decide. It is none of the judiciary's business."

This was a clear departure from the statement of the former Chief Justice, R.C. Lahoti on Monday that the country needed a new law to tackle terrorism and that the political leadership lacked the will to frame such a law. He also said he would not air his personal views on the death penalty. It was for the legislature to decide what the maximum and minimum punishment should be for each offence, he added.

Mr. Justice Sabharwal, who succeeds Justice Lahoti, was sworn in by President A.P.J. Kalam at Rashtrapati Bhavan on Tuesday in a ceremony attended by Prime Minister Manmohan Singh, Congress president Sonia Gandhi and Leader of the Opposition L.K. Advani.

He said he would look into the issue of the 188 vacancies pending in courts throughout the country, including those in the Madras High Court. The Supreme Court collegium had recommended to the Law Minister that the vacancies be filled. He said he did not know why there was a delay and that he was going to find out what the problem was. He would examine each one of these cases and see that steps



*Y.K. Sabharwal... new
Chief Justice of India*

were taken to fill posts before they fell vacant.

Corruption issue

Responding to a question on the Law Ministry's proposal to set up the National Judicial Council, Mr. Justice Sabharwal said that his predecessor Justice Lahoti had forwarded his view to the government. It was up to the government to legislate on the subject. "We can only look at the legality and validity of such a law if it is challenged in court," he said. Asked about corruption in the higher judiciary, he said that so far peer pressure had worked to control corruption. "I do not know on what basis ... it could be said that there is a certain percentage of corruption in the judiciary," he said. However, he added, "But, if we are talking of corruption as an evil, we need to start with cleaning our own house."

Angry SC wants freeloaders out

9-levelling
jurisdiction SC1

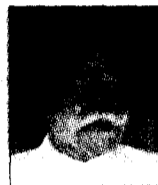
Press Trust of India

25/10
NEW DELHI, Oct. 24. — The Supreme Court today censured politicians for their "unauthorised" occupation of government accommodation in the capital, asking the Centre to "throw out" Bihar Governor Buta Singh. "Buta Singh is the Governor of Bihar. What is he doing here?"

"How can he be occupying a house here? A Governor cannot have a house here. Throw him out," a Bench comprising Mr Justice BN Agarwal and Mr Justice AK Mathur observed while perusing a list provided by the Centre detailing unauthorised occupation of government accommodation. Mr Singh, who has been an unauthorised occupant of 9, Lodi Estate since 6 March, 2004, topped the list.

The SC criticised the Centre's failure to implement the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. "The ordinary law for eviction has become (an) utter failure," the Bench said, adding: "The persons who laid down the laws are violating them..."

Additional Solicitor-General Mr Gopal Subramanian, who appeared on behalf of Attorney-General Mr Milon Banerjee in connection with a writ petition treated as PIL by the SC, said there were 465 instances of unauthorised occupation of general pool accommodation. He said the Centre had had to file before the SC provi-



Buta Singh is Governor of Bihar. What is he doing here? How can he be occupying a house here? Governor cannot have a house here. Throw him out



The ordinary law for eviction has become (an) utter failure... the persons who laid down the laws are violating them by overstaying

sions of the rules regarding the permissible period within which an occupant could vacate a house. CPI-M general secretary Mr Harkishan Singh Surjeet, UP chief minister Mr Mulayam Singh Yadav, BJP leaders Mr Rajnath Singh and Mr Jaswant Singh and three general secretaries of the Congress are on the list of guilty persons.

The SC today rejected a plea to take into consideration religious grounds for deciding the constitutional validity of a rule that permits states to relax a ban on the use of loudspeakers for two hours in the night for 15 days in a year. "Keep religion out of the issue," it said while reserving its verdict on the constitutional validity of the Rule 5 (3) of the Noise Pollution (Control and Regulation) Rules, 2000.

POLITICAL POLLUTION

The President Is Not A Constitutional Cipher

By JAGMOHAN

21/10
Confidential

Is the Indian President nothing but a robot according automatic approval to every resolution that his Council of Ministers submits to him? Is he totally helpless in stopping the dirty games to which our politicians sometimes resort? Is he not expected to serve as custodian of the constitutional conscience of the nation? What is the significance of his oath of office: "I will to the best of my ability preserve, protect and defend the constitution and law....?" Of what practical relevance is the provision pertaining to his impeachment if he has always to append his signature on the dotted line? And why does the President's election emanate from an electoral college of which the state legislatures form a significant part?

Though the context is the recent verdict of the Supreme Court on the dissolution of the Bihar Assembly, I am not commenting upon the role of the individuals in this case. My major concern here is to examine the manner in which the political pollution of our times has damaged the structure of our Constitution and benumbed its soul. The focus would be on the institution of presidency.

'Reserve' powers

The President of India is not a constitutional cipher, as is generally made out. He has "reserve" powers that the philosophy of our Constitution has given birth to, powers that are inherent in the basic norms of constitutionalism, powers that cannot be divorced from constitutional morality that the President is expected to nurse, powers that have to be viewed not in isolation but in the totality of the provisions of the Constitution.

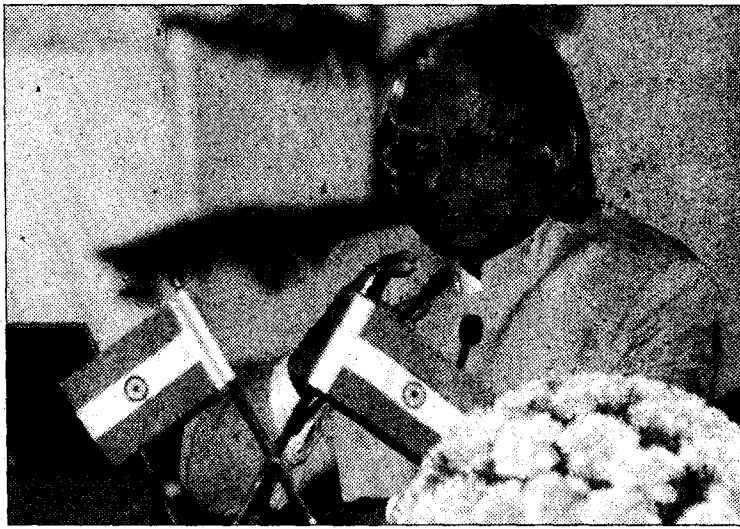
These powers must come into play with regard to certain cases, especially those in which the ruling party at the level of the Union government is driven by narrow ends of power and its decisions adversely affect its political opponents at the level of the state government. The President should not intervene in matters where two views on honest and bonafide considerations are possible. But he must exercise extra care and caution to ensure that partisan politics do not undermine any of the foundational planks of the Constitution.

There are a few powers that are too sacrosanct to be entrusted to anyone but a constitutional sage — that is, the constitutional head of the state. And the sage must shake his head in disapproval,

The author is a former Governor of J&K and a former Union Minister

whenever he finds that coteries and cliques have combined to act in a self-serving manner.

Take, for example, the position of the Governor — what the framers of the Constitution intended it to be and what it has actually become. The intention of the founding fathers was made abundantly clear when TT Krishnamachari, speaking in the Constituent Assembly, said: "I



would at once disclaim all ideas that we in this House want the future Governor who is to be nominated by the President to be in any sense an agent of the central government. I would like that point to be made very clear, because such an idea finds no place in the scheme of Governor we envisage for the future".

A study team, appointed by the Administrative Reforms Commission in 1967, enunciated a similar proposition: "It is important that the Governor should discharge his functions judiciously, impartially and efficiently".

The Supreme Court further elucidated the position in the Raghukul Tilak case: "Governor is not amenable to the direction of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office".

Sarkaria report

The observations made by the Sarkaria Commission (1983) were on the same wavelength as the above views. Additionally, the commission made wholesome recommendations with regard to selection, removal, role and functions of the Governor. But, over the years, how have things been happening in practice, despite the intentions of the framers of the Constitution and the above elaborations by independent authorities?

The leaders who later joined hands in 1977 under the banner of Janata Party used to criticise Indira Gandhi for misusing the office of the Governor. But when the Janata Party came to power, it appointed Governors on partisan considerations. In 1989, the National Front Government of VP Singh outdid all previous Governments. It changed the Governors en masse. It made a mockery

has shown constitutional courage or sagacity to use his "area of reserve-power" to protect the position of the Governor, facilitate his independent functioning and ensure that the political pollution that is fast spreading in the country does not stragulate it. He has also forgotten that, apart from being a head of the Union government, he stands at the apex of a federal structure and his oath of office requires him to protect it. He is elected by an electoral college comprising MPs and MLAs.

Had the President not surrendered meekly, at the initial stages, his power and position to the political machination of the ruling party at the Centre, the malady would not have developed roots and become chronic. Is it not a matter to be pondered over that no President has threatened to resign if the ruling party did not first communicate to the Governor the grounds on which his removal is sought, consider his explanation and then submit the case to the President along with Governor's explanation? The "pleasure of the President" cannot be withdrawn arbitrarily. The basic rules of natural justice cannot be violated in any case. Nor can the norms of constitutional morality be so cynically disregarded.

Mind and motivation

Let us recognise that it is not the Constitution but the people who have been entrusted with task of following it that have failed. And what is required is not a change in the structure of the Constitution but a change in the mind and motivation of those who have to work it. NA Palkhivala has rightly observed: "We have proved ourselves alarmingly deficient in self-discipline. The power of self-discipline is the very opposite of fatal arrogance of power which confidently asserts that whatever is technically possible is licit".

Even otherwise, as the Russian Nobel Laureate Solzhenitsyn once put it, "The letter of the law is too cold to have any beneficial influences on the society. Whenever the issue of life is woven in legalistic relations, there is an atmosphere of moral mediocrity, paralysing man's noblest instinct".

Only an injection of an 'awakened conscience' in the organs of the Constitution can provide them with the immunity from the political pollution and prevent our Constitution from becoming a soulless document. It can also put the nation on a higher trajectory where it can realise its noblest instincts.

Consequently, today, no constitutional office is so insecure as that of Governor. It is only he who can be transferred or fired at the whims of the Union government. His tenure has been reduced to that of work charged employee, if not a daily wagger.

Unfortunately, no President

Recall Buta: NDA leaders to Kalam

HT-4 14/10

HT Correspondent
New Delhi, October 13

TOP NDA leaders on Thursday called on President APJ Abdul Kalam to urge him to advise Prime Minister Manmohan Singh to resign and recall Bihar Governor Buta Singh. They said the position of the Prime Minister and Buta Singh were untenable following the Supreme Court's declaration that the dissolution of the Bihar Assembly was "unconstitutional".

Led by NDA convener George Fernandes and BJP chief L.K. Advani, the NDA leaders told Kalam he had been misled by the Prime Minister into giving assent to the dissolution of the House, forcing another election on Bihar in six months.

"We told the President that he had been misled by the Union Cabinet. The Prime Minister has not been able to substantiate the grounds on which the recommendation for dissolving the Bihar Assembly was made", said Advani after the NDA delegation



Opposition leader L.K. Advani with other NDA leaders outside the Rashtrapati Bawan after meeting the President on Bihar issue in New Delhi. PTI

Never has there been such a gross abuse of Article 356 on non-existent grounds

— L.K. Advani

tion Commission's remark on appointments made by him after the polls dates were announced.

The NDA memorandum enclosed a copy of the EC's response to Buta Singh's orders of appointment issued after the state election schedule was announced.

The NDA memorandum said, "The Governor of Bihar and the Union government are guilty of violation of constitutional norms. Their continuation in office is a threat to constitutionalism". It also said the Prime Minister's remark that "horse-trading" was taking place in Bihar as a justification for the dissolution was "misleading to the whole country".

The NDA document to the President said, "We, therefore, urge you to recall the Governor of Bihar and advise the Prime Minister to tender his resignation owning responsibility for this fraud on the Constitution".

Advani said a clear majority for the NDA was a certainty in the upcoming elections in Bihar, which, he alleged, had seen a "jungle raj" for the past 15 years.

was 'unconstitutional'. Never before has there been such a gross abuse of Article 356 on non-existent grounds". He accused the UPA government of having "cheated" the people of Bihar and "forcing" a second election on them within a year. He accused Buta Singh of violating the model code of conduct, citing the Elec-

des, BJP leaders Jaswant Singh, Sushma Swaraj, Vijay Kumar Malhotra and Mukhtar Abbas Naqvi and Shiromani Akali Dal MP Rattan Singh Ajnala.

Advani described the Bihar Assembly's dissolution as the "worst misuse ever" of Article 356. "This action was so wrong that even the Supreme Court had to rule that it

called on Kalam at Rashtrapati Bhawan and submitted a memorandum to him.

The BJP chief said, "The President should advise the Prime Minister to resign since he (Singh), himself, has said he doesn't disown responsibility (for the Assembly dissolution)".

Advani was flanked by Fernan-

ভোট-প্রক্রিয়া আটকাল না বিহারে

বুটার সিদ্ধান্ত ভুল, রায়ে অস্বস্তিতে কেন্দ্র

দীপেন্দ্র রায়চৌধুরী ● নয়াদিল্লি
ও অগ্নি রায় ● চণ্ডীগড়

৭ অক্টোবর: চণ্ডীগড়ে সনিয়া গাঁধীর মুখ্যমন্ত্রী সম্মেলন শুরুতেই তেতো হয়ে গেল।

দিল্লিতে সুপ্রিম কোর্টের পাঁচ বিচারপতির সাংবিধানিক বেঞ্চ আজ বিহার মামলার অন্তর্বর্তী রায়ে রাজ্য বিধানসভা ভেঙে দেওয়ার সিদ্ধান্তকে 'অসাংবিধানিক' বলে ঘোষণা করেছে। তবে সরকারকে কিছুটা স্বস্তি দিয়ে তারা জানিয়েছে, এই মামলা সংক্রান্ত যে সমস্ত তথ্য ও পরিস্থিতি এখন সামনে রয়েছে, তা ফের পুরনো বিধানসভাকে জিইয়ে তোলার মতো নয়। অর্থাৎ বিহারে পরবর্তী বিধানসভার নির্বাচন প্রক্রিয়া যেমন চলছে, তেমনই চলবে। একই সঙ্গে বিধানসভা ভাঙাকে 'অসাংবিধানিক' বলা ও বিহারে নির্বাচনী প্রক্রিয়া চলতে দেওয়ার কারণ অবশ্য সুপ্রিম কোর্ট ব্যাখ্যা করেনি। ফলে, এটি নিয়ে কোনও স্থির সিদ্ধান্তে আসতে পারছে না কোনও রাজনৈতিক দলই।

সরকারের পক্ষে স্বস্তি এইটুকুই যে, নির্বাচনী প্রক্রিয়া বন্ধের নির্দেশ দেয়নি সর্বোচ্চ আদালত। তবে বিরাট ধাক্কা হল রাজ্যপাল বুটা সিংহের রিপোর্টের ভিত্তিতে প্রায় মাঝরাতে বিধানসভা ভেঙে দেওয়ার সিদ্ধান্তকে 'অসাংবিধানিক' বলাটা।

এর পরে স্বাভাবিক ভাবেই বিরোধীরা সরাসরি প্রধানমন্ত্রী মনমোহন সিংহকে আক্রমণ করেছেন। বিজেপি-র মুখপাত্র অরুণ জেটলি বলেছেন, এখন প্রধানমন্ত্রীর আত্মসমীক্ষার এবং জবাবদিহির সময়। নীতীশ কুমার সরাসরি প্রধানমন্ত্রীর পদত্যাগ দাবি করেছেন। আক্রমণ শানিয়েছেন জর্জ ফার্নান্দেজও। বুটার অপসারণের পুরনো দাবিটি নিয়ে নতুন পরিস্থিতিতে সোমবার ফের রাষ্ট্রপতি এ পি জে আব্দুল কালামের সঙ্গে দেখা করবেন লালকৃষ্ণ আডবাণীর নেতৃত্বাধীন বিরোধীদের প্রতিনিধিরা। বুটা সিংহের বিদায় চেয়েছে সমাজবাদী পার্টি। সিপিএমের সাধারণ সম্পাদক প্রকাশ কারাটের বক্তব্য, রাজ্যপালের পদ এবং ক্ষমতা নিয়ে নতুন করে ভাবনাচিন্তার সময় এসেছে। সিপিএমের পলিটবুরো সদস্য অনিল বিশ্বাস বলেছেন, "কেন্দ্রীয় সরকারের আরও সতর্কতার সঙ্গে এগোনো উচিত ছিল। চূড়ান্ত রায়ে দেখার পরেই সবিস্তার কিছু বলা যাবে। তবে প্রধানমন্ত্রীর পদত্যাগের দাবি অযৌক্তিক।" আর সিপিআইয়ের সাধারণ সম্পাদক এ বি বর্ধন জানিয়েছেন, রায়ে না-পড়ে তাঁরা কোনও মন্তব্য করবেন না।

কংগ্রেসের তরফে মুখপাত্র অভিষেক সিঙ্ঘবি স্বীকার করে নিয়েছেন, এটি সরকারের পক্ষে বড় ধাক্কা। কিন্তু স্বরাষ্ট্রমন্ত্রী শিবরাজ পাটিল বা আইনমন্ত্রী হংসরাজ ভরদ্বাজ এই রায়ে প্রসঙ্গে সরাসরি কোনও মন্তব্য করেননি। রাজ্যপাল বুটা নিজেও রায়ে নিয়ে মুখ খোলেননি

এর পরে এই ধাক্কা সামলাতে সরকারের সামনে রাজনৈতিক ভাবে সহজতম রাস্তাটি হল বিহারের রাজ্যপাল বুটা সিংহকে সরিয়ে দেওয়া। তাঁর পাঠানো রিপোর্টের ভিত্তিতেই সাড়ে চার মাস আগে কেন্দ্রীয় মন্ত্রিসভা মধ্যরাতের বৈঠকে বসে বিধানসভা ভেঙে দেয়, তাই প্রাথমিক দায়টা তাঁরই। তবে সেইটাই করা হবে কি না, বা করলে তার কী রাজনৈতিক প্রভাব পড়বে, তা নিয়ে এখনও নিশ্চিত নন মনমোহন-সনিয়ারা।

কিন্তু নিশ্চিত ভাবেই মুখ্যমন্ত্রী সম্মেলনে আজ কংগ্রেসের ধুম কেড়ে নিয়েছে সর্বোচ্চ আদালত। সনিয়া-সহ মন্ত্রিসভার তাবড় সদস্যরা আজ সকাল থেকেই চণ্ডীগড়েই ছিলেন।

রাতে চণ্ডীগড়ে এসেছেন মনমোহন সিংহও। তার আগে তিনি দিল্লিতে রাষ্ট্রপতির সঙ্গে দেখা করেন। রাতেই চণ্ডীগড়ে বৈঠকে বসে কংগ্রেসের কোর কমিটি। সনিয়া গাঁধী, প্রধানমন্ত্রী মনমোহন সিংহ, স্বরাষ্ট্রমন্ত্রী শিবরাজ পাটিল, প্রতিরক্ষামন্ত্রী প্রণব মুখোপাধ্যায়, অর্থমন্ত্রী চিদম্বরমেরা বৈঠকে বিহার-প্রসঙ্গ নিয়েই জরুরি আলোচনা সেরেছেন বলে রাজনৈতিক সূত্রের খবর।

আজ সকাল থেকে চণ্ডীগড়ে মুখ্যমন্ত্রী সম্মেলনের পাশাপাশি চলছে মুখরক্ষার পথ-সন্ধান। এর আগে এস আর বোম্বাইয়ের দায়ের করা মামলাতেও একই ভাবে কেন্দ্র কাঠগড়ায় দাঁড়িয়েছিল। কিন্তু সেই মামলার রায়ে এসেছিল এত পরে, যখন তার কোনও প্রত্যক্ষ রাজনৈতিক প্রভাব ছিল না। আর এই রায়ে এসেছে বিহার নির্বাচনের মধ্যেই। এবং এই রায়ে বিধানসভা পুনরুজ্জীবনের কথা না-থাকায় সেই প্রশ্ন ঘিরে রাজনৈতিক মহলে সংশয় এবং বিতর্কও দানা বাঁধছে।

তবে এখন রাজ্যপাল বুটা সিংহকে সরিয়ে দিয়ে মুখরক্ষার চেষ্টা করা হবে কি না, সেটাই হয়ে দাঁড়িয়েছে মূল প্রশ্ন।

শিবরাজ পাটিল অবশ্য এই প্রশ্নের কোনও জবাব দেননি। তাঁর বক্তব্য, "সরকার সব সময়েই আদালতের রায়ে মেনে চলে। এই বিষয়টি নিয়ে শরিক দলগুলির সঙ্গে আলোচনা করতে হবে। মন্ত্রিসভাতেও এখনও কোনও আলোচনা

হয়নি। এই অবস্থায় আমি কোনও উত্তর এখনই দিতে পারছি না। তবে যা-ই করি না কেন, আমরা ন্যায্যসঙ্গত ও নির্ভুল ভাবে করারই চেষ্টা করব।" তাঁর বক্তব্য, আদালতের পুরো রায়ে পড়ে দেখে পরে তাঁরা সিদ্ধান্ত নেবেন।

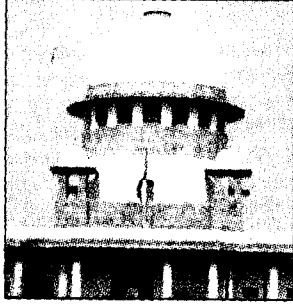
কিন্তু আদালতের রায়ে আদতে দু'টি বাক্য। ওয়াই কে সাভারওয়ালের নেতৃত্বাধীন পাঁচ বিচারপতির সংখ্যাগরিষ্ঠ অংশ এই রায়ের প্রথম বাক্য বলেছেন, বিধানসভা ভাঙার যে সিদ্ধান্ত ২৩ মে তারিখে নেওয়া হয়েছিল, তা ছিল অসাংবিধানিক। দ্বিতীয় বাক্যে তাঁরা বলেছেন, তথ্য ও পরিস্থিতির পরিপ্রেক্ষিতে বর্তমান মামলাটি বিশেষ ক্ষমতা অয়োগ করে বিধানসভা পুনরুজ্জীবিত করার মতো বিষয় নয়। এই দু'টি বাক্য থেকে নিশ্চিত ভাবে এটিও অনুমান করা সম্ভব নয় যে, কেন সিদ্ধান্তটিকে 'অসাংবিধানিক' বলেও বিচারপতিরা বিধানসভা পুনরুজ্জীবিত করার পথে গেলেন না। আইনজীবীদের একাংশের ধারণা, নির্বাচনী প্রক্রিয়া শুরু হয়ে গিয়েছে বলেই বিচারপতিরা তাতে হস্তক্ষেপ করেননি। পরে এই মামলা সংক্রান্ত চূড়ান্ত রায়ে দেবেন বিচারপতিরা।

ইতিমধ্যে বিজেপি-র পক্ষ থেকে আজ বলা হয়েছে, 'বিহারে বিশ্বে রকমের ঘোড়া কেনাবেচা চলছে' বলে প্রধানমন্ত্রী মন্তব্য করে দেশকে বিপথে পরিচালিত করেছিলেন। বিধানসভা ভেঙে দেওয়ার ঘটনটিকে জেটলি 'মানুষের সঙ্গে প্রতারণা' বলে উল্লেখ করে প্রধানমন্ত্রী ও স্বরাষ্ট্রমন্ত্রীর কাছে জবাবদিহি দাবি করেছেন। তাঁরা লালুপ্রসাদ বাদকেও কাঠগড়ায় দাঁড় করিয়েছেন।

লালুপ্রসাদ বা রামবিলাস পাসোয়ানেরা অবশ্য নির্বাচনী প্রক্রিয়া বিঘ্নিত হয়নি বলে আদালতের রায়ে সন্তোষপ্রকাশ করেছেন। তবে রামবিলাস জানিয়েছেন, আদালতের রায়ে সময়োচিত নয়। বিধানসভা ভেঙে দেওয়া যদি অসাংবিধানিক হয়, তা হলে বিধানসভা পুনরুজ্জীবিত করা হল না কেন, সেই প্রশ্নও তিনি তোলেন।

চণ্ডীগড়ে কংগ্রেসের মুখ্যমন্ত্রী সম্মেলন কালও চলবে। তবে সম্মেলনে বক্তৃতার থেকেও এখন শীর্ষ নেতাদের শলা-পরামর্শ অনেক বেশি চলবে, তাতে সংশয় নেই।

● বুটা গেলেই খুশি হত বিহার ● লাভ নীতীশেরই...পৃঃ ৫



BIHAR HOUSE DISSOLUTION UNCONSTITUTIONAL: SC

Court blow to UPA

Statesman News Service & PTI

Time running out for Buta

NEW DELHI, Oct. 7. — In a development with wide-ranging ramifications, the Supreme Court today struck down the presidential proclamation dissolving the Bihar Assembly, thereby dealing a blow to the Congress-led UPA government as well as the Bihar Governor, Mr Buta Singh.

The court order sent shock-waves through the UPA government and the Congress-RJD coalition which is now bracing itself to face the upcoming elections. The development, on the other hand, gave a boost to the resurgent JD-U-BJP combine which has been crying foul over the Assembly dissolution right from the beginning. Welcoming the court's order, the NDA immediately sharpened its attack on the UPA government, demanding the resignation of the Prime Minister and "immediate recall" of Mr Buta Singh from the Patna Raj Bhavan. Mr Buta Singh's position is clearly shaky and he could be on his way out. Stung by the turn of events, the Congress and the government chose to remain non-committal and evasive in their reaction to the court's order.

Today's development would have a bearing on the Bihar polls, giving a filip to the NDA's campaign against the "Lalu-Congress raj". Dr Singh called on the President, Dr APJ Abdul Kalam, to discuss the situation arising out of the SC order.

The SC termed the dissolution of the Assembly as "unconstitutional" but declined to revive the House, setting the stage for the four-phase Bihar Assembly elections that will begin on 18 October. "The Proclamation of 23 May, 2005 dissolving the Bihar



NEW DELHI/CHANDIGARH, Oct. 7. — Time seems to be running out for Mr Buta Singh. The Manmohan Singh government is left with hardly any option other than removing the Bihar Governor. He has been consistently embroiled in controversies and has been under the scanner of the Supreme Court and the Election Commission.

The Congress central leadership is likely to swing into a damage-control exercise. To deflect the focus from the Central government, it is expected to give marching orders to the Governor. "Buta Singh's position has become untenable now," said a senior AICC leader. The Prime Minister is already seized of the matter. He called on the President to discuss the Bihar situation arising out of the court order. He also consulted the home minister, Mr Shivraj Patil, and the law minister, Mr Hansraj Bhardwaj. The court order cast its shadow on the Chandigarh conclave of Congress CMs convened by Mrs Sonia Gandhi. The party brass is to hold a meeting there tonight to work out the future course of action. The Congress leadership was struggling to formulate its response to today's development. "Without reading the court order we will not make any comment," said the AICC general secretary, Mrs Ambika Soni. The government also betrayed similar embarrassment. "The matter will be discussed in the Cabinet", Mr Patil said. — SNS

Legislative Assembly is unconstitutional," a Constitution Bench, headed by Mr Justice YK Sabharwal, said pronouncing the majority opinion. The five-judge Bench, which examined mala fides alleged against the Bihar Governor in giving reports to the Manmohan Singh government leading to the latter's recommendation to the President for dissolution of the state Assembly, did not restore the House which was initially kept under suspended animation following a political stalemate before its dissolution.

"Despite unconstitutionality of impugned Proclamation, but having regard to the facts and circumstances of the case, the present is not a case wherein exercise of discretionary jurisdiction the status quo ante deserves to be ordered to restore the legislative Assembly as it stood on the date of Proclamation dated 7 March, 2005 whereunder it was kept under sus-

pending animation," the Bench said in a short order. "Keeping in view the questions involved, pronouncement of judgment with detailed reasons is likely to take some time and, therefore we are pronouncing this brief order as the order of the court to be followed by detailed reasons later," the Bench. The court order, quashing the Manmohan Singh government's move on the basis of the Governor's controversial report, was delivered on a bunch of petitions filed by NDA MLAs of the dissolved Assembly, which alleged that the House was dissolved at the behest of the RJD chief, Mr Lalu Prasad, to prevent the JD-U leader, Mr Nitish Kumar, from forming the government.

The approval of the Centre's proclamation came from President Kalam when he was on a visit to Moscow.

More reports on page 4

Review Governors' powers, says Left

Statesman News Service

NEW DELHI, Oct. 7. — The Left parties today charged the BJP with using the Supreme Court order, terming the 22 May dissolution of Bihar Assembly as unconstitutional, to reap electoral gains during the poll campaign in the state. They sought a review of the Governor's powers in the light of the verdict today.

The CPI-M said a review of the Governor's discretionary powers and the use of Article 356 for the dissolution of Assembly had become imperative in view of the observation on the dissolution of Bihar Assembly. "I want arbitrariness and discretion of Governor's power to go," Mr Karat asserted in Mumbai during a press conference.

Mr Karat said the issue of the Governor's arbitrary and discretionary powers was discussed at the previous meeting of the Inter-State Council. He said a serious attempt should be made to try and divest the Governor of his present powers and change the structure of the institution of the Governor in the backdrop of the Supreme Court's interim order. He said the verdict also raised questions about the role of the Governor and the manner of his appointment to that office, besides the need for changing the provisions of Article 356 relating to dissolution of Assembly.

'Prasad attacker a VHP man'

PATNA, Oct. 7. — Hours after BJP leaders deplored yesterday's attack on Mr Ravi Shankar Prasad, the story took a curious turn with his assailant being identified as a member of the Sangh Parivar. According to the state home secretary, Mr HC Sirohi, the would-be assassin identified as Munna Rai, alias Thakur Halchal Rai, is Vishwa Hindu Prishad member. The VHP, of course, denied it but the conclusion had been reached on the basis of a three-page statement found on him. It revealed that Rai was extremely disappointed that the BJP had failed to safeguard the country and Hindutva. He was unhappy that it had done nothing for building a Ram temple in Ayodhya. "There is nothing left in my life," the statement said: "I want to do something concrete and will happily die after killing (someone)." — SNS

But the CPI reacted cautiously to the judgement. CPI national secretary Mr D Raja said here that the CPI would thoroughly look into the court's observations on dissolution of Bihar Assembly, before reacting. He said it was an interim order and would not hamper the ongoing election process in Bihar. On the BJP demand for dismissal of Mr Buta Singh and the attack on Dr Manmohan Singh for the House's dissolution, he said: "What else can they do?"

'PM owes nation an explanation'

NEW DELHI, Oct. 7. — Encouraged by the Supreme Court order on Bihar Assembly dissolution, the BJP today questioned the hurry shown by the UPA government in recommending the dissolution of the Assembly.

The party said the verdict made it clear that the Prime Minister was under tremendous pressure from Mr Lalu Prasad to give his nod to the dissolution. Mr Arun Jaitley charged today that Dr Manmohan Singh owed an explanation to the nation for recommending the dissolution of the Bihar Assembly. "It is a time for introspection for the Prime Minister. Did he land himself into this conspiracy by calling a midnight meeting of the Union Cabinet to prevent JD-U leader Mr Nitish Kumar from forming the government next morning," the BJP spokesman asked.

Mr Jaitley said neither Dr Singh nor the home minister could evade responsibility. He said Dr Singh being privy to the "constitutional monstrosity" had to decide what step he had to take. "After all, it was the Prime Minister who misled the country with his remarks that Bihar was facing the worst kind of horse-trading," he said. — SNS

Lawyers have no right to strike: SC

It's their 'moral obligation' to ignore bandh calls

HT Correspondent
New Delhi, September 29

ON A day when the pulse of the nation paused for a while following the bandh called by CITU-led trade unions, Supreme Court came out with a significant ruling. The apex court on Thursday said that neither lawyers nor their representative bodies such as the Bar Associations and Bar Councils have the right to strike work.

Lawyers have no right to even call a boycott or a token strike, a three-judge bench, headed by Justice S.N. Variava, ruled.

However, the lawyers could register their protest by giving Press statements, television interviews, carrying placards and banners, wearing black or white bands holding peaceful marches outside court premises, going on relays, fasts etc. None of which should "interrupt" the proceedings of the court, the court has said while summing up its earlier judgements to this effect.

The court also went a step further and cast a moral burden on lawyers not only to ignore such calls but also to "bodily" resist such calls.

The court was adjudicating a case relating to whether Bar Council of India, by taking action against some lawyers who had boycotted a strike call, had committed contempt of court.

The apex court discharged the contempt petitions but reiterated the law it had laid down on strikes resorted to by the legal fraternity.

The court asked the bar not to issue any strike calls unless the issue involves the dignity or independence of the Bar or the Bench in terms of its earlier judgements.

"In such cases the Bar president must consult the Chief Justice or the district judge before the advocates decide to absent themselves from court," it noted.

If a lawyer abstains from court, he shall be liable for the costs in addition to damages he might have to pay his client for the loss suffered by him.

The court also warned the Bar that unless the Bar Councils or Associations took action against advocates who called for strikes or indulged in conduct unbecoming of their profession or even its own committee members who call for a strike, it would intervene.

"Even if Bar councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will," the court further warned.



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THE HINDUSTAN TIMES

SC poser to govt on Guv role

Can post-poll alliances be dismissed as unhealthy?

HT Correspondent
New Delhi, September 27

THE SUPREME Court on Tuesday sought to know from the government whether the President or the Governor could— in the era of fractured mandates— dismiss post-poll coalitions as “unhealthy” and disallow them from coming to power.

“Can the Governor or the President take the position that these types of post-poll coalitions are unhealthy and amount to a fraud on the Constitution or that they contravene the Constitution?” a Constitution Bench headed by justice Y.K. Sabharwal observed.

“Can he (the President or Governor) take a stand saying ‘I will not allow them (such post-poll coalitions) to be formed?’” Given the option of allowing such a government to be formed and going back to the people, can he choose the latter, the lesser of two evils?” the court wondered.

The Bench said all these questions assumed “importance”, since the country might have to live with “fractured mandates” for a long time

tional issues stemming from the May 23 dissolution of the state Assembly. His submissions revolved round the theory that the President’s satisfaction for invoking Article 356 of the Constitution was “subjective” and there could be no “judicially manageable objective standards” for testing it. “It’s incapable of being assessed on judicially manageable standards”, he said.

On the Governor’s role, the AS-G said he could not remain a mute spectator when faced with alliances sealed through “unfair” means, although, in law, the Governor could reject the claim of the leader of such an alliance formed through “unfair means”.

This is in contrast to the stand of solicitor-general G.E. Vahanvati, who had said that once any alliance claiming a majority staked claim, the Governor cannot disallow him from forming a government.

The apex court took note of this seeming contradiction when it again remarked: The AS-G, the S-G and the AS-G need to speak in one voice on the Union government’s stand on the issue”.

Can the Governor take a stand and say ‘I will not allow post-poll coalitions to form a government?’

to come. The observations came during submissions made by additional solicitor-general Gopal Subramaniam in the Bihar Assembly dissolution case.

Subramaniam was making submissions on behalf of the Union government on the consti-

“Life-term will be rigorous imprisonment for life”

Plea challenging incarceration for over 21 years rejected

J. Venkatesan

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NEW DELHI: Reiterating that life imprisonment is not equivalent to imprisonment for 14 or 20 years, the Supreme Court has said it is unnecessary for the legislature to specify that imprisonment for life will be rigorous imprisonment for life as it is imposed as punishment for grave offences.

A Bench of Justice K.G. Balakrishnan and Justice B.N. Srikrishna gave this ruling on Saturday while dismissing a writ petition filed by a life convict challenging his incarceration in prison for more than 21 years.

On the contention that if a prisoner was transported to other jails to do hard labour this period could not be treated as rigorous imprisonment. The Bench said: “There are ample materials to show that a person

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“Imprisonment for life was not for a definite period and *prima facie*, it must be treated as imprisonment for the whole of the remaining period of the convict's natural life”

who was sentenced to transportation had always been subjected to hard labour. It is difficult to understand how such a punishment could be deemed to have been substituted by simple imprisonment for life.”

No definite period

The judges said: “Imprisonment for life is to be treated as rigorous imprisonment for life.” On the contention that life term meant only 14 or 20 years as per the jail manual, the Bench said imprisonment for life was not for a definite period and *prima facie*, it must be treated as imprisonment for the whole of the

remaining period of the convict natural life. “We hold that life imprisonment is not equivalent to imprisonment for 14 or 20 years as contended by the petitioner,” the judges said.

Remission

While entertaining the petition in 1998, the apex court ordered his release on bail. Now the Bench cancelled the bail and said the authorities would be at liberty to take him into custody. The Bench, however, made it clear that the appropriate Government would be at liberty to pass any order of remission in accordance with law.

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THE HINDU

Life sentence for life: SC

OUR LEGAL
CORRESPONDENT

New Delhi, Sept. 16: The Supreme Court today upheld the decision of a 1981 constitution bench that "life sentence means imprisonment for life", not 14 or 18 or 20 years as various parties have been claiming.

The court, however, gave state governments the right to decide if they wished to pare the sentences of life convicts on grounds of good conduct or any other reason in keeping with law.

"The appropriate government would be at liberty to pass any appropriate order of remission in accordance with law," the order said, again upholding a provision in the 1981 verdict.

This is, however, only the first of a series of judgments expected in the life term cases as there are several batches of petitions from life convicts pending before four different benches.

A division bench of Justices K.G. Balakrishnan and B.N. Srikrishna dismissed the appeals of life convicts Md Munna and Kartick Biswas, jailed in Calcutta, from among a total of over 70, including 48 from Bengal.

But it pointed out that the Bengal government had the liberty to free the prisoners

when they complete 20 years in jail if it were to go by Rule 751 of the West Bengal Jail Code.

The confusion over what the length of a life sentence is stems from this remission clause.

Each state has its own jail manual by which individual governments can free life convicts at any time between 14 and 20 years.

Such remissions can either be on grounds of "good conduct" or "on auspicious days" like Independence Day, Republic Day or Human Rights Day.

The court clarified that provisions in states' jail manuals would not infringe on the Indian Penal Code or the Criminal Procedure Code as "there is no provision" in either "whereby life imprisonment could be treated as 14 or 20 years".

The same bench dismissed another petition by Bhola Malik, a life convict in Alipore Jail, "in view of the earlier judgment".

Another bench — of Justices Y.K. Sabharwal, C.K. Thakker and Raja Varadrajulu Raveendran — heard another set of petitions by life convicts Samir Ojha and Adhir Mandal from Calcutta.

It gave the petitioners a week to "first read the judgment" and fixed hearings after that.

Centre, A-G divided over Governor's immunity

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Press Trust of India

NEW DELHI, Sept. 6. — Differences within the government on the immunity from judicial scrutiny enjoyed by a Governor came to the fore today when the Attorney-General and the Centre announced contradictory stands before the Supreme Court.

Addressing a five-judge Constitution Bench comprising Mr Justice YK Sabharwal, Mr Justice KG Balakrishnan, Mr Justice BN Agrawal, Mr Justice Ashok Bhan and Mr Justice Arijit Pasayat, hearing a petition challenging dissolution of the Bihar Assembly by Governor Mr Buta Singh, Attorney-General Mr Milon Banerjee said in the event of proven personal malafides of a Governor, the court could issue a notice to him.

However, appearing for the Centre, Additional Solicitor-General Mr Gopal Subramaniam was emphatic that though the court could examine the personal as well as legal malafides alleged against the Governor, under no circumstances could the court issue a notice to him.

Part-time politicians?

NEW DELHI, Sept. 6. — In the midst of serious arguments, the Constitution Bench of the Supreme Court today asked just in jest, whether the Governor was a part-time or a full-time politician. The Bench came up with this query as, on the one hand it was being argued that personal malafides alleged against the Governor could be gone into, while, on the other hand the Centre was opposed to it. With questions and answers flowing forth, the Bench remarked: "Another question should have been referred to the constitution Bench — whether Governors can be part-time or full-time politicians?" The jam-packed court room broke into laughter. — PTI

Taking advantage of the divergence, former Attorney-General Mr Soli J Sorabjee, appearing for the former NDA MLAs who have challenged the dissolution of the Assembly, sought to drive home the point that if the Governor could not be asked to explain the personal malafides alleged against him, these allegations could not be levelled on the grounds that no notice had been issued to the Governor.

The Court was of the *prima facie* opinion that the legal, factual and personal malafides alleged against the Governor could be the subject of a judicial scrutiny even though the question remained as to whether notice could be issued to him in view of the bar under Article 361 of the Constitution.

After hearing the views expressed by the A-G and the ASG, the Constitution Bench implored both of them to take a common stand, saying: "This cannot be permitted that one stand is taken by the A-G and another by the ASG," Mr Justice Sabharwal said. When the Attorney-General said that he was not appearing for the Union of India but was appearing in his capacity as the A-G, the court said: "You are the first law officer of the government and both of you have to speak in one voice." Keeping in view the poll date for Bihar, 18 October, the Bench also urged the parties to advance precise arguments so that the petitions challenging the dissolution of the Assembly could be decided on before the elections. The matter would be taken up again on Thursday.

Can SC notify a governor?

Split views put govt in a fix

Court Asks Parties To Clarify Stand Before Bihar Polls

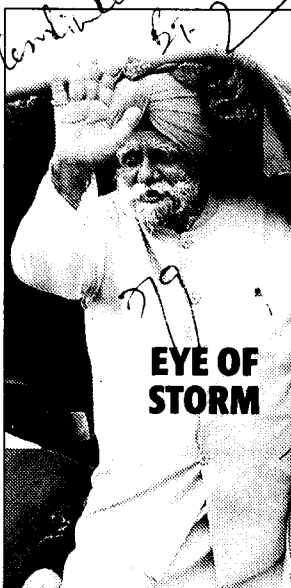
Our Political Bureau
NEW DELHI 6 SEPTEMBER

A piquant situation arose in the Supreme Court on Tuesday with the Attorney General (AG) and the Additional solicitor general taking contradictory positions on whether the governor of a state enjoys legal immunity.

Even as the five-judge Constitution Bench, headed by justice YK Sabharwal, on Tuesday urged the parties to advance precise arguments so that the petitions challenging the dissolution of the Bihar Assembly could be decided before the elections, which commence on October 18, the Manmohan Singh government suffered embarrassing moments in the court when Attorney General Milon Banerjee and additional solicitor general Gopal Subramaniam took divergent stand on the immunity enjoyed by the governor on the issue of being subjected to judicial scrutiny.

Addressing the five-judge Bench, comprising, besides justice Sabharwal, justice KG Balakrishnan, justice BN Agrawal, justice Ashok Bhan and justice Arijit Pasayat, which is presently hearing a petition challenging the dissolution of Bihar Assembly on the recommendation of governor Buta Singh, the Attorney General argued that in case of proven personal mala fide against a governor, the court could issue notice to him.

Appearing for the Centre, Mr Subramaniam, however, was emphatic that though the court could examine the personal as



well as the legal mala fide alleged against the governor, under no circumstances could the court issue notice to him.

Taking advantage of the divergence in the views of the two top legal officials of the government, former Attorney General Soli J Sorabjee appeared for the former MLAs belonging to NDA who have challenged the dissolution of the Assembly. Mr Sorabjee sought to drive home the point that if the governor could not be asked to explain the personal mala fide alleged against him, then these allegations could not be levelled on the ground that no notice had been issued to the governor.

The court was of the opinion that the legal, factual and personal mala fide alleged against the governor could be the sub-

ject matter of judicial scrutiny even though the question remained as to whether notice could be issued to him in view of the bar under Article 361 of the Constitution.

After hearing the divergent views expressed by them, the Constitution Bench implored both of them to take a common stand, saying it was impermissible for the Attorney General and the Additional solicitor general to take different stands. "This cannot be permitted that one stand is taken by the AG and another by the Additional solicitor general," justice Sabharwal remarked.

When the Attorney General said he was not appearing for the Union of India rather in his capacity as the AG, the court replied: "You are the first law officer of the government and both of you have to speak in one voice." On Tuesday afternoon, the Attorney General started with a clarification saying under no circumstances could the governor be made a party, much to the amusement of the court which counter-questioned him on his earlier stand.

Not to be seen as a person who changes his stand, Mr Banerjee was immediately on an explanatory mode saying if the personal allegations were prima facie proved against the governor, the court could issue notice to him but no notice could go to him even if the legal mala fides were proved. In case of legal mala fide, it was the Union government or the state concerned to defend the action of the governor, he said.

বুটা-প্রশ্নে সুপ্রিম কোর্ট ধমক দিল অ্যাটর্নি জেনারেলকে

নয়াদিল্লি, ৬ সেপ্টেম্বর: দেশের সর্বোচ্চ আদালতে ফের অপদস্থ হলেন অ্যাটর্নি জেনারেল, ফের বিব্রত কেন্দ্র।

সংরক্ষণ সংক্রান্ত মামলায় কেন্দ্রের মনোভাবে ক্ষুব্ধ সুপ্রিম কোর্ট এর আগে অ্যাটর্নি জেনারেল মিলন বন্দ্যোপাধ্যায়কে ডেকে তীব্র ভৎসনা করেছিল। এ বার শীর্ষ আদালতের স্কেডের উৎস- রাজ্যপালের আইনি রক্ষাকবচ নিয়ে কেন্দ্রীয় সরকারের আইনি প্রতিনিধিদের মতভেদ। অ্যাটর্নি জেনারেল এবং অতিরিক্ত সলিসিটর জেনারেলের বিপরীত মত শুনে সুপ্রিম কোর্ট আজ বলে, “অ্যাটর্নি জেনারেল এক কথা বলবেন আর অতিরিক্ত সলিসিটর জেনারেল আর এক কথা বলবেন, এটা মেনে নেওয়া যায় না। দু’জনে একটা মতে আসুন।” এখানেই শেষ নয়। অ্যাটর্নি জেনারেলকে রীতিমতো ব্যঙ্গ করে বিচারপতিরা বলেন, “এই বিষয়ে কেন্দ্র কেন চূড়ান্ত মত দিচ্ছে না? অ্যাটর্নি জেনারেলকে নিয়ে মুশকিল হল, তিনি ৮০ শতাংশ এগোলে ৫০ শতাংশ পিছোচ্ছেন।”

তবে বিতর্কের মূল বিষয়- রাজ্যপালকে কোর্টে নোটিস পাঠিয়ে ডাকা যায় কি না, তা নিয়ে আজ সাংবিধানিক বেঞ্চ কোনও সিদ্ধান্তে আসেনি। পরবর্তী শুনানি বৃহস্পতিবার।

বিহারে বিধানসভা ভাঙার সিদ্ধান্তকে চ্যালেঞ্জ করে শীর্ষ আদালতে মামলা করেন এনডিএ-র এক দল বিধায়ক। সেই সূত্রে সুপ্রিম কোর্ট প্রশ্ন তোলে, রাজ্যপাল বুটা সিংহকে তাঁর সিদ্ধান্তের ব্যাখ্যা দিতে

নোটিস পাঠিয়ে আদালতে ডাকা যায় কি না? কারণ, সংবিধানের ২৬১ নম্বর অনুচ্ছেদ অনুযায়ী, আদালতের কাজে রাজ্যপালকে জড়ানো যাবে না। বিষয়টি নিয়ে চূড়ান্ত সিদ্ধান্তের ভার দেওয়া হয় সাংবিধানিক বেঞ্চকে। সেই শুনানিই আজ চলছিল। উপস্থিত ছিলেন অ্যাটর্নি জেনারেল (এজি) মিলন বন্দ্যোপাধ্যায় এবং অতিরিক্ত সলিসিটর জেনারেল (এএসজি) গোপাল সুব্রহ্মণ্যম। অ্যাটর্নি জেনারেলের মতে, ব্যক্তিগত দুরভিসন্ধির অভিযোগের মামলায় রাজ্যপালকে আদালত নোটিস দিতে পারে। কিন্তু আইনি বেনিয়মের অভিযোগ উঠলে তা করা যায় না। কিন্তু, অতিরিক্ত সলিসিটর জেনারেলের মতে, কোনও অবস্থাতেই রাজ্যপালকে আদালত নোটিস দিতে পারে না। তখন বিচারপতিরা বলেন, একই বিষয়ে এজি এবং এএসজি দু’ধরনের মতামত দেবেন, তা মেনে নেওয়া যায় না। মিলন বন্দ্যোপাধ্যায় আদালতকে বলেন, তিনি সরকারের হয়ে আদালতে দাঁড়াননি, অ্যাটর্নি জেনারেল হিসাবে দাঁড়িয়েছেন। আদালত এই বক্তব্য উড়িয়ে দিয়ে জানায়, তিনি কেন্দ্রের সর্বোচ্চ আইনি প্রতিনিধি এবং তাঁদের দু’জনের একই কথা বলা উচিত। এর মধ্যে বিচারপতিদের একটি মস্তব্যে পরিবেশ কিছুটা সহজ হয়। তাঁরা কিছুটা হালকা সুরেই জানতে চান, রাজ্যপালেরা কি আংশিক সময়ের রাজনীতিবিদ, না পুরো সময়ের। — পি টি আই

অধিকার ছাড়ালে ডানা ছাঁটতে চান লাহোটি

ভোপাল, ৩ সেপ্টেম্বর: আইন সভা বনাম বিচার বিভাগের লড়াইটা আরও এক বার উস্কে দিলেন সুপ্রিম কোর্টের প্রধান বিচারপতি আর সি লাহোটি। ভোপালে একটি অনুষ্ঠানে তিনি বলেছেন, “ভারতের শাসন ব্যবস্থার তিন স্তম্ভ প্রশাসন, আইন সভা এবং বিচার বিভাগ। তিনটি স্তম্ভেরই সংবিধান মেনে কাজ করা উচিত। কিন্তু, কোনও ব্যবস্থা যদি নিজের অধিকারের সীমা পেরিয়ে যায়, সে ক্ষেত্রে বিচার বিভাগ তার ডানা ছাঁটতে কসুর করবে না।” তাঁর মতে, “এক কণা জলও ক্ষমতা পেলে নিজেকে সমুদ্র ভাবতে শুরু করে। তাই এই ক্ষমতার ব্যাভিচার ছাঁটার অধিকার কারও হাতে না থাকলে কবেই মানুষ তার অধিকার হারাত।” পাশাপাশি তিনি এ-ও বলেন, ওই তিন স্তম্ভ পরস্পরের সঙ্গে সম-মর্যাদায় কাজ করলে গোলমাল হবে না।

প্রসঙ্গত, কিছু দিন আগে বেসরকারি কলেজে সংরক্ষণ নিয়ে শীর্ষ আদালতের রায়ে প্রকাশ্যেই ক্ষোভ প্রকাশ করেছিল কেন্দ্র। কেন্দ্রের এই ক্ষোভে দেশের প্রধান বিচারপতিও এ নিয়ে তাঁর অসন্তুষ্টি প্রকাশ করেছিলেন। আজ ফের তাঁর এই বক্তব্য সে কারণে যথেষ্ট তাৎপর্যপূর্ণ।

তবে একই সঙ্গে বিচার বিভাগ এবং প্রশাসনের সমন্বয়ের উপরে জোর দিয়েছেন প্রধান বিচারপতি। তিনি বলেন, “তিনটি স্তম্ভেরই উচিত, নিজেদের এজিয়ার ও ক্ষমতা সম্পর্কেও সঠিক এবং স্বচ্ছ ধারণা থাকা। আইন সভার তৈরি আইন কত দূর বাস্তব, তা যাচাইয়ের দায়িত্বও বিচার বিভাগেরই।”

দেশে প্রচুর মামলা ঝুলে রয়েছে বলে আক্ষেপ করে তিনি জানান, আদালতে যাতে আরও কম মামলা আসে তা দেখতে হবে। আদালতে আসার আগেই অন্য কোনও সংবিধান-স্বীকৃত উপায়ে সমস্যাগুলির সমাধান করে ফেলতে হবে। এ জন্য একটি বিকল্প সমাধান প্রক্রিয়াও গড়ে তোলার প্রয়োজনীয়তার কথাও আজ বলেন প্রধান বিচারপতি।

উদাহরণ দিয়ে তিনি বলেন, কালিফোর্নিয়ায় ৪৬ শতাংশ মামলাই এই বিকল্প পথে সমাধান হয়। আদালতে মামলা আসার আগেই যাতে বিভিন্ন সমস্যার সমাধান করা যায়, সেই লক্ষ্যে আপস ও মধ্যস্থ ব্যবস্থাকে আরও জোরদার করার উপরেও জোর দিয়েছেন লাহোটি। ভিডিও কনফারেন্স এবং কমিটি তৈরির মাধ্যমে বিভিন্ন দ্বিমতের সমাধান করা সম্ভব বলে মন্তব্য করে তিনি বলেন, এর ফলে যেমন সময় বাঁচবে তেমন খরচও বাঁচানো সম্ভব হবে।

এ প্রসঙ্গে প্রশাসনের টিলেমি নিয়েও ক্ষোভ প্রকাশ করেছেন দেশের প্রধান বিচারপতি। তাঁর মতে, বস্তা পচা আইনের পরিবর্তনে স্বাধীনতার পর থেকে এত দিন পর্যন্ত কোনও সরকারই কোনও ব্যবস্থা নেয়নি। এমনকী, একটি কমিশন পর্যন্ত গঠিত হয়নি। পুলিশে সংস্কার নিয়ে আসার যে রিপোর্ট পেশ হয়েছিল, তার উপরে বিস্তর ধুলো পড়ে রয়েছে বলেও অভিযোগ করেন তিনি। তবে তাঁরা আশা, শেঠি কমিশন বিচার ব্যবস্থার বদল নিয়ে যে সুপারিশ করেছে, সেগুলির খুব দ্রুত বাস্তবায়ন হবে। কারণ, ইতিমধ্যে সব রাজ্যই এই বদলে একমত হয়েছে। — পি টি আই

Judiciary has power to clip wings: Lahoti

PRESS Trust of India
Bhopal, September 3

OBSERVING THAT judiciary can 'clip the wings' of other organs of governance if they cross their limits, chief justice RC Lahoti on Saturday said alternative dispute-resolution mechanism, like conciliation, would ensure speedy justice by drastically slashing court cases.

"All three organs — executive, legislature and judiciary — should work in accordance with Constitutional provisions and if anyone acts beyond its jurisdiction, judiciary can clip its wings," he said at a seminar on 'Speedy and Affordable Justice and Cooperation between Judiciary and Executive'.

It is the duty of the judiciary to ensure that the laws framed by legislature were

in conformity with the provisions of the Constitution, he said adding that the executive should also avoid excesses while implementing laws. Strongly favouring coordination between the judiciary and the executive, Justice Lahoti said the three organs should carry out their responsibilities in a dignified way and strengthen each other for the welfare of society.

On delay in delivery of justice, he said an independent agency should be formed for alternative dispute resolution through methods like conciliation, and mediation should be adopted to substantially reduce the number of cases reaching the courts.

Citing an example, he said about 46 per cent of the disputes was handled through an alternative resolution mechanism in California, of which 94 per cent were re-

solved. Court hearings through video conferencing and formation of committees to resolve disputes in government departments would not only save time but also money, he added.

Stating that many disputes can be resolved without approaching courts, Justice Lahoti said the government should make arrangements by forming a committee of senior officials and experts.

Regretting that no concrete step had been taken for overhauling the legal system and obsolete laws, the CJI said reports of police reform commissions are also gathering dust without proper action to implement their recommendations. Expressing hope that the recommendations of the Shetye Commission on judicial service would be implemented soon, he said all states have agreed in

principle to accept these. Justice Lahoti's request for special allowances to judges in Madhya Pradesh to purchase books evoked instant acceptance at the function as chief minister Babulal Gaur announced that Rs 3,000 per year would be provided with immediate effect from Saturday for this and the amount would be raised to Rs 4,000 next year. The CJI also lauded efforts made by Gaur and state law minister Narottam Mishra in strengthening the justice delivery system and improving coordination with judiciary.

Endorsing justice Lahoti's suggestion, Governor Balram Jakhar said the executive and judiciary are complementary and supplementary to each other and there should be proper coordination between them.



Executive, legislature and judiciary should work in accordance with constitutional provisions and if anyone acts beyond its jurisdiction, judiciary can clip its wings

HC-A 219

Buta Singh's letters to President made public

Reports annexed to Centre's counter-affidavit in Supreme Court

Legal Correspondent

NEW DELHI: The Centre on Friday filed in the Supreme Court the reports sent by Bihar Governor Buta Singh to President A.P.J. Abdul Kalam on April 27 and May 21 recommending dissolution of the Assembly. The letters, faxed to the President, who was then in Moscow, formed the basis for dissolving the House on May 23.

The letters were annexed to the Centre's counter affidavit to the petitions challenging the dissolution of the Assembly.

Legal experts said though letters of Governors were subjected to judicial scrutiny in the past, this was the first time copies were made public.

"Disturbing feature"

In the first letter, Mr. Singh drew Mr. Kalam's attention to a "disturbing feature" of "allurements like money, caste, posts, etc, being used to win over legislators of the newly-elected Assembly." Such attempts were at variance with the canons of "political propriety and morality."

Mr. Singh said: "The Janata Dal-United (JD-U) and Bharatiya Janata Party (BJP) MLAs are quite convinced that by the end of this month or the latest by the first week of May, [the] JD-U will be in a position to form the government." But "the high pressure moves of [the] JD-U/BJP are also affecting the RJD MLAs, who have become restive. Ac-

• **April 27: Allurements being used to win over legislators**

• **Consequent political instability will give rise to horse-trading**

• **May 21: LJP MLAs moving towards the Janata Dal (United)**

• **If the trend is not arrested immediately, it may not be possible to contain the situation**

ording to a report, there is a lot of pressure by the RJD MLAs on Lalu Prasad Yadav to either form the government on [the] UPA pattern in the Centre, with the support of Congress, LJP and others or he should at least ensure continuance of President's rule."

Fresh poll

Mr. Singh said, "The present situation is fast approaching a scenario wherein if the trend is not arrested immediately, the consequent political instability will further give rise to horse trading being practised by various political parties/groups trying to allure elected MLAs."

In his May 21 letter, he said: "The reports received by me in the recent past through the media and also through meet-

ings with various political functionaries, as also intelligence reports, indicate a trend to win over elected representatives. Report has also been received of one LJP MLA, who is general secretary of the party, having resigned today and 17-18 more perhaps are moving towards the JD-U, clearly indicating that various allurements have been offered, which is a very disturbing and alarming feature."

"Distorting the verdict"

Mr. Singh said "any move by the breakaway faction to align with any other party to cobble [together] a majority and stake claim to form a government would positively affect the constitutional provisions and safeguards built therein and distort the verdict of the people, as shown by the results in the recent elections. If these attempts are allowed, it would amount to tampering with constitutional provisions."

The Governor said, "I am of the considered view that if the trend is not arrested immediately, it may not be possible to contain the situation. Hence, in my view, a situation has arisen in the State wherein it would be desirable in the interest of the State that the Assembly, presently kept in suspended animation, is dissolved so that the people/electorate can be provided with one more opportunity to give their mandate at an appropriate time."

NDA Leaders Say Buta Made Decision Long Ago

SC set to hear petition on Bihar House dissolution

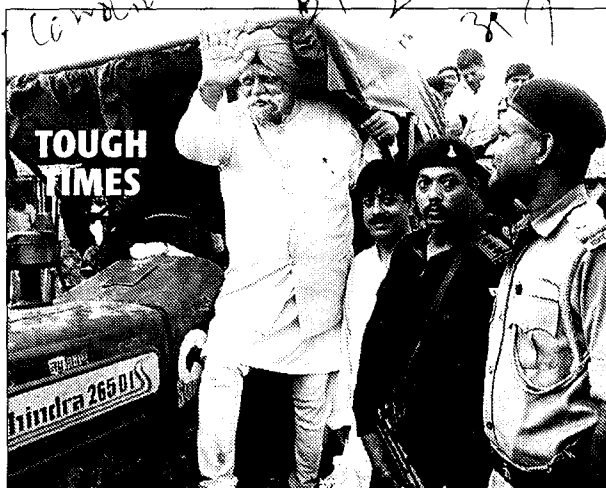
Our Political Bureau
NEW DELHI 2 SEPTEMBER

A Constitution Bench of the Supreme Court is getting ready to start hearing on an NDA-sponsored petition challenging dissolution of the Bihar Assembly. The Centre on Friday filed its side of the story in a detailed 158-page affidavit which has, among its attachments, two reports filed by governor Buta Singh to pre-empt the JD(U)-BJP combine from staking claim to form the next government in the state.

The documents, sent by the governor separately on April 27 and May 21, but which resemble a facsimile copy of each other, had been summoned by the three-judge Bench, led by Chief Justice RC Lahoti and may well decide the course of the petition. The Assembly, it may be mentioned, was finally dissolved on May 23.

The reports refer to attempts made to engineer a split in the 29-member LJP by weaning a group of 16-17 MLAs away, and the churning it had led to in the RJD camp. But beyond making general observations about "allurements" being offered to LJP MLAs, the governor, it is clear, was acting more on his instincts than on specific information.

The fact that two reports, the second following the first after a



gap of 25 days, are almost identical, makes it plain, NDA leaders alleged, the governor had long ago made up his mind to recommend dissolution of the state Assembly in order to prevent Nitish Kumar from approaching Raj Bhavan to secure the invitation to the form a government.

In his two-page letter, despatched on May 21, to the President, the governor said: "The reports received by me in the recent past through the media and also through meetings with various political functionaries, as also intelligence reports, indicate a trend to win over elected representatives of the people."

Referring to his April 27 letter,

Mr Singh said: "I had said that around 16-17 MLAs belonging to LJP were being wooed by various means so that a split could be effected in the LJP. Attention was also drawn to the fact that RJD MLAs had also become restive in light of the above moves made by JD(U)."

The governor cited newspaper-reports to show that one of the LJP general secretaries had resigned on May 21, the day he wrote the second report.

"Also, 17-18 MLAs, probably, are moving towards the JD(U), clearly indicating that various allurements have been offered which is a very disturbing and alarming feature."

SC refuses to stay Bihar polls

Refers plea to Constitution Bench

HT Correspondent
New Delhi, August 31

THE SUPREME Court on Wednesday declined to pass an interim order staying fresh elections to the Bihar Assembly in the face of Election Commission's submission that it was set to put the process in motion.

Instead, the three-judge bench, comprising chief justice R.C. Lahoti and judges G.P. Mathur and P.K. Balasubramaniam, referred the plea to a Constitution bench (expected to sit on September 6), along with the constitutional issues arising out of the petitions challenging the Governor's recent act of dissolving the House.

Intervening in the arguments, Election Commission counsel S. Murlidhar stated that the commission planned to issue a "press release" within the next "three or four" days, thereby, formally setting the poll process into motion.

The release sets the model code of conduct in place for the polls.

The counsel said that the "press release" would have to be issued as the commission needed time to organise things and sought a clarification from the court as to the next course of action.

The Election Commission faces a November 22 deadline for constituting the next House.

The bench, headed by the chief justice, however referred the plea along with several key constitutional questions to a five-

judge bench. Though not before asking whether the release could be "deferred" by a few days and whether it had any statutory backing. It was told that though the release had no "statutory" backing, it formally marks the beginning of the poll process.

Among the key constitutional issues referred to the Constitution bench were the scope and ambit of Article 361 of the Constitution, which grants absolute immunity to the Governor for all actions taken in his official capacity.

Specifically whether the "protection" afforded by Article 361 prevented him from being impeaded, even when there are allegations of "mala fides" and "fraudulent exercise of power".

And whether "inaction or omission" to perform a duty imposed by the Constitution would come under protection of Article 361 and whether it can be claimed that he shall not be answerable for such it.

It will look into whether the Governor couldn't be impeaded when a mandamus is sought against him to "perform his constitutional obligation of administering oath of office to newly-elected representatives" and "making the House function" under Article 188 and appointing a chief minister under Article 164(1).

As also whether it would be justified to say in the light of constitutional provisions that a mandamus or any other direction could only be issued to the Union of India and not the Governor.



Lalu Prasad at a function to felicitate him on his being reelected RJD chief in Delhi on Wednesday. PTI

Buta dossiers to go public

R. VENKATARAMAN

New Delhi, Aug. 30: For the first time in the country's history, the Centre today offered to make public two 'secret' and 'privileged' reports to the President sent by Bihar governor, Buta Singh, on the basis of which the Bihar Assembly was dissolved on May 23.

The Supreme Court had earlier sought all reports and documents related to the dissolution, which has been challenged by a batch of petitions.

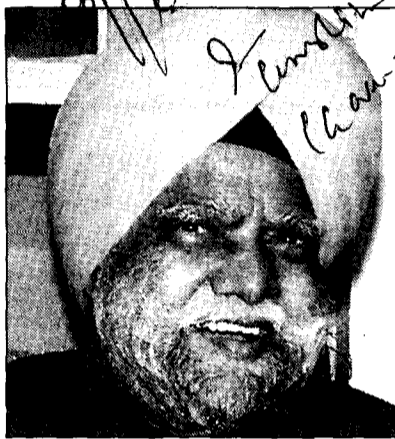
The court was informed today that the two reports will be submitted along with the Centre's reply so that they become 'public'.

Fighting a tricky legal battle on the dissolution case, and hard put to establish that the dissolution was bona fide, the UPA government hopes to turn the table by making the reports public.

The governor's reports, sent on April 27 and May 21, are believed to contain details of inducements offered by the NDA to the newly elected MLAs owing allegiance to Ram Vilas Paswan's Lok Janshakti Party. The Bihar governor is even believed to have obtained affidavits by some of these people before making allegations of horse-trading and defending the dissolution.

Petitioners challenging the dissolution had accused the governor of being partisan and of not applying his mind.

Pointing out that the central cabinet met around midnight on May 22 and recommended dissolution to the Presi-



Buta Singh

dent, who was away in Moscow at the time. President Kalam had signed on the dotted lines and faxed his assent in the wee hours of May 23. The petitions prayed for 'revival' of the Assembly and declaring the dissolution as void.

The petitions had also claimed that a polarisation of forces was taking place and NDA leader Nitish Kumar was on the verge of staking his claim and parading the MLAs before the governor, when the House was dissolved.

The governor in turn had defended his decision and pointed out to a group of Bihar MLAs 'being held hostage' in Jharkhand by the NDA government ruling the state.

In earlier hearings, the apex court had asked the Centre to show cause why

the governor should not be summoned to explain his stand on the 'legal mala fides' and explain the governor's "failure to perform the constitutional duty of first swearing in the elected legislators and then assess the strength of various claimants to form the government."

The apex court has repeatedly observed that the governor recommended dissolution of a "non-existing Assembly" as no member was administered oath.

"The Assembly did not even exist.... How come you dissolved a non-existing Assembly?" the chief justice said during an earlier hearing.

Not swearing in the members would thus figure in tomorrow's arguments when the Centre gives its replies to why the governor should not be summoned to explain his action.

On the question of issuing notices to the governor and summoning him, former attorney-general Soli Sorabjee, who appeared for four NDA legislators, argued that the constitutional functionary was the best person to answer allegations levelled against him.

Attorney General Milon Banerjee and additional solicitor general Gopal Subramanian opposed the argument, arguing that the Constitution prohibits courts from inquiring into the acts of governors.

The arguments remained inconclusive and so the hearing would resume tomorrow.

Parliament versus Judiciary

IF this is the attitude of the government, then wind up the courts and do whatever you want." Strong words from Chief Justice of India R.C. Lahoti, in response to the criticism of his order to do away with quota system in private, unaided educational institutions from members of Parliament. Was he expressing his disappointment, disgust or was he merely exasperated? Whatever it was, it had no effect either on the government or on Parliament, which went ahead with its proposal to have a central legislation — possibly a constitutional amendment — to bypass the Supreme Court's judgment.

There are ways of doing things. Was it really necessary to flaunt authority? True, there is nothing new in all this Parliament, in the past, has the Judiciary had come up with verdicts contrary to what the Legislature found desirable. But the most disconcerting part in the recent instance was the remark made by Union Law Minister H.R. Bhardwaj, that if the institution — including Parliament — was accountable then why not the judiciary? His observation during a discussion on the High Court and Supreme Court (Salaries and Conditions of Service) Amendment Bill, had preceded the debate on Chief Justice Lahoti's remarks.

It is nobody's brief that the judiciary should not be accountable. But while in Parliament for six years, I came to believe that we — the members — had a holier than thou attitude. We have some 124 tainted members in the present Lok Sabha and the Rajya Sabha. What have we done about them? That Parliament represents the people of India goes without saying. It has every right to rewrite a law or constitutional provision. But who would ensure that the law does not violate the letter and spirit of the Constitution? The courts have to do the job. Therefore, judicial review is an integral part of any democratic system.



Both should remember that they are creatures of the Constitution

KULDIP NAYYAR

I do not know how many MPs have read Lahoti's judgment in full. Had they done so, the brief encounter between Parliament and the Judiciary could have been avoided. He had suggested to the government to "come up with a legislation" which would not go against the Constitution. It was Attorney General Milan Bannerjee's remark that irritated him. During the hearing of the petition on reservation for Dalit Christians, Bannerjee had said he thanked the court for not "precipitating" the matter. Some attorney generals at the Centre and advocate generals in the states have given the impression that they wear their authority on their sleeve. Even though they address the judges with respect,

together, ensuring that the nation does not deviate from the rule of law.

What do the courts do when there are shoddy laws that restrict liberty or violate fundamental rights? Still worse are the laws that are meant to circumvent a judgment that the Executive has not liked. Take the example of 'single directive' in the hawala case. It laid down that the government's prior permission was required in order to initiate an inquiry against public servants enjoying the rank of joint secretary and above. The Supreme Court threw out the discriminatory directive and removed the distinction between one set of officers and the other. But the government has reenacted a new law to restore the

It is nobody's brief that the judiciary should not be accountable. But while in Parliament for six years I came to believe that we MPs had a holier than thou attitude

they often tend to be patronising. Lesser judges have come to nourish the feeling that the Executive is looking over their shoulder. This defeats the very purpose of justice.

Judges are doing their job as much as MPs. Both are jealous of their rights and duties. All they have to ensure is that they do not cross the Lakshman rekha to which Speaker Somnath Chatterjee has drawn the nation's attention in a different matter. Both Parliament and the Judiciary are creatures of the Constitution. They are not supreme; the Constitution is. They are like a pair of oxen yoked to a carriage, drawing it

idea of a 'single directive' which, apparently, comes in handy for political purposes. This way top officials can ensure that the government will not give permission for action against them should a scam come to light. The new law has been challenged and awaits the verdict of the Supreme Court.

There have been numerous other instances when the Judiciary and Parliament have locked horns. A few decades ago, an intrepid, young MP from Maharashtra, Nath Pai, led a battle to define the confines of the judiciary. When many laws to effect land reform failed to

come up to the judges' interpretation of the Constitution, Jawaharlal Nehru had it amended. What is 'social justice' for Parliament may be perceived by the courts as an encroachment on the prerogative of others, equally sacrosanct in the Constitution. There has to be a balance between laws as well as between Judiciary and Parliament.

It would be in the interests of the Republic of India if the basic structure of the Constitution is not changed by Parliament. Imagine what would have happened to the polity if elements who did not believe in secularism were to attain a two-thirds majority in both houses of Parliament, the vote required to amend the Constitution? The very democratic structure, too, would be in danger should a combination of parties, which believe in dictatorship of one kind or the other, come to power.

At the same time the notion of many judges that the Supreme Court is beyond the appraisal of ordinary mortals is mistaken. All its decisions are announced publicly, yet mystery continues to enshroud the functioning of the courts. This has unfortunate results. There is, for instance, the surprise and consternation which attend the perennial discovery that our highest judges are, one, human and, two, make a lot of law in the course of interpreting the law.

In 1938, Justice Frankfurter — a professor at Harvard Law School — summed up the mysteries of 'declared law' in cogent terms: "So the problem is not whether the judges make the law, but when and how and how much... By covering up the law-making function of judges, we mis-educate the people and fail to bring out into the open the real responsibility of judges for what they do..." "If the rule of law is going to be more and more the rule of reason — as judges see it in the light of due process — critics of the courts would realise that what in most cases they are objecting to is the rule of reason.

FRIDAY, AUGUST 26, 2005

Maintaining the balance

There was a time, in the 1970s, when the Supreme Court and the High Courts were under a fierce attack from those in power after a series of judgments went against the government, with inconvenient judges being superseded or transferred and with attempts being made to pack the courts with committed judges. It is a measure of the change in the relative balance of power among the constitutional authorities that the tables have now been turned and the Supreme Court has thought it fit to caution the Government severely against any talk of a confrontation with the judiciary. Judges do not normally take notice of happenings outside. But in a departure from the traditional judicial reserve and even as the Court was hearing an entirely different case, Chief Justice of India R. C. Lahoti expressed his displeasure in the strongest terms over the Centre criticising the Court's judgment that declared government quotas, and along with them reservations, unconstitutional in unaided private colleges. The Court no doubt over-reacted to the demand of all political parties that a law be enacted to provide for reservation for the Scheduled Castes and Scheduled Tribes and other backward classes in unaided professional colleges. The Chief Justice was perhaps anguished over such light talk of overturning the Court's decision on the constitutionality of a measure through passing a law. Still, having now joined the public debate, he can hardly complain if his remarks have come in for some sharp criticism in Parliament.

The latest verdict of the seven-judge bench that sought to clarify the judgment of the 11-judge bench in the T.M.A. Pai Foundation case on private professional colleges declares that unaided colleges should be left free to admit students without the government appropriating any proportion of their seats to be filled through its own centralised procedure. It has also suggested a law to ban unconscionable capitation fees and profiteering. In a sense, it has served to highlight the contradictions that had been building up in professional education, with the State governments abandoning their commitment to provide adequate opportunities and leaving it to private initiative, but still seeking to retain their control over admissions and meet their social commitments to various constituencies. The social commitments through reservations are best met through the institutions run by the state, which need to be expanded. If they are to extend to unaided private colleges, the States and the Centre would be well-advised against any compulsory appropriation of seats that would run afoul of the Supreme Court's decision. They could persuade the unaided private colleges to commit some seats to specific social and economic categories and, if need be, even make income tax, state and local tax concessions contingent on their meeting certain social goals. While the debate has been raised to a high pitch, it is a welcome sign that the Government spokesmen, the Speaker and the leaders of political parties have said they would avoid any confrontation with the judiciary. Equally, it is important that judges too observe restraint and avoid sweeping pronouncements.

THE HINDU

26 AUG 2005

অনভিপ্রেত

সুপ্রিম কোর্টের প্রধান বিচারপতি এক অত্যন্ত মর্যাদাসম্পন্ন পদাধিকারী। তিনি যখন একটি মামলার সুত্রে অ্যাডভোকেট জেনারেলকে বলিয়া ওঠেন, সরকার ইচ্ছা করিলে সব আদালত বন্ধ করিয়া দিক, তখন সরকারের প্রতি তাঁহার ক্ষোভের মাত্রা অনুমান করিতে অসুবিধা হয় না। ক্ষোভের আশু উপলক্ষ ছিল বেসরকারি শিক্ষাপ্রতিষ্ঠানে দলিত খ্রিস্টানদের জন্য কোটা সংরক্ষণের সরকারি নির্দেশের বিরুদ্ধে আনীত একটি জনস্বার্থ মামলা। সুপ্রিম কোর্ট সরকারি সহায়তাবর্জিত সংস্থায় সরকারি নির্দেশ বলবৎ করার প্রয়াসকে অসাংবিধানিক মনে করিয়াছে। সরকার তাহা চ্যালেঞ্জ করাতেই প্রধান বিচারপতির ক্ষোভের উদ্দিগরণ। বিশ্লেষণটি সুপ্রিম কোর্টের প্রধান বিচারপতির মুখে মানানসই কি না, সে প্রশ্ন উঠিয়াছে। তবে ইহা যে বহু দিনের সঞ্চিত ক্ষোভের বারুদে স্ফুলিঙ্গ সংযোগের পরিণাম, তাহা নিশ্চিত। বিচার বিভাগের সহিত বিভিন্ন প্রশ্নে সরকারের বিরোধ উত্তরোত্তর বাড়িয়াই চলিয়াছে। রাজনীতিকরা নির্বাচিত জনপ্রতিনিধি এবং আইনসভার সদস্য হওয়ার সুবাদে আইন ও শাসন বিভাগের কাজে বিচার বিভাগের হস্তক্ষেপকেও অবাঞ্ছিত বলিয়া অভিমত দিয়াছেন। অথচ প্রায়শই শাসন বিভাগের গাফিলতি ও অবিচারের প্রতিকার চাহিয়া রুজু হওয়া জনস্বার্থ মামলার রায় দিতে গিয়াই বিচার বিভাগকে হস্তক্ষেপ করিতে হইয়াছে। এই টানা পোড়নেরই পরিণাম প্রধান বিচারপতির উক্তি।

ভারতীয় গণতন্ত্রে আইন, শাসন ও বিচার বিভাগের একত্রিত সাংবিধানিক ভাবেই নির্দিষ্ট। একে অপরের একত্রিত হস্তক্ষেপ করিলে তাহার স্পর্শকাতর প্রতিক্রিয়াও তাই অস্বাভাবিক নয়। সংসদ তথা নির্বাচিত আইনসভাকে সার্বভৌম ভাবিতে অভ্যস্ত মন্ত্রী ও রাজনীতিকরা প্রায়শ সংবিধান ও আইনের শাসনকে বৃদ্ধাস্থষ্ট দেখাইয়া জনতার আদালতের রায়ে নিজেদের অপকর্মের বেধতা প্রতিষ্ঠা করিতে চাহেন। সরকার যখন নাগরিকদের প্রতি দায়বদ্ধতা পালন করে না, মন্ত্রীরা যখন দুর্নীতি ও স্বজনপোষণে ডুবিয়া থাকেন, রাজনীতিকরা কেলেঙ্কারি ও গুণ্ডামিতে, তখন সে সবার শিকার অসহায় সাধারণ মানুষের বিচার বিভাগের দ্বারস্থ হওয়া ছাড়া উপায় কী? বিচার বিভাগ যখন সেই অনিয়মের সংশোধন বা অন্যায়ের প্রতিবিধানে উদ্যোগী হয়, তখনই তাহার অতি-সক্রিয়তার, একত্রিত লঙ্ঘনের অভিযোগ ওঠে। আইন ও শাসন বিভাগ যদি নিজেদের কাজ যথাযথ করিত, তাহা হইলে বিচার বিভাগকে হস্তক্ষেপ করিতেই হইত না। যেমন অনৈতিক ভাবে রাজ্যপালদের দ্বারা আইনসভার সংখ্যাগরিষ্ঠ নির্বাচিত গোষ্ঠীকে সরকার গড়িতে না-ডাকার অন্তত তিনটি সাংস্প্রতিক ঘটনায় আদালতের রায় বা অবস্থানে কেন্দ্রীয় সরকার যারপরনাই অখুশি হইয়াছে। এই অসন্তোষ সংশ্লিষ্ট রাজনীতিকরা গোপন করিতেও চেষ্টা করেন নাই। একই ভ্রান্ত দৃষ্টিভঙ্গি সরকারের শাসনপ্রণালীতেও প্রতিফলিত হয়, যখন সর্বোচ্চ আদালতের সাংবিধানিক ব্যাখ্যাকে কার্যক্ষেত্রে নাকচ করিয়া দিতে বদ্ধপরিকর সরকার বা সংশ্লিষ্ট মন্ত্রক আইন সংশোধনের পস্থা লয়। দলিত খ্রিস্টানদের সংরক্ষণের প্রশ্নেও তেমন ব্যবস্থাপত্রই বিবেচিত হইতেছে।

সরকার বলিতেছে, বিচার বিভাগের স্বাধীনতা ও নিরপেক্ষতার তাহারা কদর করে এবং তাহার সহিত কোনও সম্মুখসম্মে যাইতেও ইচ্ছুক নয়। ইহা সত্য হইলে সুপ্রিম কোর্ট বেসরকারি প্রতিষ্ঠানে কোটা সংরক্ষণকে অন্যায আখ্যা দেওয়ার পরও আইন সংশোধন করিয়া আদালতকে পাশ কাটাইবার উদ্যোগ কেন? কেন বিষয়টি লইয়া আদালতেই আরও সওয়াল-জবাব হইবে না? কেন সংসদেও আলোচনা চলিবে না? সরকার এখানে আপন নীতিগত অগ্রাধিকারের ধূয়া তুলিয়াছে, যাহা বিচার বিভাগের একত্রিত-বহির্ভূত। কিন্তু কেবল মেধানির্ভর উচ্চশিক্ষার প্রতিষ্ঠানে কোনও রকম অনুদান, ভর্তুকি বা সহায়তা না থাকা সত্ত্বেও জাতপাতনির্ভর সংরক্ষণের নৈতিক অধিকার সরকারের আছে কি না, সে প্রশ্নও তো আছে। নির্বাচিত জনপ্রতিনিধিরাই সরকার গড়িয়া থাকেন, তাই অনির্বাচিত বিচারপতিদের তুলনায় তাহারা গণতন্ত্রের গহনতর প্রহরী, এ অজুহাতও সংবিধান-প্রণেতার মানেন নাই। এই ধরনের কাহিনীতে ঘটনা অপেক্ষাও বড় কথা ঘটনার সংকেত। সেই সংকেতটি কিন্তু গণতন্ত্রের পক্ষে শুভ নহে।

SC outburst uncalled for: Lok Sabha MPs

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Constitution

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25/8

New Delhi: Reacting sharply to the supreme court's outburst on the issue of reservation in private professional colleges, members in the Lok Sabha on Wednesday termed its remarks as "very unfortunate" and "uncalled for" with the speaker asserting that Parliament would not give up its rights to make laws.

Reflecting the members' strong sentiments, Speaker Somnath Chatterjee asserted "We are not giving up our rights to make laws" but made it clear that "avoidable controversy" should not be created. Describing Tuesday's remarks of Chief Justice R C Lahoti on the issue as "very unfortunate", "unprecedented" and "uncalled for", the members contended that while they did not want any confrontation between the legislature and the judiciary, the court should "not cross the Lakshman rekha".

In an obvious reference to Lahoti's critical remarks about "unwanted criticism" the apex court has faced for its ruling on the reservation in private institutions, leader of the House Pranab Mukherjee said "There has been no confrontation of any kind and there is no occasion to express anguish on account of any legislative

action". The Speaker said "Legislature has its own rights and Parliament, as the supreme legislative body, surely will act according to its rights under the Constitution. Similarly the courts have their own rights to function in their own sphere without any interference and nobody can interfere".

Chatterjee said it was the "undoubted right" of the court to con-

an avoidable controversy".

The only thing that struck him, said the Speaker, was that the observations made by the supreme court on Tuesday were not in any judgement and was expression of certain views with regard to what may have happened inside the House. "Therefore, we are only requesting ourselves that we should not do or say anything which may



Legislature has its own rights and Parliament, as the supreme legislative body, surely will act according to its rights under the Constitution. Similarly the courts have their own rights to function in their own sphere without any interference and nobody can interfere

-Somnath Chatterjee

strue the laws passed by Parliament. Therefore, many laws passed by Parliament are being declared ultra vires and it was binding on everybody.

"What is important is that there should be a harmonious relationship between major constitutional organisations like the legislature and the court and nothing should be done or said which may create

be misunderstood. But we are not giving up our right to make laws according to the constitutional provisions which the SC will have power, no doubt, to construe at the appropriate time", he said. Observing that the unanimous view of the House was that a law was necessary, he expressed the hope that it would be translated into action as soon as possible. Agencies

25 AUG 2005 7:20

সংঘাত এড়িয়েও নয়া আইনে অনড় কেন্দ্র

স্টাফ রিপোর্টার, নয়াদিল্লি, ২৪

অগস্ট: বেসরকারি কলেজে আসন সংরক্ষণের জন্য নতুন আইন প্রণয়নে অনড় থাকলেও বিচারব্যবস্থার সঙ্গে দূরত্ব আর বাড়তে চায় না সরকার ও সংসদ। কাল সন্ধ্যায় সর্বদলীয় বৈঠকের পরে আজ লোকসভায় তাই অনেক বেশি সতর্ক ছিলেন প্রণব মুখোপাধ্যায়, সোমনাথ চট্টোপাধ্যায়রা। আর বের্ফাস মন্তব্য নয়, সভাতেই সকলকে মনে করিয়ে দিলেন স্পিকার এবং লোকসভার নেতা। তবে সেই সঙ্গেই তাঁরা এ কথাও বুঝিয়ে দেন যে, সুপ্রিম কোর্টের রায় অপ্রাসঙ্গিক করে দিতে সরকার নতুন আইন প্রণয়ন করতে চলেছে।

সম্প্রতি ঝাড়খণ্ডে শিবু সোরেনকে মুখ্যমন্ত্রী করা নিয়ে সুপ্রিম কোর্টের সঙ্গে সংঘাতের মুখে পিছু হটে কেন্দ্র। বিধানসভায় শিবুর শক্তি পরীক্ষা এক দিন এগিয়ে এনেছিল সুপ্রিম কোর্ট। সেই দিনের কার্যবিধি নিয়ে রিপোর্ট পাঠাতেও বলা হয়েছিল রাজ্যপাল ও বিধানসভার অস্থায়ী স্পিকারকে।

আইনসভার সঙ্গে আদালতের সাম্প্রতিক দ্বন্দ্বের শুরু তখনই। এর সূত্র ধরে সেই সময় লোকসভার স্পিকার এবং বাম দলগুলি ক্ষমতা বিভাজনের বিষয়টি নিয়ে বিতর্ক চেয়েছিলেন। প্রস্তাব ওঠে, রাষ্ট্রপতির মত চাওয়া হোক। কিন্তু কেন্দ্র আদালতের সঙ্গে সংঘাত এড়িয়ে যায়।

এ বারে কিন্তু সরকার এতটা নরম হতে নারাজ। সরাসরি সংঘাতে না যাওয়ার ব্যাপারে একমত সোমনাথ চট্টোপাধ্যায় থেকে শুরু করে প্রণব মুখোপাধ্যায়, সবাই। কিন্তু কাল প্রধান বিচারপতি আর সি লাহোটির ভর্ৎসনার পরে আজ ক্ষমতা বিভাজন স্পষ্ট করার বিষয়টি আরও এক বার সামনে এসেছে। লোকসভায় আজ সোমনাথবাবুর বক্তব্য, “আমরা আইন প্রণয়নের অধিকার ছেড়ে দেব না।”

স্পিকার বলেছেন, “আইনসভার নিজস্ব অধিকার আছে। সর্বোচ্চ আইন প্রণয়নকারী পরিষদ হিসাবে সংসদ সেই সংবিধানপ্রদত্ত অধিকার মেনে চলবে। একই ভাবে আদালতেরও নিজেদের আওতায় স্বাধীন ভাবে কাজ করার অধিকার রয়েছে। সেখানে কেউ নাক গলাতে পারে না।”

তিনি আইনসভা ও আদালতের মধ্যে সুসম্পর্কের কথা উল্লেখের পাশাপাশি বলেন, “একটি বিষয়েই আমার খটকা। কাল প্রধান বিচারপতি যা বলেছেন সেটা রায়ের অংশ নয়। সভার মধ্যে কোনও ঘটনা বা মন্তব্যের প্রেক্ষিতেই তাঁর এই বক্তব্য। সূত্রাং আমরা এমন কিছু বলব না, যার ফলে বিভ্রান্তি তৈরি হতে পারে।”

গণতন্ত্রের দুই স্তরের মধ্যে এই ক্ষমতার দ্বন্দ্ব নিয়ে সাংসদদের সচেতন করার পরেও কিন্তু সভার মূল সুর অস্বীকার করতে পারেননি সোমনাথবাবু। বেসরকারি কলেজে সংরক্ষণ নিয়ে কাল সর্বদলীয় বৈঠকের মতোই এ দিন লোকসভাতেও প্রায় সর্বসম্মত ভাবে রায় অপ্রাসঙ্গিক করতে আইন প্রণয়নের প্রয়োজনীয়তার কথা বলা হয়েছে। সে কথা মেনে নিয়ে তিনি বলেন, “আশা করি, যত শীঘ্র

এর পর নয়ের পাতায়

অনড় কেন্দ্র

প্রথম পাতার পর

সম্ভব এ নিয়ে সিদ্ধান্ত হবে।”

প্রায় একই সূরে প্রণব মুখোপাধ্যায়ও বলেন, “সুপ্রিম কোর্টের সঙ্গে সংঘাতে যাবে না সরকার। আবার আইনসভার কোনও কাজ নিয়ে উম্মা প্রকাশ করাও চলবে না।” বস্তুত, এ দিন লোকসভায় প্রায় সব দলের সদস্যই প্রধান বিচারপতির ভর্ৎসনা নিয়ে তীব্র প্রতিক্রিয়া জানান। প্রণববাবু নিজে লাহোটির ভর্ৎসনাকে ‘অপ্রয়োজনীয় সমালোচনা’ বলেছেন। সমাজবাদী পার্টি, আরজেডি, সিপিএম বিজেডি, সকলেই বলে, ঘটনাটি ‘অত্যন্ত দুর্ভাগ্যজনক’ ও ‘অপ্রয়োজনীয়’। আদালতের ‘লক্ষণরেখা পার হওয়া উচিত নয়।’

সর্বোচ্চ আদালতের সঙ্গে সর্বোচ্চ আইনসভার দ্বন্দ্ব নতুন নয়। কয়েক মাস আগে ঝাড়খণ্ড নিয়ে যা হয়েছে, সেটা দীর্ঘ ছয় দশক ধরে চলে আসা সংঘাতেরই সাম্প্রতিক উদাহরণ। জওহরলাল থেকে রাজীব, সকলের আমলেই সংঘাত প্রকৃশ্যে এসেছে। মনমোহনের আমলে বেসরকারি কলেজে সংরক্ষণ বা তফসিলি জাতির মর্যাদা কারা পেতে পারে তা নিয়ে দ্বন্দ্ব সেই তালিকায় নতুন সংযোজন। বিহারে বিধানসভা ভেঙে দেওয়ার যে সিদ্ধান্তকে চ্যালেঞ্জ জানিয়ে একটি আবেদন এর মধ্যেই গ্রহণ করেছে সুপ্রিম কোর্ট। এই নিয়ে নতুন সংঘাতের ক্ষেত্র তৈরির সম্ভাবনাও উড়িয়ে দেওয়া যাচ্ছে না।

২৫ AUG ২০০৫

ANANDA BAZAR PATRIKA

SUPREME COURT LIVID AT CENTRE'S CRITICISM OF JUDGMENT ON STATE RESERVATION

'Shut us down if you are so intolerant'

Press Trust of India

NEW DELHI, Aug. 23. — Giving vent to its anguish over "unwanted criticism" it had faced for its ruling on reservation in private professional colleges, the Supreme Court today said if the government was so intolerant it could take steps to close down the courts.

"Tell us, we will wind up the courts and then do whatever you want," a visibly hurt Chief Justice Mr RC Lahoti told Attorney-General Mr Milton K

Banerjee.

The Bench, also comprising Mr Justice GP Mathur and Mr Justice PK Balasubramanyam, said the criticism had been uncalled for as the seven-judge Bench a few days ago iterated the ruling of an 11-judge Bench given years ago telling the government to bring a piece of legislation to enforce reservation policy in private, unaided professional colleges.

Stopping short of saying that the government had not understood the import of the recent seven-judge judgment, the

Bench said: "When we said please come with a piece of legislation, you are talking about a confrontation. We are told it is a confrontation... You must advise your people (government) to exercise self-restraint."

The Supreme Court, continuously criticised by the legislature and the Speaker of the Lok Sabha ever since it intervened in the controversy relating to the formation of a government in Jharkhand, gave vent to its displeasure during the hearing on a PIL seeking scheduled caste sta-

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tus for Dalit Christians. The Bench was ready to adjourn the hearing on the petition by the Centre for Public Interest Litigation as its counsel Mr Prashant Bhushan cited a personal difficulty, but the Attorney-General tried to narrate the initiative taken by the government on the issue of Dalit Christians. When he referred to the decision taken by the government last night to set up a commission for identifying communities and thanked the court for not precipitating the matter, the court reacted sharply

and said: "The petition raising a serious constitutional issue has been pending for almost a year and the government takes a decision a day before it is scheduled for hearing."

The Court, then, went on to express its anguish over the criticism of its judgement and asked: "Why are we told time and again by the government that it is not taking a confrontational attitude? Who is taking a confrontational attitude?"

The Chief Justice added: "If the attitude of the government is to go after a judgment without

understanding it, then wind up the courts and do whatever you want." When the Attorney-General and the Additional Solicitor-General, Mr Gopal Subramaniam, sought to explain explain to the court that they held it in high esteem, the Bench said: "Should you not tell your clients to give the respect the courts deserve." It added: "If this is the attitude of the government towards the courts, then we will go on doing our duty and let them do theirs."

Panel to draft legislation, pg 5

Criticism uncalled for, says Lahoti

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“Government going after verdict without understanding it”

J. Venkatesan

NEW DELHI: Chief Justice of India R.C. Lahoti on Tuesday expressed the Supreme Court's “displeasure” over the Centre and others criticising the recent seven-judge Bench judgment abolishing government quotas and reservation in private unaided educational institutions.

If the Government was so intolerant it could take steps to close down courts, he told Attorney-General Milton K. Banerjee during the hearing of a petition on reservation for Dalit Christians.

A three-judge Bench, which included Justice G. P. Mathur and Justice P. K. Balasubramanian, said the criticism was uncalled for as the seven-judge Bench only reiterated the ruling of an 11-judge Bench judgment in the T.M.A. Foundation case in 2002 suggesting that the Government enact legislation to govern higher education. A five-judge Bench (in the Islamic Academy case) also suggested enactment of a law for higher education.

A visibly annoyed CJI said, “When we said please come [up] with legislation, you are talking about confrontation. We are told it is confrontation. You must advise your people [government] to exercise self-restraint. Why are we told time and again by the Government that it is not taking a confrontationist attitude? Who is taking a confrontationist

attitude? If this is the attitude of the Government to go after a judgment without understanding it, then wind up the courts and do whatever you want.”

The Attorney-General and Additional Solicitor-General Gopal Subramaniam said they held the apex court in high esteem. The CJI said, “Should you not tell your clients to give the respect the courts deserve. If this is the attitude of the Government towards the court then we will go on doing our duty and let them do theirs. This sort of attitude is good neither for the country nor for the Government.”

Earlier, the Attorney-General sought adjournment of the petition filed by the Centre for Public Interest Litigation seeking a direction to the Central Government to provide reservation for Dalit Christians. He brought to the notice of the Bench the Government's decision on Monday to set up a Commission for identifying communities for reservation. The Bench told the Attorney-General that the hearing of the case could go on and the Commission could do its job. When he insisted, the Bench agreed to a brief adjournment. Mr. Banerjee thanked the court for not precipitating the matter. This remark resulted in the sharp reaction from the court.

Reactions on Page 12

24 AUG 2006

Bells toll for Buta as CPI backs recall

Our Political Bureau
NEW DELHI 22 AUGUST

PRESSURE is building on the Manmohan Singh government from within the ruling alliance to act against Bihar governor Buta Singh who has chosen to exercise his gubernatorial powers without regard for reasonableness and decency. The CPI on Monday backed the call for Mr Singh's recall describing his style of functioning as unbecoming of a governor.

CPI general secretary AB Bardhan, who said his continuation in the Patna Raj Bhawan would only help the NDA's power project, added that the Centre should immediately act against the governor. "The NDA will use the issue in the coming Assembly elections. They want him to continue as it has become a major political issue. After certain allegations surfaced, we have sought his removal. We are against him holding the post. We have called a 'Bihar bandh' on August 24 to mobilise support for our demand," agency reports from Bhopal quoted the CPI leader.

The entire issue has pushed the government into an embarrassing corner. While Laloo Yadav has been openly claiming that Buta Singh was his personal choice, two days ago, Ram Vilas Paswan went public with his complaints against the governor. The governor, who has been

acting against the officials in the state, who refused to provide any aid or comfort to his partisan preoccupations, has become the subject of a potent political campaign.

On his part, the governor is not making things easy for the Centre. Disregarding the furor over his letter to favour a railway official, the governor said he would repeat his controversial action if someone approached him with a request. His actions have shown he is yet to acquire the habit of working within

the constraints of the Constitution.

The NDA also stepped up its tirade against Mr Singh. It moved notices for adjournment motion, suspension of the Question Hour and the Zero Hour in the Lok Sabha to discuss the situation in Bihar. Speaker Somnath Chatterjee was slated to give his ruling.

"Railway minister Laloo Prasad Yadav has gone on record saying that Mr Singh was his appointee. His remarks are highly objectionable. A governor is appointed by the President under Article 155 of the Constitution. He is of course bound by the advice of the Council of Ministers, but this does not mean a governor is appointed on the advice of one minister," contended BJP spokesman VK Malhotra. Mr Yadav's assertion, the BJP leader added, went against the constitutional provisions.



Bihar Governor's letter sparks controversy

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Special Correspondent

NEW DELHI: Both Bihar Governor Buta Singh and Union Railway Minister Lalu Prasad on Friday maintained that there was nothing wrong with the former writing a letter to the latter for transfer of a middle-level Railway Ministry bureaucrat while senior Bharatiya Janata Party leader Vijay Kumar Malhotra described it as "highly improper".



On the other hand, the Railway Ministry said the officer concerned had been posted to South Western Railway in the same capacity in his cadre on August 2, a fortnight before the media highlighted an official letter written by Mr. Buta Singh to the Railway Minister in early July requesting transfer of the officer, Vijay P. Meshram, to Central Railway.

"There is no such proposal at present to transfer Mr. Meshram to Central Railway. All such matters are dealt with on merit as per rules. An appropriate reply to the Governor of Bihar is in the process of being issued," added the statement by the Rail-

way Ministry.

Reacting to the reports, the Bihar Governor clarified that there was no code for Governors that says whether a Governor can write letters or not.

Talking to newsmen here, Mr. Buta Singh said he had recommended the case of a Scheduled Caste officer and, if necessary, he would do so again.

The Railway Minister also confirmed that the Bihar Governor had written to him seeking transfer of the official over a month ago but felt "it was natural (for the Governor) to write a letter to me".

"It is natural (for the Governor) to write a letter to me ... what is the big deal if he (Governor)

nor) wrote a letter?" Mr. Prasad added. The Railway Minister met United Progressive Alliance Chairperson Sonia Gandhi during the day but said the meeting had nothing to do with the matter but was about the Rural Employment Guarantee Bill introduced in the Lok Sabha on Thursday.

NDA meeting on Monday

Meanwhile, a meeting of National Democratic Alliance leaders has been called for next Monday to discuss the "highly improper" recommendation for transfer of the railway official by the Bihar Governor, said Mr. V.K. Malhotra here on Friday.

The meeting would discuss three issues and decide how to raise them in Parliament. The conduct of Mr. Buta Singh and the Opposition strategy on moving amendments to the National Rural Employment Guarantee Bill were among other issues that would be discussed, Mr. Malhotra said. Mr. Malhotra and BJP vice-president Mukhtar Abbas Naqvi said that the party would demand recall of the Bihar Governor "as elections cannot be conducted impartially with Mr. Singh in the Raj Bhavan".

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Imrana case triggers SC petition

Legal glare on ^{9 conditions in} 'parallel' court

OUR LEGAL
CORRESPONDENT

OFF COURT

New Delhi, Aug. 16: The Supreme Court today took note of a "parallel Muslim judicial system" allegedly striking root in the country.

Acting on a public interest litigation, the court issued notices to the Centre, the Dar-ul-Uloom, the All India Muslim Personal Law Board and several states where Muslim courts apparently exist.

A practising Supreme Court advocate filed the PIL seeking to restrain the Nizam-e-Qaza (the parallel judiciary) from adjudicating in civil and criminal disputes involving Muslims on the ground that "religious judiciary" could not perform "sovereign function" in a democracy.

The PIL comes in the wake of the June controversy over the alleged sexual assault on Imrana Bibi and the fatwa ordering her to split with her husband.

Imrana was allegedly raped by 60-year-old Ali Mohammed at their family home in Muzaffarnagar. The Dar-ul-Uloom (the seminary in Deoband) had then decreed she could not live with her husband as he had become "a sort of son" to her.

Petitioner Vishwa Lochan Madan pleaded that an effort should be made to stop the parallel judicial system from striking root and a bar placed on "intermeddling with the marital status of Indian Mus-

Three recent cases where complaints were settled outside legal system

● Imrana of Uttar Pradesh was allegedly sexually assaulted by father-in-law but a fatwa said she could not live with her husband

● Asoobi of Haryana had a similar experience with a maulana declaring police complaint could not be filed

● Joshanara of Assam, again, was allegedly violated by her father-in-law but religious leaders annulled her marriage

lim citizens".

He sought a directive banning judgments by Muslim courts (dar-ul-qazas and shariat courts), maulvis and other religious bodies on matrimonial disputes. Criminal law had not been allowed to run its course in the Imrana case, he pointed out, as the issue had been hijacked by clerics.

On the PIL, a division bench of Justices Y.K. Sabharwal and C.K. Thakker issued the notices.

The states issued notices were Bengal, Uttar Pradesh, Madhya Pradesh, Assam, Rajasthan, Haryana and Delhi. Notices were also sent to a Mumbai-based organisation, Muslim For Secular Democracy.

"Islamic courts have been formed (in these states), posing a challenge to the judicial system of the country," the petition said.

Seeking "immediate disso-

lution" of such courts, it pleaded that the AIMPLB be restrained from establishing dar-ul-qazas in Thane (Maharashtra), Akola Dholiya (Rajasthan), Indore (Madhya Pradesh), south and east Delhi, Asansol and Purulia (Bengal) and Lucknow and Sitapur (Uttar Pradesh).

The petition sought a declaration that "fatwas have no legal sanctity". It sought a directive that "judgments and fatwas pronounced by authorities not established under the Constitution of India or the procedure established by law have no place in the Indian constitutional system...."

It also urged the court to "declare the movements/activities being pursued by AIMPLB and other similar organisations for establishment of a Muslim judicial system and setting up of dar-ul-qazas and shariat courts in India as absolutely illegal, illegitimate and unconstitutional...."

Hearing in the case will resume after the eight-week notice period.

The so-called parallel Muslim judicial system first came under glare in 1985 with the Supreme Court ruling that Shah Bano — divorced by triple talaq — be given maintenance.

Although the order was later overturned by the Rajiv Gandhi regime through a bill that gave legal status to the Muslim personal law on maintenance, rumblings for a uniform civil code had begun.

■ See Pages 6 and 13

SC QUASHES QUOTA SYSTEM

No state pie in pvt colleges

Press Trust of India

NEW DELHI, Aug. 12. — The Supreme Court today ruled that in unaided private institutions, including engineering and medical colleges, the state could neither impose reservation policy nor carve out its quota from the total number of seats.

"Neither the policy of reservation can be enforced by the state nor can any quota or percentage of admissions be carved out to be appropriated by the state in a minority or non-minority unaided educational institution," a seven-Judge Bench headed by Chief Justice Mr RC Lahoti said.

The Bench, comprising Mr Justice YK Sabharwal, Mr Justice DM Dharmadhikari, Mr Justice Arun Kumar, Mr Justice GP Mathur, Mr Justice Tarun Chatterjee and Mr Justice PK Balasubramanyan, gave this ruling while deciding on a bunch of petitions, including one by the All-India Medical and Engineering Colleges' Association.

The Chief Justice made it clear right at the outset that the Bench dealt with the issues only from the point of view of cases relating to both minority and non-minority educational institutions which did not receive any aid from the state.

For the first time, the court also carved out a 15 per cent quota for NRI students in private colleges, allowing them to charge higher fees but added the rider that "the amount of money collected against such seats should be utilised for benefiting students from economically weaker sections of the society." Abolishing the state quota and reservations in private colleges, Mr Justice Lahoti said:

The state cannot insist that private educational institutions which receive no aid from the state to implement state's policy on reservation for granting admissions." On the admission procedure to be adopted by private colleges, the Chief Justice, said unaided institutions, whether minority or non-minority, "have the unfettered fundamental right to choose the students and the procedure" as long as it was fair, transparent and non-exploitative.

The seven-judge Bench recommended that admissions be regulated by a centralised and single-window procedure. Holding that capitation fees and profiteering by colleges was illegal, the Bench said though every institution was free to devise its own fee structure, it could be regulated in the interests of preventing profiteering and capitation fees.

The matter regarding admissions to private aided and unaided colleges as well as minority institutions, was dealt with in detail by an 11-judge Bench in the TMA Pai case. A five-judge Bench had attempted to answer the few questions that had yet to be resolved. Now, a seven-judge Bench handled the matter to clear the confusion over the admission process.

Admission legislation

The Centre has decided to frame an appropriate legislation regarding admission and charging of fees by private, unaided medical and dental institutions in the country. The minister of state for health, Mrs Panabaka Lakshmi, told the Rajya Sabha that the legislation would be framed after eliciting views of the concerned departments and stakeholders, including states.

13 AUG 2005

THE STATESMAN

SC wants list of minority groups to be scrapped

New Delhi
10 AUGUST

DEFINING the ultimate aim of a democracy like India, the Supreme Court said the practice of listing religious groups as "minority communities" should be discouraged and the list to be gradually done away with, as it promotes divisive tendencies to weaken the nation. A three-judge Bench comprising of chief justice RC Lahoti, justice DM Dharmadhikari and justice PK Balasubramnyan reminded the Minorities Commissions' set up by the Centre and state governments, that the goal of the Constitution was to create social conditions where there was no need to shield or protect rights of minority or majority communities.

"The Commissions instead of encouraging claims from different communities for being added to a list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified minorities is gradually reduced and



done away with altogether," justice Dharmadhikari, writing for the Bench recently said. The ruling was given while disposing of a petition demanding minority status for the Jain community. The Bench accepted the Centre's stand that it was for the states to determine whether Jains would be a minority community depending on their social conditions in their respective states.

"In a caste-ridden Indian society, no section or distinct group of people can claim to be in majority. All are minorities amongst Hindus," the court said.

— PTI

1 AUG 2005 The Economic Times

Buta, man of controversy

MAYANK S. Singh
Patna, August 5

AS GOVERNOR of Bihar, Buta Singh has hardly managed to stay away from controversy. The standoff with chief secretary G.S. Kang, who openly criticised the Governor, is only one of them.

Singh had courted controversy soon after the imposition of President's rule in Bihar. The NDA had leveled charges against his two sons for interfering in government affairs. Singh, however, denied the allegations and defended his sons. But Singh triggered a major stir in April when he criticised the performance of the previous RJD government.

Kang resumes job

ENDING THE week-long stand-off with the Bihar governor, chief secretary G.S. Kang on Friday resumed his duties following an assurance by the Raj Bhawan that his 'position and prestige' will not be compromised in the future. "My differences with the Governor have been sorted out", Kang told reporters soon after resuming work. Asked whether the Governor had agreed to revoke the transfer of 17 IPS officers, Kang said, "I had protested the manner in which my office was bypassed during the transfer decisions... The Governor has, however, hinted at reverting some of the transferred officers." said Kang,

PTI, Patna

mation regarding an NDA move to lure some LJP MLAs into its fold.

When the LJP split a few weeks later, Singh was quick to allege that horse-trading had taken place. The Centre dissolved the Assembly following recommendation of Singh, who later said he had no evidence of horse-trading. However, it was the issue of transfer and postings of government officers that has snowballed into the biggest controversy during his tenure.

After initially patting the backs of C.K. Anil and K.K. Pathak — district magistrates of Siwan and Gopalganj respectively — Buta had apparently succumbed to the RJD pressure and removed both of them.

GOVERNOR'S TROUBLES

Dogmatic governor

His sons have been accused of meddling in transfers and he has been criticised for lack of transparency in functioning

"My decision will have to be final"

RJD barb

He fell foul of Lalu Yadav when he criticised the Rabri Devi government

"I didn't mean to pass any judgment on Rabri"

Corruption

George Fernandes called the Patna Raj Bhawan a den of corruption

"Fernandes had no business to allege such things"

Home truths

A Bihar administration report to the Union home ministry says that law and order situation has gone down after President's rule was imposed in Bihar on March 7

Dissolution drama

The NDA accused Buta of acting at the behest of Lalu while dissolving the Assembly

"No party/alliance was in a position to form the government"

Kin trouble

The commercial tax department issued notices to his son and daughter-in-law asking for details of income generated during an exhibition cricket match

Buta defended his sons



Rabri Devi



George Fernandes

05 AUG 2002

Buta goes berserk

AB But an exemplary show of defiance

In a way, the transfer of 17 upright IPS officers in one desperate stroke and their replacement by those who are apparently more pliable is the culmination of unilateral acts of shameless partisanship on the part of the Governor. It began with a clear sign that Buta Singh was Lalu Prasad's voice to the extent of ensuring that neither Nitish Kumar of the JD-U nor Ram Vilas Paswan of the LJP upstaged him and put together the numbers to form the government. But few could have imagined that puppetry could go to such dangerous extremes where even the state chief secretary is compelled to stage a revolt. If this is unprecedented in bureaucratic history, it is because Bihar sets its own standards. Buta Singh has crossed all the limits of administrative discretion in easing out officers who may have had a vital role to play in cleaning up the mess left behind by Lalu and installing handpicked lackeys who are presumably committed to promoting Lalu Raj during President's Rule. The Governor has no logical explanation for the reshuffle — just that "it had to be done" even without the formal consent of his advisers. That said it all.

Now it is up to the high command to salvage the situation, and the Home Minister's less than persuasive defence in Parliament deserves to be ignored. The last election had proved that the electorate in Bihar is more alert than Lalu had bargained for — helped by a proactive Election Commission. Buta's latest exercise serves to turn the clock to the days when the administration was at the RJD leader's beck and call. Particularly distressing is the transfer of the Siwan SP who had been instrumental in putting Mohammed Shahabuddin, MP with a colourful record of crimes, in his place. He and the other IPS officers may have hoped that President's Rule would be the most appropriate time to put law and order back on rails. They must now be utterly disillusioned. Evidence of Buta's pathetic tilt is so glaring that sympathy for the defiant chief secretary has cut across party lines. The Congress' dilemma could be that it needs a discredited Lalu as much as it needs the hypocritical Left to remain in power. But the more it endorses Buta's unprincipled excesses, the more it may serve to destroy the institutions of governance. It is equally surprising that voices of dissent — from IPS and IAS associations in particular — are somewhat stifled. Chief secretary GS Kang's act of courage thus stands out more prominently and sets a brilliant example.

THE STATUE

NDA urges Kalam for Buta recall

Statesman News Service

NEW DELHI, Aug. 1. — An NDA delegation met the President, Dr APJ Abdul Kalam, this evening to apprise him of Bihar Governor Mr Buta Singh's role in the recent transfer of 17 IPS officers. It also demanded his recall.

Also today, Union home minister Mr Shivraj Patil summoned Mr Singh for a discussion on the issue. Mr LK Advani on Saturday sought his intervention in the controversy.

During today's meeting with Dr Kalam, the NDA delegation comprising Mr Advani, Mr George Fernandes, Mr Jaswant Singh, Mrs Sushma Swaraj, Mr Sharad Yadav, Mr Digvijay Singh, Mr Raghunath Singh and Mr SS Ahluwalia alleged that the transfers were ordered by the Governor under pressure from Mr Lalu Prasad.

The issue caused a stir in the Rajya Sabha also, with the NDA gunning for Mr Singh for his "dubious" move in the run-up to the Bihar Assembly elections.

During the 35-minute meeting at Mr Patil's residence, Mr Singh is understood to have conceded that he had differences with the chief secretary, Mr G Kang, who proceeded on leave without "consulting him".

Later, Mr Singh told reporters that the DGP and the home secretary had been consulted on effecting the reshuffle.

"I asked the chief secretary to resume working," the Governor said. Mr Singh said the government could make alternative arrangements if Mr Kang didn't join duty.

CENTRE ASSERTS PM'S PREROGATIVE

SC 'clean' bowls govt

Press Trust of India

NEW DELHI, Aug. 1. — In a development that could fuel further debates on the "tainted" ministers controversy, the Supreme Court today asked the government who should decide "what is clean governance" and whether it could entertain such a query involving the spirit of the Constitution.

This question was put by a three-judge Bench comprising Chief Justice Mr RC Lahoti, Mr Justice CK Thakker and Mr Justice PK Balasubramanyan while dealing with a public interest litigation filed by Mr Manoj Narula challenging inclusion of "tainted" persons in the council of ministers headed by Prime Minister Dr Manmohan Singh.

The issue cropped up when the Centre through Attorney-General Mr Milon Banerjee and Solicitor-General Mr GE Vahanvati told the Supreme Court that it was the sole prerogative of the Prime Minister to choose his council of ministers and that the prerogative was not amenable to judicial scrutiny.

"Probing the matter further will not be beneficial to conventions and Parliamentary democracy," Mr Banerjee said. The Attorney-General's statement assumes significance with Lok Sabha Speaker Mr Somnath Chatterjee voicing serious objection to the Supreme Court's intervention in the formation of Jharkhand government and its decision scrapping the controversial IMDT issue.

"My duty is to prevent even the germs of discordance coming between the judiciary and Parliament, both of which were supreme in their own spheres," Mr Banerjee said.

Court seeks details of judge transfer

NEW DELHI, Aug. 1. — Stalling the prospects of an early verdict in the disproportionate assets cases against Mr Lalu Prasad and Mrs Rabri Devi, the Supreme Court today sought from Patna High Court details of the transfer of CBI judge Mr Yogendra Prasad, who had been hearing the cases. A Bench comprising Mr Justice S N Variava, Mr Justice AR Lakshmanan and Mr Justice S H Kapadia, hearing a PIL alleging interference in the fodder scam trials and income-tax appeal cases against the husband-wife duo, asked the prosecution to complete its evidence but ordered that the defence arguments would begin only with the permission of the Supreme Court. — PTI

The court wanted to know from the government whether it could entertain the petition but found certain "unsubstantiated allegations" made in the petition, prompting it to ask the petitioner to amend it within two weeks.

The Supreme Court said what is to be debated in Parliament was its own affair and the Court could do nothing about it if it chose not to discuss the issue of tainted ministers.

But, it went on to ask the Attorney-General, who was assisted by senior advocate Mr Gopal Subramaniam, whether a citizen of the country had a right to choose what type of persons should govern him.

Amicus Curiae Rakesh Dwivedi contended that in the present scenario the day was not far when a person facing trial for murder, dacoity and treason charges could become the Prime Minister.

THE STATESMAN

NDA taps Kalam to rescue Bihar Buta in line of Congress fire

Our Political Bureau
NEW DELHI 1 AUGUST

Ashok K Mishra
PATNA 1 AUGUST

THE NDA took its dissent over Buta Singh's continuing as the governor of Bihar to President APJ Abdul Kalam on Monday, seeking his immediate intervention to rescue the state from Mr Singh's "clutches".

With the controversy over the latest round of police reshuffle in the state snowballing into a major embarrassment for the Congress, the National Democratic Alliance (NDA) has stepped up its assault, opening up — in the process — three fronts against the Bihar governor and, by extension, the Manmohan Singh government. The police rejig had forced chief secretary GS Kang to go on leave in protest against being excluded from the decision-making exercise and has left the crime-infested district of Siwan virtually headless for the last three days.

Intending to haul the UPA government over the coals, the NDA served notices in the Lok Sabha on Monday on the dissolution of Bihar Assembly, the breakdown of the law and order machinery in the state and the governor-chief secretary stand-off.

The Lok Sabha, interestingly, will be witness to two rounds of discussion on Bihar on Tuesday. While the Opposition-sponsored motion will be taken up under rule 184, which is followed by voting, the second round of debate will be on the extension of President's rule in the state. Efforts were on to merge the discussions on the two motions but have a separate voting ritual for each of them.

A delegation of NDA leaders from the state will meet the Election Commission a day later to urge it "to take cognisance of the latest transfers and restore police officials to their respective districts." "We'll also request the poll panel to stop the misuse of official machinery by Laloo Prasad Yadav," Bihar BJP president Sushil Kumar Modi told reporters here on Monday. On a day in which Mr Singh was summoned by Union home minister Shivraj Patil to explain the bureaucratic and political maelstrom triggered by his acts, the NDA submitted a memorandum to the President to use his good office to ask the UPA to recall the governor.

BIHAR governor Buta Singh may be getting the flak from unexpected quarters even as the Opposition is pressing for his recall. Surprisingly, a section of the Congress is upset about the manner in which the governor was handling the affairs of the state government.

The State IAS Association held a meeting here on Monday evening. It passed a resolution in support of chief secretary GS 2 who has emerged as a "martyr" after he decided to proceed on long leave in protest against the transfer of 17 IPS officials.

In a day packed with activity, the governor found himself on a sticky wicket. He left for New Delhi after being summoned by the home ministry. The governor will have to do a lot of explaining for the deadlock afflicting the state bureaucracy which has become "headless" due to Mr Kang's decision to proceed on protest leave. The heat will further turn on him when the NDA will raise the issue in Parliament.

Perhaps taken aback by the turn of events, the governor broke the protocol norms and went to the residence of the chief secretary. In what could be termed as placatory moves, the governor urged Mr Kang to resume his duty. But Mr Kang, sources said, politely turned down the request. That the whole issue has gone to the home ministry's court became clear when an additional secretary rank official of the ministry telephonically contacted Mr Kang and enquired about his grouse.

The chief secretary told the home ministry official that he was feeling humiliated because he was being ignored by the governor and his special advisor Arun Pathak in the decision making, especially the transfers of IAS and IPS officials.

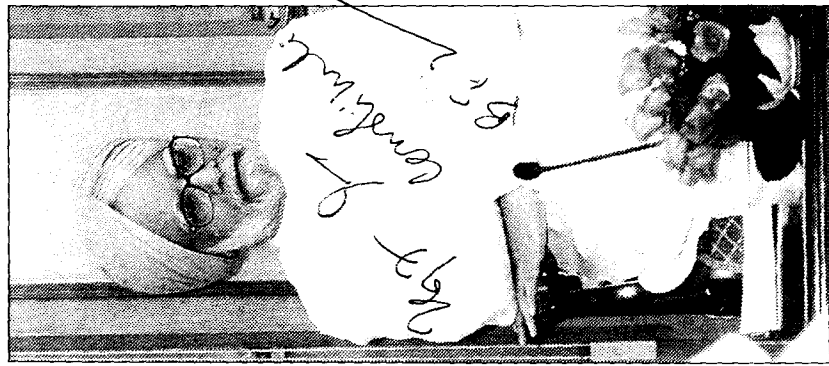
The transfer of Siwan SP has become intriguing. While special advisor Arun Pathak insisted that the SP was transferred on his own volition, sources said the SP was pressurised by the state to give it in writing for seeking his transfer on personal grounds. Sources said Mr Kang was told by a senior functionary of the state government to convince the Siwan SP to hold a press conference for justifying his transfer.



2 AUG 2005 The Economic Times

SC To Hear Plea Challenging Dissolution Of Bihar House, Gives Centre 3 Weeks To Reply

OBJECTIONS OVERRULED!



Our Political Bureau
NEW DELHI 25 JULY

THE Supreme Court snubbed the Manmohan Singh government severely on Monday as it overruled the latter's objections to the consideration of NDA-sponsored petition challenging the dissolution of the Bihar Assembly. The apex court issued notices to the Centre and the state governor, asking them to file their replies in three weeks.

The development coincided with the commencement of the Parliament's monsoon session and the Centre's decision to extend President's rule in the state by another six months. The ruling came as a shot in the arm for the NDA, and provided it with another ammunition to target the ruling UPA during the month-long session.

Buoyed by the unexpected turn of events, the BJP-led alliance was seen flexing its muscles on Monday as it braced for a confrontation with the treasury benches in the two Houses.

"Our stand has been vindicated. The apex court has, *prima facie*, found enough substance to corner the government on its decision to dissolve the Bihar

Assembly with the limited aim of preempting the NDA from staking claim to form the government in the state with the help of independents and disgruntled LJP MLAs," asserted BJP parliamentary party spokesman VK Malhotra here on Monday afternoon.

He said the Opposition will rake up the issue in Parliament. "We've already submitted notices for an adjournment

motion or a discussion under either rule 184 or 193 — whichever is accepted by the Lok Sabha Speaker, we'll be ready," Mr Malhotra said. While the Congress and its allies, including the RJD, were on the defensive, the NDA was clearly itching for a showdown on the issue.

Opposition grouping drew comfort from the proceedings earlier in the day in the apex court Bench headed by chief justice RC Lahoti. The Bench rejected the objections raised by the Centre on entertaining the petition, observing that the former NDA MLAs had "made out a case" for hearing their petition.

The three-judge Bench, while giving its ruling, took note of the "swift manner" in which the Union Cabinet took the decision to dissolve the House and subsequently sought presidential assent.

It also took into account the fact that the governor had taken no step to convince himself of the veracity of the claims made to break the constitutional deadlock. The Bench, which comprised justice CK Thakker and justice PK Balasubramanyan, examined the file detailing the Cabinet meeting held at 11 pm on May 22, transmission of the notification and other documents to President's secretary

at in the Capital and the transmission of documents to President at 01.34 or 01.50 hours from New Delhi to Moscow for his perusal and assent. When senior advocate Gopal Subramaniam said the President gave his assent to the Cabinet decision at "0330 hours local time", the Bench said "this case calls for hearing".

Appearing on behalf of MLA Rameswar Prasad Chaurasia (BJP) Kishore Kumar Munna (Independent) Rampravesh Rai (JD-U) and Dr Anil Kumar (breakaway LJP group), senior advocate and former attorney general Soli J Sorabjee said the governor — as per the Supreme Court ruling on Bommai case — was required to make an effort to find out as to which party could form a stable government.

The governor did nothing of that, and on mere conjectures and surmises about "horse trading of MLAs", recommended dissolution of the House, Mr Sorabjee contended. He added that the dissolution of a House was not a matter of course and it was only to be resorted to when all efforts by the governor had failed. The governor took this extreme step after coming to know that the NDA was in a position to stake claim to form the government.

President's rule extended

PRESIDENT'S rule in Bihar was extended by another six months by the Union Cabinet on Monday.

Bihar had come under President's rule on March 7 this year after Governor Buta Singh gave a report to the Centre saying no political party or group was in a position to form a stable government. The initial phase of President's rule was to expire after six months. Bihar was brought under President's rule eight days after elections had thrown up a hung Assembly.

— PTI

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26 JUL 2006

The Economic Times

Group of Ministers to study order on Illegal Migrants Act

It will hear the views of various parties and advise the Government: Patil

Vinay Kumar

NEW DELHI: Two days after the Supreme Court struck down the Illegal Migrants Determination by Tribunal (IMDT) Act, the Centre decided to set up a Group of Ministers (GoM) to study the court order and suggest further course of action.

The decision to form the GoM was taken at a meeting of the Cabinet Committee on Political Affairs (CCPA), presided over by the Prime Minister Manmohan Singh here.

"The GoM will hear the views of various parties and advise the Government for further action," Union Home Minister Shivraj Patil told reporters after the meeting.

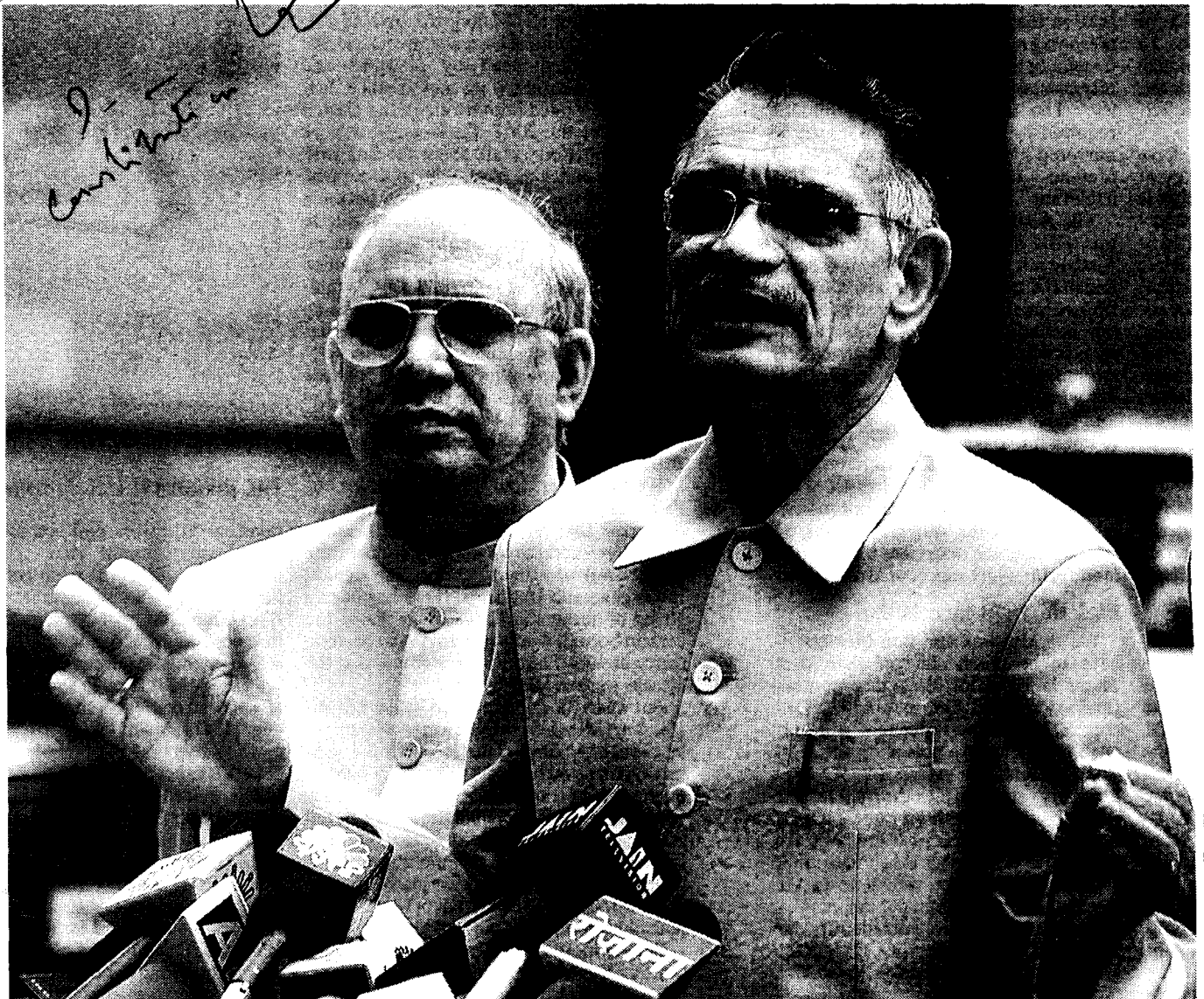
Sensitive issue

Mr. Patil said the order was being examined carefully by the Home Ministry and the Law Ministry for "proper and further action." Describing it as a "sensitive issue," Mr. Patil said "this is a matter on which people have expressed their views differently. The Government has decided to hear all shades of opinion before deciding finally as to how and what has to be done."

On whether the Government would go for a review petition before the Supreme Court, he said that no decision was taken on it.

Mr. Patil later met UPA Chairperson Sonia Gandhi and it is learnt that the order on IMDT Act figured during discussions. Sources indicated that the Centre may not challenge the Supreme Court order but may go for amendments in the Foreigners Act to incorporate some of the provisions of the now scrapped IMDT Act.

Besides, the Home Minister, the GoM is likely to have Defence, Law and North-East Affairs Ministers on it.



Home Minister Shivraj Patil and Law Minister H.R. Bharadwaj briefing the media after the meeting of the Cabinet Committee on Political Affairs on the IMDT Act, in New Delhi on Thursday. - PHOTO: V. SUDERSHAN

The Assam Chief Minister, Tarun Gogoi, who was in the Capital to attend the meeting of the Central Advisory Board of Education (CABE) said the State would explore the possibility of

ensuring some "kind of legal protection" to the minorities under the Foreigners Act of 1946.

No comment on Salman

UNI reports from New Delhi:

Does cine star Salman Khan have any links with the underworld?

This question was put to Mr. Patil during the press briefing, referring to a story published in

an English daily.

Mr. Patil shot back parrying the question: "Don't ask me to comment on what others have said through the media."

1 - JUL 2015

THE HINDU

IMDT Act is the biggest barrier to deportation, says Supreme Court

Describes the influx of illegal immigrants as an aggression on Assam

Legal Correspondent

HD-12 1917
NEW DELHI: The Supreme Court held that the Illegal Migrants (Determination by Tribunals) Act, 1983 and rules "has created the biggest hurdle and is the main impediment or barrier in the identification and deportation of illegal migrants."

A three-judge Bench comprising Chief Justice R.C. Lahoti, Justice G.P. Mathur and Justice P.K. Balasubramanyan, which, on Tuesday, struck down the IMDT Act as unconstitutional, observed: "The presence of such a large number of illegal migrants from Bangladesh, which runs into millions, is in fact an aggression on the State of Assam and has also contributed significantly in causing serious internal disturbances in the shape of insurgency of alarming proportions."

The court, in its 114-page judgment, noted that this "aggression" had made the life of the people of Assam "wholly insecure and the panic generated

• Large-scale immigration has led to insurgency and social disturbances

• Local language and culture being affected

• Growth of Assam hampered by migrants

thereby had created fear psychosis." The Bench said this hampered the growth of Assam though it had vast natural resources. The rest of the country viewed it as a disturbed area and hence there were no investments or employment opportunities, giving rise to insurgency.

Justice Mathur, writing the judgment for the Bench, pointed out that the IMDT Act and Rules had been so made that innumerable and insurmountable difficulties were created in identification and deportation of illegal migrants. The Bench noted that though enquiries

were initiated in 3,10,759 cases under the IMDT Act, only 10,015 persons were declared illegal migrants and only 1,481 illegal migrants were physically expelled up to April 30, 2000.

This, the Bench said, "comes to less than half per cent of the cases initiated." On the contrary in West Bengal, where Foreigners Act was applicable, 4,89,046 persons were deported between 1983 and November 1998, which was a lesser period. Thus the IMDT Act "is coming to the advantage of such illegal migrants as any proceedings initiated against them almost entirely ends in their favour, enables them to have a document having official sanctity to the effect that they are not illegal migrants."

The Bench said "the IMDT Act and the Rules clearly negate the constitutional mandate contained in Article 355 of the Constitution, where a duty has been cast upon the Union of India to protect every State against external aggression and internal

disturbance. The IMDT Act, which contravenes Article 355 of the Constitution is, therefore, wholly unconstitutional and must be struck down."

The judges said the impact of such large-scale illegal migrants not only affected Assam but also other north-eastern States as the route to these places passed through Assam. The Bench said the influx of Bangladeshi nationals into Assam posed a threat to the integrity and security of the north-eastern region.

Their presence had changed the demographic character of the region and the local people of Assam had been reduced to a status of minority in certain districts. The judges said the enforcement of the IMDT Act had helped the illegal migrants to stay in Assam. The illegal migrants had affected the language, script and culture of the local people. The Bench directed constitution of fresh tribunals under the Foreigner (Tribunals) Order, 1964.

14 JUL 2005

SC strikes down Assam Migrants Act



Why the Act

The Illegal Migrants (Determination by Tribunals) Act 1983 was to keep out mainly illegal Bangladeshis

However...

As per the Act, a citizen has to prove whether someone is a foreign national

Legal contrast

The above is at variance with normal judicial process: The onus of proof normally lies with the accused

SAMANWAYA Rautray
New Delhi, July 12

THE SUPREME Court on Tuesday struck down the controversial Illegal Migrants Determination (by Tribunals) Act, 1983, which provided for a more rigorous regime for identification of illegal Bangladeshi migrants in Assam as compared to the rest of country.

It is being seen as a major blow to the Congress government in the state ahead of the Assembly polls next year. The Act, brought into force post Assam Accord and signed with the All-Assam Students' Union, had been a bone of contention between the Congress

and the NDA. The latter claimed it had been ineffective. The Congress had lobbied for its retention soon after coming to power.

The apex court, in its brief order, said: "All Tribunals functioning under the Act will cease to function immediately. Pending matters will be dealt with by Tribunals set up under the Foreigners' Act. The government should set up more such tribunals to deal with the situation."

A three-member bench, headed by chief justice R.C. Lahoti, also struck down as unconstitutional the rules framed under the Act for setting up Tribunals to identify and deport illegal migrants.

The order came on a petition filed by AGP MP Sarbananda Sonowal, who contended that the process of identifying foreigners was more liberal in the rest of the country where the Foreigners' Act was in force. In Assam, on the other hand it was complicated under the IMDT Act.

He said though the IMDT Act was initially supposed to be extended to other states, its application had been restricted to Assam. This, he claimed, was discriminatory and violated Article 14 (right to equality) of the Constitution.

He also contended that the "problem of illegal migration required the strongest measures and

the Act had failed to perform the function envisaged".

The home ministry, however, is likely to file a review petition. Home minister Shivraj Patil discussed the issue with senior officials on Tuesday. "A clear picture will emerge after we scrutinise the court order, which we will get on Wednesday. It is possible that there might be a legislative solution to the issue. We will also consult the Law Ministry before deciding," a senior Home Ministry official said.

ON PAGE 2

What the Migrants Act says
Political fallout of the SC verdict

STRESS-FREE FYAMC

Dr Kalam speaks

Has Buta Singh got the message? 5/16

Governors who have a tendency to genuflect at the altar of their political masters — and quite blatantly if the state is under central rule — must have shaken in their boots at the inaugural of their periodic get-together. For, seldom in recent years, has a President put the Governors so effectively on notice and with so forthright a message. Almost certainly, the actions of at least two Governors over the past six months must have provided the immediate provocation. In both states the Raj Bhavans have been disgraced, with parties and politics firmly entrenched within the complex. Hence Dr Kalam's exhortation to "rise above day-to-day politics and override the compulsions emanating from the central or the state system". Hence also the unambiguous option to the constitutional heads — function "as a first citizen or remain caged in the confines of your political identity". Like perhaps Buta Singh who never quite imagined such a snub, indirect yet devastating. Also in this category is Goa's SC Jamir, who in February had installed a Congress government hours after dismissing a BJP ministry that had won the Assembly's vote of confidence. But the dubious distinction of making a mockery of the constitutional office goes to the Bihar Governor. To placate Lalu, he has crafted an outrageous method to manipulate the bureaucracy.

The writ of Mohammad Shahabuddin, out on bail with 42 criminal cases pending, still runs in north Bihar. As Governor, he has even succeeded in getting a Lalu acolyte appointed as his adviser. A non-committal bureaucracy functioning without political interference — the least that can be expected in a state under President's rule — does not exist in Bihar. Buta Singh functions like a pawn on the checkerboard, equally useful to the RJD and Congress. He has even on occasions been used by 10 Janpath to score brownie points over Lalu. The state is now saddled with an additional expenditure of Rs 650 crore for sops doled out to teachers and government staff, relatively neglected by the Lalu-Rabri dispensation. His utility to his mentors was crudely evident when he dissolved the Bihar Assembly just when Paswan was trying to cobble a coalition without Lalu and when the NDA had thrown its hat into the ring. Whether or not the Assembly is dissolved or in suspended animation, Buta Singh has shamelessly politicised the administration. The erudition that marked the President's address didn't quite conceal his utter exasperation. "Can we collectively say that today such a well-intended position (first citizen) is upheld by each one of us?" was his concluding query. At least Buta Singh and SC Jamir have been less than first citizens.

রাজ্যপালেরা

নিরপেক্ষ

হেন, চান

মনমোহনও

নয়াদিগ্লি, ১৫ জুন: রাষ্ট্রপতি কালাম কাল হুঁশিয়ারি দিয়েছিলেন, রাজনীতি নয়। আজ একই পথে হাটলেন প্রধানমন্ত্রী মনমোহন সিংহ। রাজ্যপালদের তাঁর পরামর্শ, “নিরপেক্ষ হোন। বিতর্কের উর্ধ্ব থাকুন।”

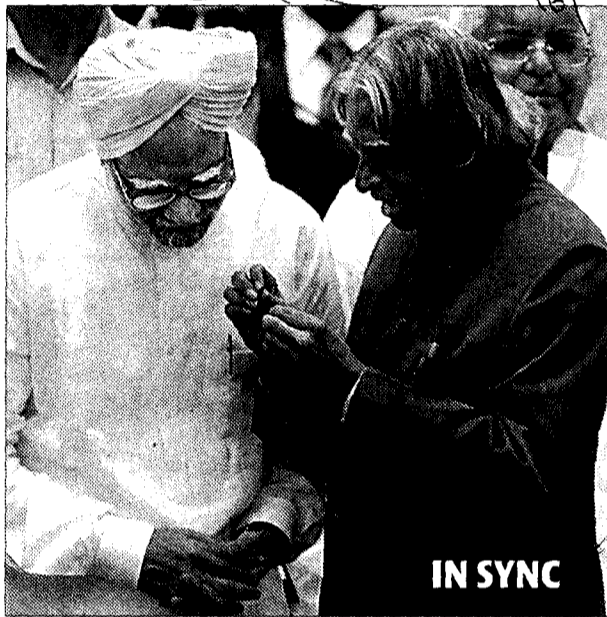
গোয়া, ঝাড়খণ্ড, বিহারে রাজনৈতিক অস্থিরতার পরে প্রধানমন্ত্রী রাজ্যপালদের সম্মেলনে কী বলবেন, তাই নিয়ে রাজনৈতিক মহলে যথেষ্ট কৌতূহল ছিল। এই তিন রাজ্যেই রাজ্যপালের ভূমিকা নিয়ে প্রশ্ন উঠেছে। বিহারে বুটা সিংহের বিধানসভা ভেঙে দেওয়ার সিদ্ধান্তে ক্ষিপ্ত বিরোধীরা আদালতের দ্বারস্থ হয়েছেন। নিজেদের সমর্থনে ১২৩ জন বিধায়ককে হাজির করেছেন রাষ্ট্রপতির সামনে।

কাল কালামের বক্তৃতাও তাই ছিল তাৎপর্যপূর্ণ। রাজ্যপালদের রাজনীতি থেকে দূরে থাকতে বলে তিনি বুঝিয়ে দিয়েছেন, তিন রাজ্যের ঘটনা তাঁর মনঃপূত হয়নি। এই অবস্থায় প্রধানমন্ত্রী কী বলেন, সে দিকে সকলের নজর ছিল। তিনি বলেন, “পক্ষপাতমূলক রাজনীতির উর্ধ্ব উঠতে হবে রাজ্যপালদের। এই ‘অস্থির সময়ে’ আপনাদের কাছে প্রত্যাশা অনেক।”

কর্তব্য পালনের ক্ষেত্রে যাতে রাজ্যপালেরা ঠিক ভাবে সব দিক বিচার করেন, তাও মনে করিয়ে দিয়েছেন প্রধানমন্ত্রী। তিনি বলেছেন, “দেশ উন্নয়নের পথে এগোচ্ছে। কর্তব্য পালনের সময় এই কথা আমাদের মনে রাখা উচিত।” অর্থাৎ রাজ্যপালদের সিদ্ধান্ত যাতে উন্নয়নের পথে বাধা না-হয়, সে কথাই মনে করিয়ে দিয়েছেন তিনি। একই সঙ্গে আর্থিক বিকাশের কথা টেনে প্রধানমন্ত্রী বুঝিয়েছেন, রাজ্যপালদের গুরুত্ব কতটা বেড়েছে। সেই সূত্রেই তাঁর বক্তব্য, “এক অর্থে আপনারা ভবিষ্যতের পথপ্রদর্শক।”

যোজনা কমিশনের ডেপুটি চেয়ারম্যান মন্টেক সিংহ অহলুওয়ালিয়াও আর্থিক বিকাশের কথা ভুলেছেন। তাঁর অভিযোগ, কেন্দ্র বা রাজ্য, কেউই দশম পঞ্চবার্ষিকী যোজনার জন্য প্রয়োজনীয় সম্পদ সংগ্রহ করতে পারছে না। - পি টি আই

Doc supports Kalam stance on governors



Our Political Bureau
NEW DELHI 15 JUNE

HAVING attested controversial actions of the governors in Jharkhand and Goa, which raised quite a dust couple of months ago, Prime Minister Manmohan Singh on Wednesday echoed President APJ Abdul Kalam's views, asking Union representatives in the states to rise above partisan controversy in discharging their constitutional duties.

Speaking at the governors' conference here, the message from Dr Singh was governor's would have to work within the constraints of the democratic system.

"In our evolving polity, where political patterns have changed substantially over the last 50 years, there is bound to be some partisan controversy or the other challenging the authority and dignity of this high office. This places an added burden on your shoulders to rise above partisan politics while discharging your Constitutional obligations," Dr Singh said in his address.

When the controversy regarding governor's role in Jharkhand and Goa was raging, Mr Singh's aides had attempted to stress that the Prime Minister was quite pained with the events in Jharkhand and Goa. Although he did

not publicly voice his reservations on the manner in which Shibu Soren was installed as chief minister, despite having questionable majority by governor Syed Sibte Razi, his aides contended that he had been highly distressed at the way constitutional norms was violated.

Inaugurating the conference on Tuesday, President Kalam had asked the governors to rise above day-to-day politics and not nurture political affiliations, warning such a tendency would lead to their isolation.

Adding in the same vein, Dr Singh maintained there was no other constitutional office that enjoyed the autonomy and carried the attendant responsibility as did the post of governor. "In these turbulent times we are living in, people have great expectations from this office. The greater the responsibilities attached to an office, the greater will be public scrutiny in a democracy," he said.

Dr Singh said in discharging their constitutional obligations the governors were the sole judges of what is right and wrong, of what is mandated for them under the Constitution and what is not and what people perceive their actions to be. He said governors could also act as watchdogs and alert the state and central governments on security threats.

রাজ্যপাল রাজনীতিক

রাজ্যপালরা রাজনীতির উর্ধ্ব উঠিয়া নিজেদের মহান সাংবিধানিক দায়িত্ব পালন করুন, এমন আবেদন জানাইলেন রাষ্ট্রপতি এ পি জে আবদুল কালাম। পর দিন প্রধানমন্ত্রী মনমোহন সিংহকেও বলিতে শোনা গেল, রাজ্যপালরা যেন নিরপেক্ষ ভাবে কাজ করেন, বিতর্কের উর্ধ্ব নিজেদের রাখিতে পারেন, ইত্যাদি। এই সব কথার উচ্চারণডুমি রাজ্যপালদের সম্মেলনে কেন্দ্রীয় স্বরাষ্ট্রমন্ত্রীও ছিলেন। ভাগ্যে তিনিও রাজ্যপালদের রাজনীতি হইতে দূরে থাকার পরামর্শ দিয়া বসেন নাই। রাজ্যপালদের অবশ্য সাংবাদিক বৈঠক ডাকিয়া আত্মপক্ষ সমর্থনের রীতি নাই। থাকিলে তাঁহারা পাল্টা প্রশ্ন করিতে পারিতেন, কেন রাজ্যপালদের কেন্দ্র নিজের রাজনৈতিক এজেন্ট হিসাবে ব্যবহার করে, কেন আপাতদৃষ্টিতে কোনও সাংবিধানিক সঙ্কট না থাকিলেও তাঁহাদের সেই সঙ্কট সৃষ্টিতে তৎপর হইতে হয়, যে জন্য পরে তাঁহাদের শীর্ষ আদালতের সংবিধান বেঞ্চ কিংবা রাষ্ট্রপতির দ্বারা প্রকাশ্যে ভর্ৎসিত হইতে হয়? অন্তত তিনটি রাজ্যের (গোয়া, ঝাড়খণ্ড ও বিহার) রাজ্যপালরা এই প্রশ্ন তুলিয়া কেন্দ্রীয় শাসক গোষ্ঠীকে বিব্রত করিতে পারিতেন। কেননা এই তিন জনই সম্প্রতি ঝড়ের কেন্দ্রে অবস্থান করিয়াছেন এবং বিরোধীরা তাঁহাদের বিরুদ্ধে কেন্দ্রের এজেন্ট হিসাবে কাজ করার অভিযোগও আনিয়াছেন। তিন রাজ্যপালের কাজের বৈধতা লইয়াই আদালতে মামলা রুজু হইয়াছে, রাষ্ট্রপতি ভবনে সংখ্যাগরিষ্ঠ বিধায়কদের কুচকাওয়াজ তাঁহাদের সিদ্ধান্তের নৈতিকতা লইয়া প্রশ্ন তুলিয়াছে।

কিন্তু রাজ্যপাল সম্মেলনে কেহই এই অস্বস্তিকর প্রশ্ন তোলে নাই। তাহা কি এই কারণেই যে তিন রাজ্যপালই প্রবীণ দলীয় রাজনীতিক এবং নিজেদের দীর্ঘ রাজনৈতিক জীবনের একটি সামরিক বিরামচিহ্ন রূপে তাঁহারা রাজভবনের মেয়াদ পূরণের অপেক্ষায়? তাঁহাদের কি এই আশা নাই যে, মেয়াদ ফুরাইলেই এবং শাসক দলের স্বার্থ সিদ্ধ করিতে পারিলেই ভবিষ্যতে আরও গুরুত্বপূর্ণ ও লাভজনক দায়িত্ব দলীয় হাইকমান্ড তাঁহাদের উপর ন্যস্ত করিবে? এমনই চির কাল চলিয়া আসিয়াছে। যে দল যখন কেন্দ্রে ক্ষমতাসীন হয়, রাজ্য-রাজ্যে সেই দল তখন আগের জমানার রাজ্যপালদের অপসারিত করিয়া দলীয় রাজনীতিকদের দিয়া রাজভবনগুলি ভরাট করিয়াছে। সাধারণত দলীয় নেতৃত্বের কাছে অস্বস্তির কারণ হইয়া ওঠা বিক্ষুব্ধ মনসবদাররাই রাজ্যপাল পদের জন্য মনোনীত হইয়া থাকেন। তাঁহারা ধরিয়াই লন, নির্বাচিত সরকারগুলিকে কেন্দ্রীয় শাসক গোষ্ঠীর অভিপ্রায় অনুযায়ী পরিচালিত করাই তাঁহাদের কাজ, যাহা ঠিক মতো করিলে পুরস্কার জুটিবে। রাজ্যপাল পদকে রাজনীতির উর্ধ্ব, বিতর্কের উর্ধ্ব রাখিতে হইলে এই পদে দলীয় রাজনীতিকদের নিয়োগ কঠোর ভাবে বন্ধ হওয়া উচিত। কেন্দ্র-রাজ্য সম্পর্কের পুনর্নির্ন্যাসের সম্ভাবনা খতাইয়া দেখিতে গঠিত সরকারিয়া কমিশনও অনুরূপ সুপারিশ করিয়াছিল। তাহাতে ধূলা পুরু আস্তরণ জমিয়া গিয়াছে। যখন এস সি জামির বা বুটা সিংহের মতো পোড়-খাওয়া রাজনীতিকরা বিরোধী শাসিত রাজ্যের রাজ্যপাল হন, তখন রাজ্যগুলির নির্বাচিত শাসকদের প্রমাদ গোনা স্বাভাবিক। বাস্তব অভিজ্ঞতাও দেখাইয়াছে, এ শঙ্কা অমূলক নয়।

যাবতীয় বিতর্কের অবসান ঘটানো যায় রাজ্যপাল পদটিরই অবলোপ ঘটাইলে। এই পদের যা কার্যকারিতা, তাহা স্বরাষ্ট্র মন্ত্রকের সচিব স্তরের অফিসারকে দিয়াই করা যায়, সে জন্য বিপুল আড়ম্বর ও ব্যয়বাহুল্যের প্রয়োজন নাই। তবু যদি পদটি রাখিতেই হয়, তবে রাজনীতিকদের নিয়োগ বন্ধ হওয়া জরুরি। অন্তত এমন নিয়ম হওয়া উচিত যে প্রাক্তন রাজনীতিকরা কেবল এই শর্তে রাজ্যপাল নিযুক্ত হইতে পারিবেন যে রাজভবনের মেয়াদ ফুরাইবার পরবর্তী দশ বা পনেরো বছর তাঁহারা সক্রিয় রাজনীতিতে যোগ দিতে পারিবেন না। এই শর্তে মোতিলাল ভোরা, মদনলাল খুরানা, সুন্দর সিংহ ভাণ্ডারী, বুটা সিংহ, এস সি জামিরের মতো রাজনীতিগতপ্রাণ ব্যক্তিরাজ্যপাল হইতে কোনও উৎসাহই বোধ করিবেন কি? রাজভবনগুলিকে অবসরপ্রাপ্ত রাজনীতিকদের পিছরাপোল হিসাবে ব্যবহার করার প্রবণতাও হ্রাস পাইবে। যদি দক্ষ প্রশাসনিক অফিসার বা আমলারা বেশি-বেশি করিয়া এই পদে নিযুক্ত হন, তবে নির্বাচিত রাজনৈতিক কর্তৃপক্ষকে হেনস্থা করার অভিসন্ধি হইতেও রাজভবনগুলি কতকাংশে মুক্ত হইতে পারিবে।

"Governors can act as watchdogs"

J. Comptin
HD-1
16/6/05

Manmohan's four-point mantra

Special Correspondent

NEW DELHI: Prime Minister Manmohan Singh asked the Governors on Wednesday to use the autonomy of their office "to do good" in these "turbulent times." He told them that they worked under "public scrutiny" and they must "rise above partisan politics while discharging Constitutional obligations."

Dr. Singh was speaking on the concluding day of the two-day conference of Governors at the Rashtrapati Bhavan and appeared keen to "leave behind some thoughts about the evolving nature of the role and functions of this august office. The Prime Minister gave a four-point mantra on how the Raj Bhavan residents should deal with difficult situations: first, "you are the sole judge of what is right and wrong;" second, it is your judgment as "to what is mandated to you as per the Constitution and what is not;" third, judge "what is in the larger national interest and what is not"; and last, "what do people perceive your actions to be."

Like President Abdul Kalam on Tuesday, Dr. Singh too did not refer to the recent controversial decisions of the Governors of Goa, Jharkhand and Bihar. However, he suggested that the Governors play a proactive role as "the representatives of the Centre in the States" and "to bring a national perspective to State-level actions."

The Governors had a role in ensuring the economic development process. "There is a need to make our growth processes more inclusive; to ensure that the marginalised and weaker sections benefit from economic growth; and to ensure that social

infrastructure, particularly in health and education, is improved."

Dr. Singh suggested that "the Governors must guide Chief Ministers and help them deal" with the internal security situation. "They can act as watchdogs and alert the State and Central Governments to any developments or trends which they perceive may have adverse implications in the long run." In particular, "in our country, symbols and gestures matter. Nothing should be done which detracts from the authority of the Indian State and its primary role as an upholder of public order. The Governors have a role in ensuring this."

The Governors also had a responsibility to ensure "communal harmony" and the welfare of the Scheduled Tribes and the Scheduled Castes. On inter-State disputes, Dr. Singh thought "there is a need for [the] Governors to play the role of elder statesmen in ensuring that inter-State issues are handled with sagacity without spilling over as major disputes and often, as law and order problems."

The Prime Minister said, "Governors can use the influence at their command to ensure that civil services are well managed, that there is security of tenure and that their morale is kept high."

On the second day, the President gave a power presentation, while the Union Finance Minister, P. Chidambaram made out a convincing case for VAT. Minister for Human Resource Development Arjun Singh spelled out his Ministry's perspective on the role of Governors as chancellors and there was a heated discussion on the subject.

16 JUN 2005

THE HINDU

President turns preacher for governors

Our Political Bureau
NEW DELHI 14 JUNE

RECENT developments in Goa, Jharkhand and Bihar are inviting the charge that governors and their 'political bosses' are unwilling to submit to the constraints of democratic institutional arrangements. In the light of this, President APJ Abdul Kalam on Tuesday exhorted governors not to "remain caged in the confines of the political world or ancestry."

Inaugurating the two-day governors' conference here on Tuesday, Mr Kalam said: "You will all agree that the Constitution has provided for a special role for the governor. It is a position with sanctity. Governor's office is a beacon light in the affairs of the State."

This assertion of the President is significant as it shows Rashtrapati Bhavari's unease with the unwholesome reflexes of some of the occupants of Raj Bhavan. Mr Kalam said while there were many checks and

balances provided by the Constitution, the office of the governor was bestowed with the independence to rise above the day-to-day politics and override compulsions either emanating from the central system or the state system.

"The governor's role is to distil the best of aspirations of the people from the vicissitudes of politics. It is like preserving the light of dharma. The governor by definition and in the spirit of our Constitution is the first citizen of the state. You have to decide whether you rise to be a first citizen or remain caged in the confines of your political or any other ancestry," the President said.

In what is seen as the President's disapproval for the continued political loyalties of governors, he said: "If you continue to nurture certain affiliations, many will hesitate in approaching you with suggestions and problems. This will lead to your isolation". Opening the two-day conference, attended by vice-president Bhairon Singh Shekhawat, Prime

Minister Manmohan Singh and his senior Cabinet colleagues, Dr Kalam asked the governors to preserve their "dharma" (righteousness) while the central and state governments come forward to "hedge their post-retirement life" in dealing with contingencies during times of political crises.

Among the issues likely to be deliberated at the twice postponed governor's meet are security, border management and disaster management. Speaking on security imperatives and border management, the President said the "covert intervention by hostile elements from across the border has been posing a grave threat to our national security and integrity". He referred to co-operation extended by Bhutan in flushing out militants engaged in terrorist activities against India, and called for similar partnerships with other neighbours to "send a message throughout the region that violence and terrorist activities will not be tolerated".



Go by Constitution, Governors told

Rise above partisan politics, says Kalam

Special Correspondent

NEW DELHI: President A.P.J. Abdul Kalam on Tuesday urged Governors not to "remain caged in the confines of [your] political or any other ancestry" and told them that their "dharma" was to "distil the best of aspirations of the people from the vicissitudes of politics."

Inaugurating the biennial conference of Governors at the Rashtrapati Bhavan, he reminded them that theirs was a "mission of righteousness" and wondered whether they could collectively say that "today such a well intended position is upheld by each one of us?"

Without mentioning the recent controversies over gubernatorial decisions in Jharkhand, Goa and Bihar, Mr. Kalam noted that "the Constitution has pro-

vided for a special role for the Governor. It is a position with sanctity. "The Governor's office is a beacon of light in the affairs of the State. While there are many checks and balances provided by the Constitution, the office of the Governor has been bestowed with the independence to rise above the day-to-day politics and override compulsions either emanating from the Central system or the State system."

• **Constitution provides a special role for Governor**

• **It is a position with sanctity**

• **A beacon of light in the affairs of the State**

Exhorting the Governors to rise above the partisan politics of their parent bodies, he warned, "if you continue to nurture certain affiliations, many will hesitate in approaching you with suggestions and problems. You will be isolated from a large number of people. That is not the purpose of the Raj Bhavan."

Besides the Governors and Lieutenant-Governors of all States and Union Territories, Vice-President Bhairon Singh Shekhawat, Prime Minister Manmohan Singh and Ministers are taking part. Dr. Singh and Mr. Shekhawat are scheduled to address the meet on Wednesday. Union Home Minister Shivraj Patil gave a presentation on internal security.

Photo on Page 12

Bihar Guv order challenged in SC

HT Correspondent
New Delhi, May 30

HT-3/5
Constitution

THE DISSOLUTION of the Bihar Assembly has been challenged in the Supreme Court.

A public interest litigation, filed on Monday, has contested the constitutional validity of the May 23 notification of the Union home ministry on the Presidential proclamation on this. The petition filed by Shiv Kumar Prasad Singh, a candidate who unsuccessfully contested the 2000 polls in Bihar, also sought a stay on the election process till the apex court disposed of his election petition.

As per the Constitution, the Election Commission has to hold fresh elections within six months of the dissolution of any House.

The petition stated that the Governor's recommendation to dissolve the Assembly lacks bona fides and amounted to a "colorable exercise of a constitutional power". Besides "frustrating the mandate of the electorate", "indiscreet exercise of the power has plunged the state into yet another general election within a short period of some months", the PIL said. Alleging that the Governor had acted in "haste" to prevent a non-RJD government from coming to power, the PIL stated. "It is flabbergasting to note that the Governor has acted on the basis of baseless engineered media reports that the MLAs had become subjects of sale and purchase," the petition said.

"...If such a thing had really happened and the Governor ...had any solid evidence about any MLA, he could have proceeded against him in law," it said.

EC report today: The two-member Election Commission team, which visited Bihar to assess the preparations for Assembly elections, apprised the Election Commissioners on Monday and is expected to submit its report on Tuesday. Sources said EC too was contemplating holding Bihar polls after September. "Weather will be an important factor since large parts of the State are flooded during the monsoon. Then we have to keep in mind the festival season also," an official remarked.

31 MAY 2005 THE HINDUSTAN TIMES

Press Trust of India

NDA demands Buta's recall

Paswan dumped

PATNA, May 25. — Stepping up its offensive against Governor Mr Buta Singh for dissolution of the state Assembly, the NDA today said that the alliance would launch a series of agitational programmes against the Governor for resorting to "dictatorial step" to prevent Mr Nitish Kumar from forming government.

"We will embark on a series of agitational programmes and hold a massive rally here on 25 June to press for removal of Mr Singh who has lost moral rights to continue after the dissolution of the House on film-sy and illegal grounds", NDA state convener Mr Nand Kishore Yadav, BJP state pres-

ident Mr Gopal Narayan Singh and his JD-U counterpart Mr Vijendra Yadav told a joint press conference here.

Mr Nand Kishore Yadav and Mr Vijendra Yadav said that a meeting of BJP and JD-U legislators of the dissolved House recalled that former Prime Minister Indira Gandhi had added a black chapter in the history by declaring emergency in the country on 25 June, 1975.

"We chose to organise our rally on the same day in June to protest against the dissolution of the state Assembly", they said adding "we will expose the murderers of democracy the same day."

On the allegation of the NDA indulging in horse-trading of LJP MLAs and their abduction, JD-U leader asked

The rebel LJP leaders claiming support of 21 MLAs today categorically rejected the leadership of Mr Ram Vilas Paswan and said they would move the Supreme Court against the dissolution of the Assembly. They held a meeting at Mr Munna Shukla's residence which was attended by expelled state unit chief Mr Narendra Singh and Mr Nagmani. "We have called a meeting here in the first week of June to decide whether to float a new party or merge with the NDA," Mr Singh said.

Also today Pro-Paswan LJP leaders Mr Suraj Bhan Singh and Mr Satish Kumar said Mr Buta Singh should order a CBI inquiry into the allegations of horse-trading. Both the NDA and the RJD were responsible for the dissolution of the Assembly, they said. — PTI

why didn't the Governor take a legal action against "the perpetrators of horse-trading or abductors of the MLAs when he claimed to have a definite information about the worst-type of horsetrading taking place in Bihar".

CPI pins hopes on Bihar polls

The CPI which won three Assembly seats against the CPI-M's one in February polls in Bihar is buoyed by the possibilities of making further gains in the next Assembly elections.

26 MAY 2005

THE STATESMAN

President Kalam signs Proclamation in Moscow to dissolve Bihar Assembly

Dissolution will need approval of Parliament; Government cites 'horse-trading'

Special Correspondent

NEW DELHI: President A.P.J. Abdul Kalam signed a Proclamation to dissolve the Bihar Legislative Assembly on the advice of the Union Cabinet late on Sunday night. The Union Cabinet decided on the dissolution after considering the report of the Bihar Governor, Buta Singh.

Although the Bihar Assembly was already under suspended animation, the Proclamation of dissolution will require fresh approval by both Houses of Parliament and remains open to legal challenge. This is the constitutional position following the Supreme Court's 1994 judgment in the Bommai case.

The Government received the approval from the President, away in Moscow on an official visit, in the early hours of Monday after Prime Minister Manmohan Singh spoke to him, explaining the reasons for the Cabinet decision. However, it is learnt that before the Cabinet formally made the request to the President, he was informally sounded out on the probable request. President Kalam, in turn, consulted his legal advisers, based in Rashtrapati Bhavan, before he communicated to Dr. Singh that he would give his consent to the Cabinet's recommendation.

Before the Prime Minister took the decision, almost all the United Progressive Alliance partners and supporters were consulted. Dr. Singh spoke to the DMK president, M. Karunanidhi, and the CPI(M) leaders, Pra-

kash Karat and Harkishan Singh Surjee. Further, all the senior Congress Ministers — Pranab Mukherjee, Shivraj Patil, P. Chidambaram, and Hansraj Bhardwaj — were taken into confidence before the Cabinet formally met. Congress president Sonia Gandhi was also consulted but she is understood to have expressed the view that the Cabinet was the competent body to take a decision.

Explaining the rationale for the dissolution, Union Home Minister Shivraj Patil cited the Governor's report. "Since the situation was worsening in the State, the Union Cabinet accepted the recommendations of the Bihar Governor and recommended [the] dissolution of the Assembly to the President," he said.

Talking to reporters, Mr. Patil said the Governor had sent two reports to the Centre over the past few days. While the first report had made a mention of "horse-trading" of MLAs, the report on Sunday recommended the dissolution of the Assembly, which had been kept under suspended animation since no party or alliance could cobble together a majority to form an elected Government. "It is now for the Election Commission to hold fresh Assembly elections in Bihar," Mr. Patil said.

The Governor's report referred to "unconstitutional and illegal methods being taken by political parties to win over MLAs." The Centre had similar information, which was corroborated by some political leaders



NDA UPSET: Janata Dal (United) leader Nitish Kumar puts across the Opposition NDA's anger over the dissolution move at a press conference in New Delhi on Monday. To his left are George Fernandes and Atal Bihari Vajpayee, who alleged "murder of democracy." — PHOTO: V. SUDERSHAN

from the State.

Mr. Patil said the Centre was aware of the efforts being made to fly some MLAs from Jamshedpur to other places. "To prevent the situation from worsening and getting further polluted, the Cabinet decided to dissolve the House." Once the dissolution takes effect, the Election Commission has to decide when the polls should be held. "The Commission's jurisdiction is absolute. The Government has no say in it and whatever they decide has to be followed," he said.

Asked if the UPA Government

had acted under pressure from the Rashtriya Janata Dal (RJD) and about the NDA's criticism that it was a "murder of democracy," Mr. Patil observed: "Somebody has to say something. We don't have to go by what others say. We have to go by our understanding and as to what is correct."

Mr. Buta Singh dismissed the charge that he had acted under pressure and defended his recommendation for dissolution of the Assembly. His explanation was that it was to prevent "horse-trading" in the name of government formation in Bihar.

It was his "biggest fear" that MLAs were being bought and made to sign papers under duress. "My recommendation was to save democracy and prevent [the] law and order situation from going out of hand," he told

reporters. As Governor he would never have permitted the "illegal, undemocratic and unconstitutional." The Cabinet was told that each of the Lok Jan Shakti Party MLAs, who had reportedly crossed over to the National Democratic Alliance, was paid huge cash incentives. The NDA denounced the dissolution. Its leadership hinted at a legal challenge to the Proclamation.

The Congress, the CPI(M), and the CPI argued that there was no alternative. The two main antagonists — Ram Vilas Paswan and Lalu Prasad — endorsed the dissolution, although for different reasons.

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More reports on Page 12

Assent came in the early hours

K.V. Prasad

MOSCOW: President A.P.J. Abdul Kalam was awake till 1.30 a.m. local time (3 a.m. IST) before he gave his assent to the decision of the Union Cabinet to dissolve the Bihar Legislative Assembly.

While accepting the recommendation, Mr. Kalam advised the Government to appoint knowledgeable advisers to the Governor as early as possible in order to facilitate a smooth functioning of the administration, official sources said.

Ahead of sending in the

crucial Cabinet decision, Prime Minister Manmohan Singh telephoned Mr. Kalam at 10 p.m. local time informing him of the developments.

The requisite papers were transmitted to the President's office here an hour later.

The Presidential assent was faxed back to Delhi by 1.30 a.m. completing the first stage of the constitutional process of dissolving the Assembly.

Mr. Kalam studied the Cabinet recommendation and the Bihar Governor, Buta Singh's report, which highlighted horse-trading among legislators.

Constitution

Horse trading: Buta Singh monitoring reports

Mr. Singh
2/2/05

"Confinement" of party MLAs won't lead to split: Paswan

Special Correspondent

NEW DELHI: Bihar Governor Buta Singh said on Saturday that he was monitoring reports of "horse trading" in Bihar for forming a government in the State. Bihar went to the polls in February but President's rule was imposed as none of the parties could cobble together a majority in the 223-member Assembly.

Mr. Singh, who met Union Home Minister Shivraj Patil, here said he had taken "serious note" of reports that some of the

al authority," he told reporters after meeting the Home Minister.

While not commenting on the political situation in the State, Mr. Singh said that his duty was to uphold the constitutional values and norms. Informed sources said the Governor and Mr. Patil discussed the situation in Bihar, particularly in the wake of rapid political developments that have rattled Ram Vilas Paswan's Lok Janshakti Party (LJP) which has 29 MLAs in the Assembly. Mr. Paswan has maintained that the "confinement" of

some of his party MLAs in the opposition ruled Jharkhand would not lead to a split. "They will not be able to muster the two-thirds needed for the purpose," he told reporters. Reports speak of about a dozen of the 29 LJP MLAs having gone to Jamshedpur.

He did not directly blame any party but said he suspected the involvement of either the NDA or the RJD. "I don't know exactly. But both the NDA and the RJD could be behind it as the path in which LJP was traversing was not favourable to both."

• Will uphold Constitution: Governor

• Discusses situation with Union Home Minister

MLAs had been taken to Jamshedpur in Jharkhand and that efforts were being made to lure away others to put together a majority. "I am keeping a strict watch over all developments and reports. I will not allow any immoral and unconstitutional means to erode the constitution-

SATURDAY, MAY 14, 2005

Accountability & the right to information

The Right to Information Bill, 2005 goes a long way in putting together a comprehensive mechanism for citizens to secure information under the control of the Government and thereby (as the statement of objects and reasons asserts) promotes “transparency and accountability in the working of every public authority.” This landmark legislation is a radical improvement on the relatively weak and ineffective statute it seeks to replace, the Freedom of Information Act, 2002. The new legislation unequivocally confers on all citizens the right of access to information and, correspondingly, makes the dissemination of such information an obligation for all public authorities. An outstanding feature of the Bill is the provision for Information Commissions — independent high-level bodies at both the Central and the State levels that are dedicated to encouraging the citizen’s right to know and enforcing the provisions of the Act. By empowering these Commissions to act as appellate authorities and by vesting them with the powers of a civil court, these bodies have been given the teeth to discourage public authorities from refusing to part with information.

Although it is based substantially on the bold draft prepared by the National Advisory Council headed by Sonia Gandhi, the Right to Information Bill contains a few provisions that have diluted its effectiveness. The provision in the original draft that criminal liability, with punishment by imprisonment, would extend to those who furnished false information or those who destroyed it has been deleted. Another important change relates to the selection of the Information Commissioner and his or her deputies. The draft Bill envisaged their selection by a team comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha, and the Chief Justice of India (CJI). However, the Bill as passed by the two Houses has amended the draft to replace the CJI with “a Union Cabinet Minister to be nominated by the PM,” thus making the selection process somewhat more partisan. These and some other flaws in the Bill should not detract from the fact that it is a substantial improvement over the Freedom of Information Act and other ‘freedom of information laws’ passed by various States from 1997 onwards. While the right to know is not explicitly spelt out in the Constitution, the Supreme Court has held in several cases that this right is inherent in the right to freedom of speech and expression (Article 19) as well as the right to life and liberty (Article 21). The effectiveness of the Right to Information Act will depend substantially on how prepared the Central and State Governments are in implementing it — in both letter and spirit. The very fact that it will be in the statute books will send out an important message to all public authorities. The disclosure of information is no longer a transgression but an obligation. Conversely, its withholding is no longer a virtue but an offence.

14 MAY 2005 THE HINDU

Transparency with pep talk

OUR SPECIAL
CORRESPONDENT

New Delhi, May 11: Prime Minister Manmohan Singh today urged the bureaucracy to look at the right to information bill in a positive light as it aimed at eliminating corruption at all levels of governance.

"I would only like to see that everyone, particularly our civil servants, should see the bill in a positive spirit, not as a draconian law for paralysing government, but as an instrument for improving government-citizen interface," he said before the Lok Sabha adopted the bill by voice vote.

As many as 150 amendments were accommodated in the draft bill that was introduced in the last session of Parliament and then examined by a parliamentary standing committee.

The bill is expected to be carried through in the Rajya Sabha tomorrow.

Singh's appeal to civil servants came in the backdrop of reservations that the right to seek information from the government should not be an enforceable one.

The bill provides for accessing information in a simple, easy and time-bound manner and envisages stringent penalties for failing to provide information or affecting information flow in any way.

ACCESS POWER

What the UPA bill says

- Information commissions to be set up at central and state levels
- Overrides the Official Secrets Act. Commissions to allow access to information if public interest outweighs harm to protected persons
- All categories of exempted information to be disclosed after 20 years except cabinet deliberations and information that affects security, strategic, scientific or economic interests, relations with foreign states or leads to incitement of offence
- Information will be free for people below poverty line. For others, fee will be reasonable
- Also covers NGOs funded by the government
- Makes it the responsibility of the government to provide information suo motu to reduce requests for information
- 30-day deadline for providing information; deadline is 48 hours if information concerns life or liberty of a person

Emphasising that the bill imposed an obligation on agencies to disclose information suo motu, the Prime Minister said erring officials would be subjected to departmental proceedings. However, a penalty clause in the draft bill that envisaged imprison-

● Exempts intelligence and security organisations unless information pertains to allegations of corruption or human rights violations

● Penalty for delay in providing information, without reasonable cause, shall be Rs 250 for each day and up to a maximum of Rs 25,000

How to appeal if denied information

● First appeal to superior of public information officer

● Second appeal to information commission

● Third appeal to high court

What NDA's Freedom of Information Act lacked

1) Concept of penalties

2) Independent system of implementation

3) Act was secondary to Official Secrets Act and other laws

4) Gave absolute exemption to security and intelligence agencies

ment was omitted by an amendment.

The bill entitles citizens to seek information from the Union and state governments, panchayati raj institutions, local bodies and recipients of government grants. Singh said the access to

information would be extensive with minimum exemptions.

Even the exemptions could be questioned on the basis of a "public benefit test", he said. Such a test would check whether the benefit of releasing information outweighs the harm caused by disclosure.

Singh said exemptions could be made in cases where releasing information would entail a breach of privilege of Parliament or legislature. Security and intelligence agencies were exempt unless the information sought involved corruption allegations or human rights violations, he said.

To enforce the right, the bill envisages setting up an independent appeal mechanism at the central and state levels, headed by information commissioners. This would give "teeth to the right, making the right a potent instrument" for good, effective and transparent governance, the Prime Minister said.

He hoped the legislation would help convert huge budgetary "outlays into outcomes" for the benefit of the *aam aadmi*.

Singh also expressed gratitude to the Sonia Gandhi-led National Advisory Council which took the initiative to draft the legislation as promised in the common minimum programme.

12 MAY 2005

THE TELEGRAPH

BHARDWAJ BREAKS RANKS, MAKES BJP'S DAY

Law minister socks it to Saptharishi

Statesman News Service

NEW DELHI, May 9. — In a rebuff to the Union railway minister, Mr Lalu Prasad's tirade against the two election commissioners that provided a boost to the BJP's position, Union law minister Mr HR Bhardwaj today broke ranks with his Cabinet colleague and made it clear that the authority of a constitutional body like the EC could not be challenged. The Congress fell in line and backed Mr Bhardwaj.

Mr Bhardwaj today virtually asked Mr LV Saptharishi — whose letter to him against Mr BB Tandon and Mr N Gopaldaswamy was the basis of Mr Prasad's demand for their resignation — to shut up.

The ministry concerned should examine whether disciplinary action could be taken against the official, he said. On Mr Saptharishi's letter, Mr Bhardwaj said: "I have no such letter. I cannot tell you if there is any other minister under whom he is working and he has that letter. He can certainly call for the civil servant's explanation."

"It is not proper for an officer to criticise any constitutional authority."

Election Commission briefs Kalam

NEW DELHI, May 9. — The chief election commissioner, Mr TS Krishnamurthy, along with the two election commissioners, Mr BB Tandon and Mr N Gopaldaswamy, called on the President, Dr APJ Abdul Kalam, today to inform him of the "factual position" in the controversy. A detailed report was handed over to Dr Kalam outlining the sequence of events leading up to the countermanding of the polling in Chapra in addition to the rebuttal to Mr Saptharishi's charges, EC sources said. Though the meeting was meant to be Mr Krishnamurthy's "farewell call", the issue figured at the meeting with Dr Kalam all right. Mr Krishnamurthy retires on 16 May and will be replaced by Mr Tandon on the same day. — SNS

The BJP attributed Mr Saptharishi's allegations against the ECs to a "quid-pro-quo agreement" between the rural development minister, Mr Raghuvansh Prasad Singh of the RJD and him. The BJP demanded that all documents relating to Mr Saptharishi a week prior to his letter be made public.

"This official wrote against the election commissioners on 6 May, 2005. Around the same time, Mr Raghuvansh Prasad was trying to make sure Mr Saptharishi was given a post-retirement three-year extension as director-general, Capart (which comes under the rural development ministry)," the BJP general secretary, Mr Arun Jaitley, alleged.

Referring to the "appreciation" bestowed by him

upon Mr Saptharishi during his tenure as law minister, Mr Jaitley said that the government had leaked some annual confidential reports to "add to the credibility of this dubious claim".

While Mr Prasad stuck to his demand, the Congress criticised Mr Saptharishi for allegedly breaching the service code of civil servants by shooting a letter to a minister.

Mr Prasad, after a 15-minute meeting with Mrs Sonia Gandhi, said it was for the government to initiate action. "I want the two to step down on their own in the wake of Mr Saptharishi's charges."

The Congress does not want to take on the EC at the behest of Mr Prasad, who has given it more than enough to worry about.

Another report on page 5

10 MAY 2005

THE STATESMAN

Legislature vs judiciary

A controversy, whether the Supreme Court and the High Courts are empowered to interfere with the functioning of the legislative bodies, has been raked up at the national level. This is in the context of the fact that under Articles 122 and 212 of the Constitution, proceedings of Parliament (Article 122) and of state legislatures (Article 212) are not subject to scrutiny even by the higher judiciary in India.

The instant provocation behind the controversy was the political development which forced Arjun Munda, NDA leader in Jharkhand, to seek the Supreme Court's intervention on the grounds that his fundamental right which he was supposed to enjoy as the leader of the majority members of the Jharkhand Assembly had been violated by certain arbitrary and unconstitutional steps undertaken by Syed Sibte Razi, Jharkhand Governor.

Mr Razi had invited Shibu Soren, leader of the minority members, to form the Jharkhand government and permitted him so much time to prove his government's majority on the floor of the House that there was prima facie reason to believe that Mr Soren might resort to horse trading to prove his government's majority in the House.

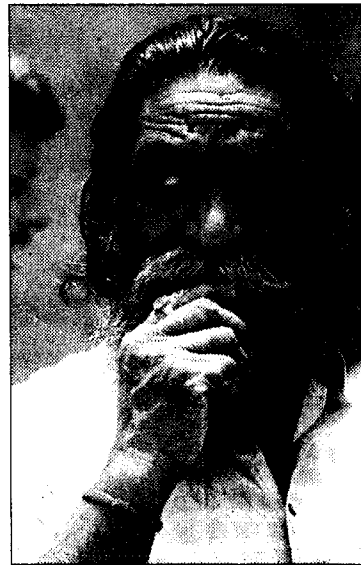
Mr Munda's writ petition under Article 32 of the Constitution was entertained by the Supreme Court in such a manner that it neither declared the Jharkhand Governor's action over inviting Mr Soren first to form a government unconstitutional nor rejected squarely the allegations made by Mr Munda on the manner in which the trial of strength would be perpetrated by the Soren government in the Jharkhand Assembly.

For the trial of strength in the Jharkhand Assembly to be free and fair, upholding the best traditions of a parliamentary democracy, the court issued certain directives.

Whether the Supreme Court can issue such directives on the manner of holding business in the Assembly on a motion of confidence is the moot question. The Supreme Court (or for that matter the High Courts) is the protector and guarantor of fundamental rights. The Supreme Court and the High Courts occupy unique positions in the sense that the Constitution has entrusted the responsibility of protecting and guaranteeing the fundamental rights to no other agency.

To accomplish their constitutional roles, the Supreme Court and the High Courts may issue "directives" to the "state" in the form of writs. The word "State" here refers to "...

In the backdrop of the controversy over whether the Supreme Court and High Courts are empowered to intervene in the functioning of legislative bodies, SUBHENDU MAJUMDAR draws attention to the Keshav Singh case



The Jharkhand cauldron: Arjun Munda, Syed Sibte Razi and Shibu Soren.

the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." (Article 12).

Whenever a writ is issued by the Supreme Court or a High Court, it cannot be challenged on the ground that the courts cannot interfere with the proceedings of a state legislature and/or Parliament. Conversely, if, in the court's opinion, it appears that the proceedings of a legislative body or for that matter the activities of a legislative body are hampering or likely to hamper the fundamental rights of an individual, the court may take necessary measures and issue appropriate orders to protect the fundamental rights of the aggrieved person, irrespective of the fact that it may or may not interfere with the proceedings of a legislative body. This was demonstrated in the landmark Keshav Singh's case (1963).

Keshav Singh, a non-member of the Uttar Pradesh legislative Assembly, had committed a contempt of the House. He was produced before the House and the Speaker reprimanded him in the name of the House. After a resolution adopted by the House, he was sentenced to imprisonment for seven days and sent to the district jail, Lucknow.

B Solomon, an advocate, filed a petition, representing Mr Singh, to the Lucknow Bench of the Allahabad High Court under Section 491 of the Criminal Procedure Code and under Article 226 of the Constitution, against the Speaker of the House, the House, the Uttar Pradesh Chief Minister and the Superintendent of the district jail, Lucknow, praying that he be released on the ground that his detention after the reprimand had been administered to him, was illegal and without any authority and further pleaded that pending the disposal of his petition, he be ordered to be released on bail.

The petition was admitted by the High Court and Mr Singh was released on bail that day pending disposal of the writ petition.

After this incident, the Uttar Pradesh legislative Assembly adopted a resolution that the two judges by way of entertaining Mr Singh's petition and ordering him to be released on bail, had committed a contempt of the House. The House ordered that the two judges be taken into custody and brought before the House. The two High Court judges immediately filed petitions to the Allahabad High Court under Article 226 of the Constitution praying for a writ of mandamus for restraining the House.

A full Bench of the Allahabad

High Court, consisting of 28 judges, admitted the petitions of the two judges on the same day and restrained the Speaker from issuing any arrest warrant against the two judges.

Later, the Speaker withdrew the arrest warrants but the Committee of Privileges issued notices to the two judges to appear before it for submitting their explanations as to why had the court ventured into the exclusive domain of the legislature.

By the time when such a dangerous tussle between the Uttar Pradesh Assembly and the Allahabad High Court was going on unabated, Dr S Radhakrishnan, the then President, after a Cabinet decision, made a Special Reference to the Supreme Court by virtue of the power conferred upon him by Article 143(1) of the Constitution. Under this Article, the President sought opinion of the Supreme Court regarding the powers and jurisdiction of the High Court and its judges in relation to the state legislature and its officers and regarding the powers, privileges and immunities of the state legislature and its members in relation to the High Court and its judges in the discharge of their duties.

A Supreme Court Constitution Bench consisting of seven judges, presided over by the then Chief Justice of India, PB Gajendra-gadkar, considered the President's

reference. The majority opinion of the Supreme Court (only one judge made a note of dissent), in unequivocal terms established the supremacy of the judiciary over the legislature in so far as the question of protecting fundamental rights was concerned. The Supreme Court's opinion was, inter alia, that

(1) "Prima facie, the power conferred on the High Court under Article 226(1) can, in a proper case, be exercised even against the legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by a House order." Article 226(1) read by itself, does not seem to permit such a plea to be raised. Article 32, which deals with the power of this court put the matter on a still higher pedestal; the right to move this court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what we have said about Article 226(1) is still more true about Article 32(1).

(2) "If a citizen moves the High Court on the ground that his fundamental rights under Article 21 has been contravened, the High Court would be entitled to examine his claim, and that itself would introduce some limitation on the extent of the powers claimed by the House in the present proceedings"

(3) "...the conduct of a judge in relation to the discharge of his duties cannot legitimately be discussed inside the House, though if it is, no remedy lies in a court of law. But such conduct cannot be made the subject matter of any proceeding under the latter part of Article 194(3). If this were not the true position, Article 211 would amount to a meaningless declaration and that clearly could not have been the Constitution's intention".

Keeping in mind the historic opinion delivered by the Supreme Court in Keshav Singh's case, is there really any need to make an acrimonious claim that the court, under no circumstances, can poke into the affairs (proceedings) of a legislature in India?

(The author is a Political Science professor in Chander-nagore College)

বিত্তিকৃত রাজ্যপালের

বিজেপির সংগঠনে

পা নয়াদিহি, ২৬ মার্চ: সজ্জ পরিবারের সঙ্গে 'যোগসাজশ' থাকায় ইউপিএ সরকারের সরিয়ে দেওয়া দুই রাজ্যপালকে জাতীয় পরিষদে জায়গা করে দিলে বিজেপি। দলীয় সভাপতি লালকৃষ্ণ আডবানী জাতীয় পরিষদের জন্য নতুন যে ৪০ জন নেতাকে বেছে নিয়েছেন, সেই তালিকায় আছেন কেদারনাথ সাহনি ও বাবু পরমানন্দ। নতুন তালিকায় আছেন আরও পাঁচ জন প্রাক্তন রাজ্যপাল এবং পাঁচ প্রাক্তন কেন্দ্রীয় মন্ত্রী। উল্লেখযোগ্যদের মধ্যে আছেন এস এস ভাণ্ডারী, ভাই মহাবীর, লেফটেন্যান্ট জেনারেল এস সি জ্যাকব, বিষ্ণুকান্ত শাস্ত্রী, জগমোহন, স্বামী চিন্ময়ানন্দ প্রমুখ। চিত্রতারকা শিবিরের মুকেশ খন্না, গজেন্দ্র চহাণ ও বিজয়শান্তি ঠাই পেয়েছেন পরিষদে। — পি টি আই

LINE OF CONTROL: Goa, Jharkhand will recur unless governors are guaranteed independence

The central problem

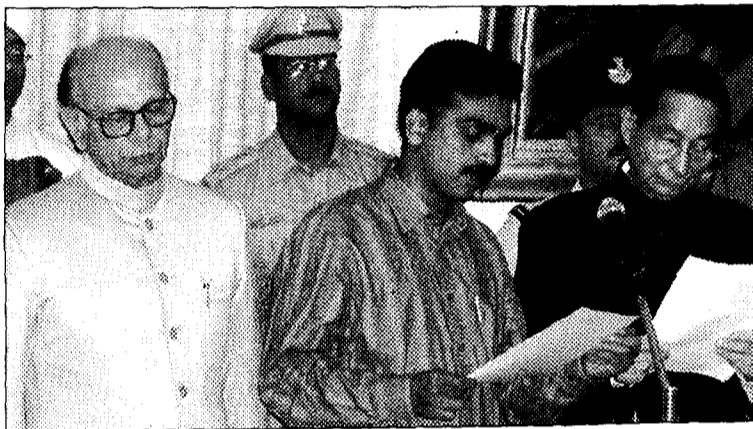
BY K.K. VENUGOPAL

THE RECENT events in Goa and Jharkhand have been disturbing and have been viewed with cynicism by the general public. These throw up serious flaws in our constitutional scheme, especially in regard to the failure of democratic institutions. But, however strange it may seem, I welcome these happenings as these give us an opportunity to revisit the foundations on which our democratic institutions have been established, and, to investigate the cause of these failures.

The institutions that have played a part in the events of the last two months are the governors, the speakers and the courts. First and foremost is the governor, who, under Article 361 of the Constitution, is not answerable to a court of law for anything done or purported to be done in exercise of the powers and duties of his office. Once the governor has appointed a chief minister and asked him to prove his majority on the floor of the House, there arises the immunity. The speaker is the authority to apply the anti-defection law contained in the 'X Schedule' to the Constitution, and is the sole master of the proceedings in the House. The courts, in particular the Supreme Court, have been barred under Articles 361 and 212(2) from questioning the actions of the governor or the procedure and conduct of business by the speaker and the Houses of the legislature.

The experience of the last five decades has demonstrated the frailties affecting the Indian polity and, in particular, that democratic institutions in the country are prepared to exploit the 'silences of the Constitution' for their own political ends. For example, Article 164 merely declares that the chief minister shall be appointed by the governor. It is silent on the considerations that go into the selection and appointment of a chief minister and the procedure to be followed in making the choice. But we do know that the conventions which govern the appointment of the prime minister would equally apply to the choice of a chief minister.

The systemic failures thrown up by the Goa and Jharkhand episodes could be attributed to the absence of safeguards in the Constitution for guaranteeing the independence of the governor, which, at the same time, confers on him vast and un-



SEEING NO EVIL: (From left) Pratapsingh Rane, Filipe Neri Rodrigues, S.C. Jamir

dled powers. Among constitutional functionaries other than the attorney general, the governor alone holds his office at the pleasure of the president, that is, the council of ministers, and is hence removable or transferable at will. Under the cabinet system of democracy, when one speaks of a governor being subject to the will of the central government, it could also mean the will of the political party in power at the Centre. There are a number of instances of governors being dismissed and cases where they have been forced to resign when a different political party comes into power at the Centre.

It is clear that no claim to independence can usually be made by a governor; during the over 100 dismissals of governments under Article 356, the governor never submitted a report against a state government, where the party in power was the same as the ruling party at the Centre. As noted by the Supreme Court in *Bommai vs Union of India*, (1994) 3 SCC 1 (at p. 67): "Since the Constitution came into force, the president has taken action under Article 356 on nearly 100 occasions. On not a single occasion has the action been constitutionally proper. The motivation has uniformly been to displace governments (almost always belonging to rival political parties) and substitute others in their place. The Sarkaria Commission has noticed that most of the instances of exercise of power under Article 356 were wholly improper."

Even though governors had given sanctions for the prosecution of chief ministers, in virtually no case did a

governor grant such sanction when the chief minister's party was the same as the one at the Centre.

These facts speak for themselves. The governors are the eyes and ears of the Centre, without any freedom to act in accordance with their personal judgment. In this background, one need not be overly shocked at aberrations where the governors go to the aid of their political masters whenever there is a 'hung legislature'. We have to blame the system by which the governor is controlled from the Centre and, hence, believes that his future is dependent on his acting in accordance with the mindset of the party at the Centre.

Having, by necessary implication, adopted the conventions of the Constitution, matters stood compounded by the absence of guidelines for the selection of a chief minister, which gives scope for manoeuvrings — for exploiting the vast discretion that the governor possesses. Fortunately, the presidents of India, in the recent past, have been strictly following the principle of inviting the leader of the single largest pre-poll alliance of political parties, as identified by a common manifesto and a common agenda, for forming the government. Now, with the Constitution's 91st amendment Act, changing political allegiance by members of a political party has become impermissible. But, human ingenuity is such that, where constitutional morality is lacking, devices can be found to defeat the system. By resigning from a political party, one can tip the balance in favour of a rival political party and later be compensated by being pre-

sent with any office, with perquisites and status that do not qualify as holding an office of profit.

Every chief minister has at his command a number of such posts for rewarding the venality of those who crossed floors when the law permitted, or the independent members who supported him and those who resigned. It is essential that the 'independents' should not have any say when a governor decides which is the single largest pre-poll alliance of political parties.

It is clear that we cannot afford any more Goas or Jharkhands. This can be achieved only by canalising the discretion of the president and the governors through guidelines catering to different political equations arising after a general election. The guidelines have to be accepted by the governors, as they would otherwise lack constitutional legitimacy. Ideally, the president of India would, at the conference of governors, arrive at a consensual set of guidelines which governors, present and future, would be expected to follow. Equally, the discussions would cover the situation where a prime minister/chief minister loses his majority in the House. Even so, I am afraid that the resolve of a governor may fail unless he is guaranteed his independence.

A committee or collegium consisting of the PM, the leader of the opposition in the Lok Sabha and the speaker would be an ideal combination for selecting the incumbent to the gubernatorial post. As far as the appointment of a governor is concerned, the Constitution review committee suggested that a committee comprising the prime minister, home minister, speaker of the Lok Sabha and the chief minister of the concerned state should select a governor. If the power of appointment, removal, transfer and alterations while in service are all entrusted to this collegium, one can perhaps look forward to the survival of the democratic system embedded in the Constitution — and what is more, perhaps the absence of a need for the Supreme Court to intervene in the highly sensitive area of either the governor's immunity or the privileges and immunity of the legislatures and Parliament, as provided in the Constitution.

The writer is senior advocate of the Supreme Court of India

TUESDAY, MARCH 22, 2005

RESTORING THE BALANCE

THE CONCERN EXPRESSED by the Conference of Presiding Officers of Legislative Bodies convened by the Speaker of the Lok Sabha, Somnath Chatterjee, over court orders that tended to "disturb the delicate balance of power" between the legislature and the judiciary represents an attempt to roll back the dominant role courts have come to play in national affairs. Coming in the wake of the happenings in Goa and in Jharkhand, the call to respect the legislature's right to manage its own proceedings as provided in the Constitution may be dismissed, in some quarters, as seeking a licence for partisan presiding officers to subvert constitutional governance. The larger issue, however, will still remain: the dramatic shift in the balance of power from both the executive and the legislature to the judiciary over the last three decades. In 1964, the Uttar Pradesh Assembly could imagine that it was within its powers to order that two judges of the Lucknow Bench of the Allahabad High Court, who released on bail a person sentenced to imprisonment for contempt of the House, be taken into custody and produced before it — a move that is inconceivable in the present context. It is a measure of how far the balance has shifted that the Supreme Court could, in the Jharkhand case, direct that its own order be taken as notice for the Assembly session that was advanced; put legislators on notice of good behaviour; order the video recording of the proceedings to be produced before it for review; and, contrary to the usual order of business in a new House, direct that the vote of confidence be taken up before any other business including the election of the Speaker.

Over the years, the jurisdiction of courts has seen a continual expansion, but it has not been through institutional self-aggrandisement. The transgressions and defaults of governments and legislatures and the general failure to ob-

serve constitutional conventions have forced the courts to step in amidst public applause, often for the good but at times unnecessarily too. In case a government was not serious about investigating a corruption charge or if a legislature claiming sky high powers ordered the arrest of an individual in the name of exercising its privileges, courts have set things right. On the other hand, the higher judiciary has appropriated for itself the power of appointment of judges, even if it be to remedy a situation of gross misuse by the executive of the power vested in it by the Constitution. It has also gone into such areas as pollution control that are difficult to manage judicially.

In the constitutional scheme, legislatures are allowed to devise their own procedures and manage their proceedings without intervention by courts. Yet if a Speaker were to abandon all scruple and through the device of disqualification or other sleight of hand convert a minority into a majority, what will be the remedy? In such a situation, the courts have a clear duty to intervene but they also need to fashion the remedies in a way that is sensitive to the powers and position of the legislature and not treat it as just another litigant. It was this sensitivity that was missing in the Jharkhand order although its flaws were overshadowed by the enormity of the Governor's wrong and the stalling of the floor test. If the courts then need to rethink the intrusive role they have come to play, the legislatures, which have much to answer for, must demonstrate through their conduct that they are worthy of the confidence placed in them by the Constitution. Were the courts merely to step back without the legislatures and the presiding officers showing a greater commitment to fairness and constitutional norms, the country will find itself in a situation far worse than the constitutional imbalance created by judicial overreach.

"Courts always recognised Parliament's supremacy"

By J. Venkatesan

NEW DELHI, MARCH 20. The Lok Sabha Speaker, Somnath Chatterjee, today asserted that the Supreme Court and the High Courts had consistently recognised the supremacy of Parliament and the Legislative Assemblies in a number of cases.

While so, "I believe [that] in the March 9 interim order of the Supreme Court [relating to the Jharkhand Assembly] the contours of the area of the supremacy of the legislature have been blurred," Mr. Chatterjee said addressing the conference of Presiding Officers of Legislative Bodies.

He said that in the M.S.M. Sharma case of 1960, the apex court had categorically upheld the sovereignty of the legislature in matters pertaining to the power to conduct its own business. The court had said: "No court can go into the questions which are within the special jurisdiction of the legislature itself, which has the power to conduct its own business."

The Speaker said that again in 1970, in the case of Tej Kiran Jain versus N. Sanjiva Reddy, the apex court had upheld the constitutional guarantee with regard to immunity of parliamentary proceedings in respect of anything said in the House or any Committee thereof. It had clarified that "anything" was equivalent to "everything." He said this was further reinforced in the impeachment proceedings of Justice V. Ramaswami, a Supreme Court Judge, when the apex court held that Parliament was sovereign with respect to the conduct of its own business and the courts could not have any say

in that.

He said that as early as in 1953 the Madras High Court in the A.K. Gopalan case had held that the powers of each of the three organs had to be exercised as fundamentally subject to the provisions of the Constitution relating to that organ individually as well as to the provisions relating to the other organs.

Further, in the case of Raj Narain versus Atmaram Govind Kher, the Allahabad High Court in 1954 held that the High Court had no jurisdiction to issue a writ, direction or order relating to a matter, which affected the internal affairs of the House.

On the contention that the apex court in 1998, in the case of Jagdambika Pal vs Union of India, had ordered a special session of the Uttar Pradesh Assembly with the sole agenda of conducting a "composite floor test" to decide who among the two claimants to the post of Chief Minister enjoyed the majority, Mr. Chatterjee said "it was not a speaking order and no reasons were given in support of the same."

Therefore, he said, such an order could not be treated as a decision on the entire gamut of the principles of separation of powers, as clearly enshrined in Article 122 and 212 (courts not to inquire into proceedings of Parliament and Legislature) of the Constitution and also of Article 361 (protection of President and Governor) thereof as a precedent.

On Jharkhand, he said, "we are once again confronted with an unfortunate situation" and if it was followed in future it would upset the constitutional balance and the democratic functioning of the state as a whole.

Judiciary-legislature balance of power getting affected, say Presiding Officers

● Supreme Court order on Jharkhand disturbing: Somnath

By Neena Vyas

NEW DELHI, MARCH 20. The Emergent Conference of Presiding Officers of Legislative Bodies, held here today, in a unanimous resolution expressed concern over repeated orders by courts, which tended to "disturb the delicate balance of power" between the judiciary and the legislature.

They appeared to be a "transgression" of the "independence of the parliamentary system of our country," the conference said.

It noted that the Constitution "expressly prohibits" the jurisdiction of courts in respect of the exercise of powers vested in officers and members of legislative bodies for regulating the procedure or conduct of business or

for maintaining order in a legislative body. It then resolved that it would be best for democratic governance if the judiciary and the legislature did "not transgress areas assigned to them by the Constitution." The presiding officers said this was "imperative" to maintain harmonious relations between these two important organs of the state.

'Unfortunate situation'

In his inaugural address, the Lok Sabha Speaker, Somnath Chatterjee, said that the judicial order, if followed, would "upset the constitutional balance and the democratic functioning of the state as a whole." (The Supreme Court on March 9 directed the pro tem Speaker of the Jharkhand Assembly to conduct a composite floor test on March

11 to ascertain who enjoyed the majority.)

Describing this as an "unfortunate situation" he emphasised that he was not commenting on the political happenings in Jharkhand but was worried since the order was "unimplementable." The Supreme Court's Jharkhand order of March 9, he said, was "disturbing" and it had "distorted" the "whole constitutional scheme of governance."

Later, addressing a press conference, Mr. Chatterjee said he did not think the Jharkhand order could become a precedent for future cases as it was "only an interim order." Moreover, there were many verdicts of the Supreme Court clearly acknowledging that the courts had no role to play in matters entirely

within the legislature's jurisdiction.

Mr. Chatterjee had convened the meeting of presiding officers following the March 9 interim order of the Supreme Court in the matter relating to developments in Jharkhand.

He did not wish to comment on the absence of presiding officers from States ruled by the Bharatiya Janata Party and its National Democratic Alliance partners except to say that he "cannot draw any conclusions and had full faith in all presiding officers." Although the Orissa Assembly Speaker, Maheshwar Mohanty, had earlier conveyed to Mr. Chatterjee's office that he would be attending the conference, he did not turn up. Apparently, the NDA convenor, George Fernandes, had spoken

to him and to the Speaker of the Jharkhand Assembly, Inder Singh Namdhari, suggesting they fall in line with the NDA's decision of March 14. The result was that the presiding officers of Gujarat, Madhya Pradesh, Rajasthan, Chhattisgarh, Jharkhand and Orissa turned up. Also absent was representation from Tamil Nadu, Mizoram, Nagaland, Uttaranchal and Himachal Pradesh. But as many as 22 presiding officers representing 19 States and Union Territories attended.

Legislature's supremacy

Mr. Chatterjee said that "the legislature's supremacy as enshrined in the Constitution should be clearly asserted." The point he made was that even in Jharkhand, the problem was re-

solved after executive intervention, and not through the judicial order. In fact, the pro tem Speaker of the Jharkhand Assembly was unable to carry out the interim order of the Supreme Court.

"One would like to know if the court considered that there was a violation of its order, would the Speaker or the members of the legislature be held guilty of contempt? Would the judiciary be able to deal with such a situation? ... Would the Supreme Court direct the arrest and detention of the speaker and MLAs?"

He said that at the March 10 meeting of political party leaders the "preponderant majority" had expressed the "gravest concern at the order of March 9 of the Supreme Court." As for his

suggestion that the Government make a presidential reference on the separation of powers of the judiciary and the legislature, he made it clear that no disrespect was shown to the Supreme Court, and none was intended for, the plea was to refer the matter to the Supreme Court itself.

"When I found an encroachment [by the Supreme Court on the jurisdiction of the legislature] I took this up."

The organs of the state derive their powers from the Constitution and the legislature was "not asking for an iota of power more than what was given to it by the founding fathers of the Constitution."

'Courts always recognised Parliament's supremacy':

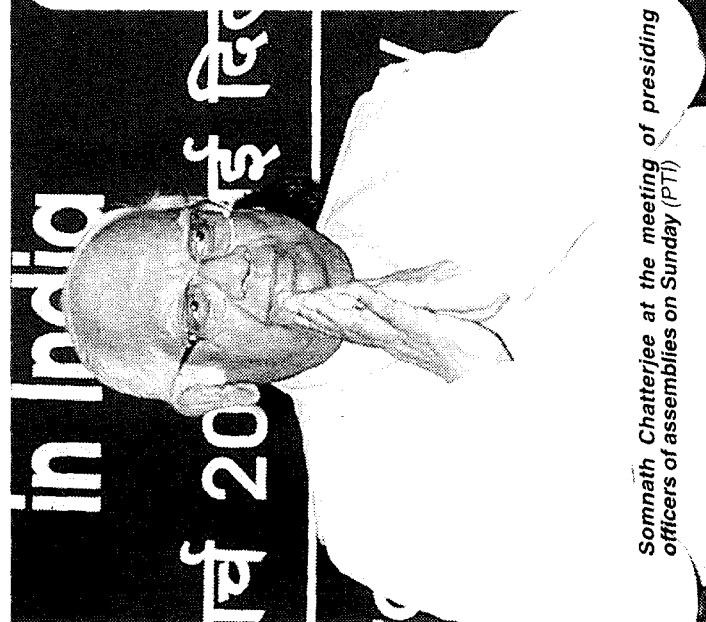
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Lakshman rekha reminder to courts

POWER DIVIDE

Highlights of the resolution adopted at the conference

- Mutual trust between legislature and judiciary and understanding that they are not acting at cross purposes
- Judiciary deserves all respect it enjoys
- Legislatures deserve same degree of respect
- Respect each other's role and do not transgress into areas assigned to others by Constitution
- Imperative to maintain harmonious relations between legislatures and judiciary



Somnath Chatterjee at the meeting of presiding officers of assemblies on Sunday (PTI)

OUR SPECIAL CORRESPONDENT

New Delhi, March 20: Lok Sabha Speaker Somnath Chatterjee today stuck to his stand that certain orders passed by the courts tend to disturb the delicate balance of power between the judiciary and the legislature.

A meeting of presiding officers of legislative assemblies convened by Chatterjee here subtly conveyed to the courts that they should not transgress into areas assigned to the legislature.

"With all respect to the honorable Supreme Court, I am of the view that the very principle of separation of powers, which is one of the basic features of our governance, has been violated," Chatterjee told the meeting.

The conference fully backed his bid to stop violation of the principle of "separation of

powers, one of the basic features of our governance", though the presiding officers of the NDA-ruled states did not attend, citing various reasons.

As many as 22 Speakers attended while six from the NDA-ruled states did not. The BJP-led camp had issued an indirect appeal to them to stay away.

Addressing the meet, Chatterjee said the issue is not confined to Jharkhand alone. The meeting was called after the apex court advanced the trust vote in Jharkhand and issued a string of directives that many elected representatives felt was an interference in the functions of the legislature.

The subject in question involves the powers of the judiciary vis-a-vis that of the legislature, Chatterjee said. He added that just as the legislature should not cross the "Lakshman rekha", others also should not do so. Chatterjee wanted to know

that if there was a violation of the order, whether the court would have held the Speaker or members of the legislature guilty of contempt of the Supreme Court.

"Would the judiciary have been able to deal with such a situation? Whether the Speaker could be summoned before the apex court for having exercised his authority under the Constitution of India?"

In the Jharkhand case, there was disturbance in the House and "can the pro tem Speaker be hauled up for contempt for defying the apex court", he asked. "We feel the Supreme Court cannot possibly deal with these matters. The Jharkhand tangle was finally resolved by an executive order."

Though some presiding officers felt that a presidential reference to the court was in order, a resolution adopted at the end of the deliberations did not contain such a demand.

Sources said it did not figure in the resolution as there were a few other suggestions and mentioning all of them was not possible.

Some suggested the need for a constitutional amendment to find a permanent solution to the recurring problem of confrontation between the judiciary and the legislature.

Another suggestion was to constitute an independent authority to resolve doubts about legislative action. The authority should have the power to review a legislative decision in the event of jurisdictional dispute. The aim is to deny the courts any scope for interfering in legislative functions.

Others felt that the day (March 9) the court directed the Jharkhand temporary Speaker to convene the House, all presiding officers should have marched to Rashtrapati Bhavan to protest the encroachment into legislative domain.

Jharkhand and the Constitution

In a political climate of a fractured mandate and multiple coalitions, the Jharkhand governor upheld the Constitution as best as he could

The unfair attack on Governor Sibtey Razi

KVS RAMA SARMA

THE recent Assembly elections in Haryana, Bihar and Jharkhand have once again showed the ugly side of democracy - fractured mandate. While in Haryana it was virtually a straight fight between the Congress Party and Indian National Lok Dal (INLD) of Chautala leading to a clear-cut mandate, in Bihar and Jharkhand fractured mandate further accentuated the unstable political climate already existing in these states.

Four important Constitutional questions came to the fore over the events in Jharkhand. First, did Governor Sibtey Razi act in a haste when he invited Soren to form a government? Secondly, why did the Governor give Soren 20 days to prove majority while in Goa very recently the Governor there had given only two days? Thirdly, whether Pro-tem Speaker has the authority to conduct confidence vote proceedings. Finally, has the Supreme Court crossed its limits in issuing an order on the proceedings of the legislature?

The meeting the Lok Sabha Speaker has called to discuss the issues involved in the controversy would hopefully answer these questions to ensure smooth and harmonious relations between the Supreme Court and legislature. This is absolutely essential if the balance between these two crucial wings is maintained. The Supreme Court order in the case of Jharkhand can have very serious and far-reaching impact on the functioning of legislature and Parliament severely affecting the authority of the executive. The Constitution empowers the Governor to exercise 'discretionary' power in the formation of a government. His "subjective satisfaction" in deciding which of the contending parties or leaders can give a stable government is supposed to be final. In this respect, the Constitution is very categorical. Article 163 (2) says "if any question arises



If the mandate is clear the Governor's course is clear and there is no question of his "discretion". But as and when a Governor exercises his discretion he almost always draws flak from other contenders. Secondly, it is wrong to apply the same yardstick everywhere. Jharkhand is not Goa. Finally, in regard to Pro-tem Speaker: the Constitution is clear that any elected member chosen to sit in the Speaker's Chair enjoys all the rights and responsibilities of a Speaker

whether any matter is or is not a matter as respects which the governor is by or under this Constitution required to act in his discretion, the decision of the governor in his discretion shall be final."

If the mandate is clear the Governor's course is clear and there is no question of his "discretion". But as and when a Governor exercises his discretion he almost always draws flak from other contenders. Secondly, it is wrong to apply the same yardstick everywhere. Jharkhand is not Goa. Finally, in regard to Pro-tem Speaker: the Constitution is clear that any elected member chosen to sit in the Speaker's Chair enjoys all the rights and responsibilities of a Speaker. Article 180 (2) says that in the absence of the Speaker and the Deputy Speaker "such person as may be determined by the rules of the procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker."

It is clear that a Speaker does not have to be elected and can be chosen to conduct business of a legislature. This is what the Governor Sibtey Razi has done when he appointed a Pro-tem Speaker to administer the oath of office as

per Article 188. According to the constitutional expert, Dr. Subhash Kashyap, the Pro-tem Speaker enjoys all powers of a regular Speaker. Lastly, on the question if the Supreme Court has crossed its Constitutional limits, the Constitution has this to say: Article 212 (2) says, "no office or member of the legislature of a state in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

The UPA members of the Jharkhand Assembly challenged the authority of the Pro-tem Speaker possibly to only obstruct the proceedings and to prevent vote of confidence. It is not possible to believe they were not aware that in Goa, Pro-tem Speaker had very recently conducted confidence vote proceedings. Their obstructive tactics certainly cannot, but be faulted. But then the question is if the Apex Court issues an order that is ultra vires of the Constitution, is it mandatory for the legislature or its members to honour it? What happened in the Jharkhand Assembly should also be

seen in the perspective of new political climate - a climate of multiple parties and coalitions that has now become rather usual. It is in this context the meeting the Lok Sabha Speaker called assumes much significance.

This meeting will hopefully clarify two things. First, when should or could a Governor exercise his "discretion"? Does the immunity provided to legislative proceedings under the Constitution needs a review in view of recurring split mandate thrown up by elections these days? There is obviously a need for a mechanism to regulate legislative proceedings within the purview of the Constitution. Should the Lok Sabha Speaker, as the head of the presiding officers, take this responsibility? In this entire unfortunate episode, Governor Sibtey Razi is seen as partisan by some. Did he really commit any indiscretion or in following the Constitution in letter and spirit did he anger some sections?

The author is Managing Editor of the Congress periodical, Sandesh. The views here are personal

Although there are strict safeguards against court intervention, when institutions are misused, the Apex Court must and should step in

The Governor's loss of dignified self restraint

ARVIND P DATAR

THE interim orders passed by the Supreme Court on March 9, 2005 in the Jharkhand case once again raised important and controversial questions on the delicate balance of power that prevails between the three wings of Government. The Lok Sabha Speaker, Somnath Chatterjee has now proposed a meeting of all the Speakers to discuss this critical issue.

The Indian Constitution, unlike that of the United States, does not provide for strict separation of powers. Our Constitution was drafted on the expectation that a minimum standard of political decency would be maintained.

The sordid Jharkhand episode brought to the fore the extremely important role that has to be played by a Governor when election results do not throw-up a clear winner. The Constitution requires Governors to be men of stature and strong moral fibre. The in-

famous Ram Lal was the first brazen manifestation of the defiling of the Governor's office. S.C. Jamir of Goa gave Manohar Parrikar just two days to prove his majority but Pratap Rane was given one month. In Jharkhand, Syed Sibtey Razi invited Shibu Soren to form a Government when he was not the head of single largest party and gave him three weeks to prove his majority. The appointment of a pro-tem Speaker was also contrary to constitutional conventions. There is not a shadow of doubt that what happened in Jharkhand was completely illegal and unconstitutional.

The Constitution also never envisaged a situation where a handful of independent MLA could decide the fate of a Council of Ministers. In a hung assembly, the independent MLA is the luckiest

person on the planet. Single, unattached, completely innocent of any sense of values, he is available to the highest bidder. Shockingly, none of these MLAs find it degrading or insulting that they should be so treated. The formation of a coalition Government and its trial of strength in the Assembly is an extremely delicate and sensitive matter. Constitutional propriety is thrown to the winds and there is a no holds-barred attempt to form a Council of Ministers.

In this background, one has to examine whether the Supreme Court ought to have refrained from interfering on the basis of Articles 122 and 212 of the Constitution of India. These two articles prohibit the court from making any enquiry of proceedings of Parliament or State Legislature on the grounds of irregularity of procedure. The Supreme Court has held that the courts can always enquire if the procedure is illegal. Nobody disputes that what was done in Jharkhand was blatantly illegal. Both these articles also prohibit the courts from making any enquiry against officers or members of Parliament who exercise power vested with them under the Constitution. This only means that as long as officers and members of Parliament (including the Speaker) exercise their power in accordance to the provisions of the Constitution, the court will not interfere. Therefore, if there are unruly scenes in a House, it is for the Speaker to take appropriate action.

But if the powers conferred on a Speaker or a member are exercised in utter violation of the Constitution, the courts will certainly be entitled to interfere. It is necessary to make a distinction between interference in the functioning of Parliament and State Legislature which has a duly constituted Speaker and Council of Ministers and a case like Jharkhand where the new Government had not been properly installed. There can be no interference



There is an appalling fall in standards in the conduct and behaviour of Ministers and Governors. The manner in which the current legislatures function is of far greater national concern than one Interim order passed by the Supreme Court

in the day to day functioning of Parliament or the State Legislatures. The decisions taken by a Speaker cannot be interfered with nor can the courts pass any order to regulate the proceedings of the House. The Supreme Court or the High Courts will have the power to pass interim orders only in extraordinary situations as in the Jharkhand case. Indeed, over the last 50 years, the courts have been extremely reluctant to interfere in the functioning of either Parliament or the State Legislatures.

The separation of powers requires that each branch acts with dignified self-restraint and does not abuse the privileges that are conferred upon it. When the legislature discharges its function in the manner envisaged by the Constitution, there is absolutely no reason to interfere. If the conduct and manner in which a Council of Ministers is to be installed is in violation of constitutional norms, the courts will have to interfere. In doing so, it will

not encroach upon the powers of the legislature. It will only prevent a breach of the Constitution. Therefore, if what happened in Jharkhand happens in other State Legislatures, the courts will be fully justified in interfering and passing interim orders.

The proposed meeting of all Speakers would do well to reflect upon the appalling fall in standards in the conduct and behaviour of Ministers and Governors. The manner in which the current legislatures function is of far greater national concern than one interim order passed by the Supreme Court. The Supreme Court did not cross the Lakshman Rekha in the Jharkhand episode; it only prevented the murder of democracy and upheld the rule of law. And, in future, if there is an action replay of what happened in Jharkhand, then the Supreme Court and High Courts can, and indeed should, interfere.

The author is a Senior Advocate of the Madras High Court

Variava takes back talk of Laloo case pressure

Judge cold water on fodder fire

R. VENKATARAMAN

New Delhi, March 17: Justice S.N. Variava has clarified that "there has been no pressure" on him to change the trial judge in a fodder case, 48 hours after his statement that "someone had contacted" him with an indirect question created a flutter in the country.

"The person concerned has since clarified to me that the enquiry was just an academic enquiry. I am satisfied that the explanation (that it was an academic enquiry) is correct and my original inference that there was an attempt to influence me was wrong," the judge said today in a 20-line clarification order.

THE SEQUENCE

•**March 15:** Judge says "someone had contacted" him with an indirect query whether a judge can be changed

•**March 16:** He takes cognisance of it

•**March 17:** He says the person who had approached him has clarified that it was an academic enquiry

"It had been indirectly enquired whether the high court could transfer the special judge trying the (fodder) case and the reply (of the judge) had been the high court could do what it wants and we could do what we think necessary," the statement said.

"Counsel (for the petitioners in the case) had then interjected that pressures were being brought on judges. Because of the large-scale coverage by the media and the consequent controversy it has become necessary for this court to clarify that it was not mentioned or implied by me that pressure had been brought on me to have the special judge changed. There has been no such pressure", the judge said.

As soon as proceedings began in the packed Court No. 5, Justice Variava read the

clarification order to clear "the misunderstanding which has arisen".

The judge's disclosure on Tuesday had sparked a furore with political overtones since railway minister Laloo Prasad Yadav is one of the accused in the case related to the fodder scam. The issue echoed in Parliament also where the government said it was up to the judiciary to order a probe.

Laloo Prasad said today that he and his family "have been tortured and the media has made mountain out of a molehill by claiming that the fodder case has taken a new turn".

The clarification order did not reveal the identity of the person who posed the query. But the judge's statement said it is to be clarified "that no one from the high court or on behalf of the high court had enquired of me".

Reacting to the clarification, Supreme Court Bar Association president P.H. Parekh said: "It is not that the judge concerned should have given the clarification on the same day he had disclosed that someone had approached him. It is, in fact, only after taking cognisance of the matter and obtaining the reply of the person, whom the judge need not name, the matter has been taken to its end."

Agreed Bar Council of India counsel T. Raja, who said the matter "has ended" and the judge's order is final. "Normally, in cases like those dealing with contempt, seeking clarification from the alleged contemnor is a judicial function and the judge has performed his duty," he said.

The court had made the revelation while hearing a public interest litigation moved by BJP Bihar president Sushil Kumar Modi and Janata Dal (United) leader Rajiv Ranjan Singh Lallan. The petition contended that Laloo Prasad was tampering with evidence and trying to change the prosecutor after the UPA government assumed power at the Centre.

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THE TELEGRAPH

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THE TELEGRAPH

Stunning Laloo case twist in SC

Exposed: plot to fix judge

OUR BUREAU

March 15: A Supreme Court judge dropped a bombshell in the courtroom today, revealing that he had been sounded whether a judge could be changed in one of the fodder scam cases in which Laloo Prasad Yadav is an accused.

"Yesterday, someone contacted me from the high court and indirectly wanted to know whether the trial judge can be changed," Justice S.N. Variava told the open court.

The disclosure came at a time when Laloo Prasad's political stock has nosedived and in the middle of a debate over division of powers of the judiciary and the legislature.

Justice Variava did not identify the court, but it is assumed that he was referring to Patna High Court. A disproportionate assets case against Laloo Prasad is going on in Patna and already three judges have been transferred.

The case, now being heard by Yogendra Prasad, is proceeding in a CBI special court but the transfer of officials comes under the high court. Most of the other key cases have been shifted to neighbouring Jharkhand.

Justice Variava, the presiding judge of a bench hearing a petition alleging evidence-tampering and seeking the cancellation of Laloo Prasad's bail, made the revelation as soon as the court assembled.

Mukul Rohtagi, the coun-



Laloo: Party seeks probe

sel for petitioners Rajiv Ranjan Lalan (JD-U) and Sushil Modi (BJP), said they were afraid that the trial judge might be changed by promoting him and holding it as a "routine promotion".

At this, Justice Variava said: "Now it will not happen."

Solicitor-general G.E. Vahanvati was quick to assure the court that the earlier prosecutor in the case would continue.

Realising that the Opposition will use the judge's disclosure to target Laloo Prasad though his name has not been mentioned, the Rashtriya Janata Dal today sought a "thorough probe" to find out who approached Variava.

"Nobody influences

QUOTE

Yesterday, someone... indirectly wanted to know whether the trial judge can be changed

JUSTICE S.N. VARIAVA

judges. The issue has been raked up just to create confusion. We will see who called up whom," senior RJD leader and Union minister Raghuvansh Prasad Singh said.

Asked if he felt that the judiciary had made a wrong statement, Singh said the matter had to be investigated. "Only then will we come to know what is the truth."

Laloo Prasad, who was in Delhi today, did not comment.

However, by neither naming the person who had approached him nor initiating action, Justice Variava has revived a debate in judicial circles.

"A judge who makes such a statement in the court should logically initiate action. But Justice Variava has a precedent as Justice (J.S.) Varma too had made a similar statement and left the matter at that," said retired Supreme Court judge Kuldip Singh, who now heads the delimitation commission.

When Justice Varma, now retired, was hearing the Jain hawala case, he had said in court that "someone" had approached him.

Another retired judge said the warning in the open court can "discourage any future attempt to influence the course of the case".

Justice Kuldip Singh said: "Of course, this method can also be adopted but someone should bell the cat."

■ **Bouncer gets Laloo sons in face, Page 6**

SPEAKERS' MEET

There is a disconcerting tendency in Indian public life to shy away from debate on important issues. The speaker of the Lok Sabha, Mr Somnath Chatterjee, has proved to be the exception to this generalization by convening a meeting of all speakers to discuss the role of the speaker and the wider issue of the separation of powers between the judiciary and the legislature. Mr Chatterjee's action has been prompted by the Supreme Court's directive fixing the date for the test of majority for Mr Shibu Soren's ministry. The prevalent attitude to public discussion is exemplified by the reaction of Mr L.K. Advani, who said that the matter had been resolved by the invitation to Mr Arjun Munda to form the government. Mr Advani is right in believing that the matter has blown over for the moment, and for Jharkhand. But there are much deeper issues involved here which need to be debated and discussed.

The separation of powers between the three pillars of the state — the executive, the judiciary and the legislature — is one of the founding principles of the Indian Constitution. This separation provides the requisite check and balance for the proper functioning of a democracy. Mr Chatterjee feels that the Supreme Court's decision to fix the date of the floor test encroaches upon the jurisdiction of the legislature and thus violates the principle of the separation of powers. Mr Chatterjee's belief is not entirely without substance and is shared by many whose concern for democracy and respect for the Supreme Court are above question. A wide-ranging debate on the separation of powers is urgently required in the present context of Indian politics. There have been many instances when one of the three organs of the state has been forced to transgress its limits and boundaries. The Emergency imposed by Indira Gandhi is a notorious example, but there have been other transgressions of a lesser scale. In the Jharkhand affair, there is a *prima facie* case to argue that the apex court may have stepped outside its limits. The action may have been justified by the failures of the Jharkhand governor. But this underlines a moot point: should one organ of the state step in to correct or compensate for the dysfunctions of another? Can there ever be valid grounds for violating the separation of powers laid down in the Constitution? The meeting convened by Mr Chatterjee should look at such questions and take the debate beyond Jharkhand and the role of speakers.

'SC crossed Lakshman rekha on Jharkhand'

New Delhi: Asserting that he was not a "dummy" Speaker, an unfazed Lok Sabha Speaker Somnath Chatterjee



said on Wednesday the supreme court had crossed the "Lakshman rekha" set by the constitution about powers of judiciary and legislature.

Maintaining that the constitution has expressly debarred courts from regulating procedures of the legislature or parliament, he asked in a frank and freewheeling interview to PTI why could he not decide what courts could do. "Can I ask what the supreme court's list of business should be? This will be palpably wrong," he said in the interview held in the backdrop of the controversy over his suggestion for a Presidential reference on the supreme court's order advancing the trial of strength in Jharkhand and directing videography of the proceedings last week.

The 75-year-old Marxist veteran strongly denied charges that he was seeking to trigger a "judiciary vs legislature" confrontation and that he was doing this because the supreme court order in the Jharkhand assembly case went against anti-BJP parties. He also ruled out his resignation in the context of BJP-led NDA's moves for tabling a no-confidence motion, which it had since dropped.

Justifying his suggestion for a Presidential reference on the apex court order, Chatterjee said it raised several issues of constitutional importance. "My issue is very simple. Constitutionally our functioning comes under Art 122 and I cannot accept the SC's directions (to legislature)," he said. PTI

NDA 'spares' Somnath

Statesman News Service

NEW DELHI, March 14. — While sparing Mr Somnath Chatterjee "for the time being" from a no-confidence motion, the National Democratic Alliance today came down heavily on the "attitude of the Lok Sabha Speaker" for creating an unnecessary "controversy between the legislature and the judiciary".

The NDA leaders, who met today to discuss the implications of the "Speaker's unwarranted move", indicated that none of the six Speakers of NDA-ruled states would participate in the 20 March meeting of presiding officers. Mr Chatterjee has convened the meeting to discuss the equation between the executive, legislature and judiciary.

The NDA today held discussions on the issue of no-confidence motion. However, no decision has been taken, said NDA convener Mr George Fernandes.

Though the NDA did not comment on whether it is going to issue any direction to the presiding officers of states where it is in power, the leaders who attended the meeting admitted that the

Breach of privilege

NEW DELHI, March 14. — The CPI-M is considering moving a breach of privilege motion against the BJP-led NDA for its remarks against Mr Somnath Chatterjee. It has demanded an explanation from the BJP on why they have denigrated the Speaker's office, the party MP, Mr Nilotpal Basu said. — SNS

Speakers of six states (Rajasthan, Madhya Pradesh, Jharkhand, Gujarat, Chhattisgarh and Orissa) are going to boycott the 20 March meeting.

"The NDA is sure that Assembly Speakers would exercise statesmanship with a constitutional vision before deciding to attend this conference and assisting the Lok Sabha Speaker to pursue an agenda which can be harmful to Indian democracy," a resolution said.

The NDA is disturbed by the Speaker's attitude and his role in creating an unwarranted controversy, the resolution said.

Mr Fernandes said: "The Supreme Court was well within its jurisdiction to quash the Governor's action, if that is wholly unconstitutional..."

More reports on page 4

Governors' powers under SC scanner

Apex court ponders Parrikar poser

HT Correspondent
New Delhi, March 14

THE SUPREME Court on Monday disposed of Arjun Munda's petition seeking his installation as Jharkhand chief minister as "infructuous", but kept another petition filed by ousted Goa chief minister Manohar Parrikar, seeking judicial adjudication of the larger issues involving the governor's powers to appoint and dismiss a chief minister, pending.

The apex court noted that the issues raised in Munda's petition had been overtaken by subsequent events in that state and disposed of his petition seeking to set aside United Progressive Alliance leader Shibu Soren's appointment as chief minister as "infructuous".

Munda has since been appointed chief minister CM of Jharkhand and is all set to seek a trust vote in the Assembly on Tuesday. However, the court kept pending another petition filed by Parrikar in which he urged the court to decide the larger constitutional issues involved in the Governor's power to appoint and dismiss a CM for the future.

Appearing for Parrikar, former Auditor-General Soli J. Sorabjee said the court needs to look into several issues. "If Parliament doesn't approve President's rule, then the status quo ante (Pratap Singh Rane government) will be restored," he said.

Parrikar had challenged the Governor's action of dismissing his BJP government and appointing the Congress government of Rane as CM of the state. He urged the court to decide whether a Governor can dismiss an elected chief minister without a no-confidence vote being passed against him in the House. "Can the Governor sit in appeal over the legality of the Speaker's action?" he asked.



NDA MLA Inder Singh Namdhari submits his nomination paper for the Jharkhand Speaker's post in Ranchi on Monday.

Razi denies quit rumours

HT Correspondent
New Delhi, March 14

GOVERNOR SYED Sibtey Razi has denied reports that he had offered to step down.

Emerging after meeting Union home minister Shivraj Patil a day before the trial of strength in the Jharkhand Assembly, Razi said, "There was no question of resignation put either by the Home Minister or by me".

Asked about a possible change of Governor in Jharkhand next month, Razi said he could not comment on that because he could not predict the future.

During the 30-minute meeting the two are believed to have discussed the political situation in the state. Razi, who arrived here on Sunday, is scheduled to return to Jharkhand on Tuesday.

The Governor also said he did not repent his decision to invite

Shibu Soren to form a government. Also, he said, at no point of time had he been pressurised by Prime Minister Manmohan Singh or anybody else to invite Soren to form the Government.

"There was no question of (resignation) put either from the home minister's side or from my side," he said.

To a question whether he had apprised the Prime Minister or Congress president Sonia Gandhi of his decision to invite Soren, he said there was no need for it. "Not at all. In my own capacity, in my own wisdom, I invited Soren," he said. "I am not repenting my decision. I invited him because I was convinced about his number. I did nothing wrong," he added.

Razi also said he had no plans to meet either President APJ Abdul Kalam or the Prime Minister before leaving for Ranchi on Tuesday.

Speakers of NDA-ruled States may not attend meet

● Move against Somnath Chatterjee "kept open"

By Gargi Parsai

NEW DELHI, MARCH 14. The confrontation between the Opposition National Democratic Alliance and the Lok Sabha Speaker, Somnath Chatterjee, escalated today with the NDA accusing him of creating an "unwarranted" controversy between the legislature and the judiciary.

After an hour-long meeting of the NDA and Telugu Desam Party (TDP) leaders here to discuss the coming Speakers' Conference on "judiciary versus legislature" in the context of the recent developments in Jharkhand, the NDA virtually asked the Speakers of the States ruled by the alliance not to attend the meeting on March 20 and "kept open" the issue of bringing a no-confidence motion against the Speaker in Parliament.

The meeting, chaired by the Bharatiya Janata Party presi-

dent and Leader of the Opposition in the Lok Sabha, L.K. Advani, also urged the Speakers of non-NDA Legislative Assemblies to show "statesmanship with a constitutional vision before attending the Conference and assisting the Speaker to pursue an agenda which can be harmful to Indian democracy."

Resolution adopted

A resolution adopted at the meeting and read out later by the NDA convener, George Fernandes, to mediapersons said: "The NDA is deeply disturbed with the attitude of the Speaker and his role in creating this unwarranted controversy. What is required is vision and statesmanship rather than a confrontationalist posture by one occupying a high legislative responsibility."

It said the Jharkhand issue was related to the Governor's "misconduct". "The task before

the Supreme Court was to deal with the "unconstitutional" action of the Governor to install a minority government. The Supreme Court is well within its jurisdiction to quash the action of the Governor, if that action is wholly unconstitutional. The Court passed interim directions providing security to MLAs, shortening the period granted by the Governor for obtaining the vote of confidence. The order of the Court did not interfere with any legislative proceedings."

Asserting that there was no challenge before the Court of the proceedings within the House and that no such challenge could ever be made, the resolution said that the challenge to the action of the Governor and the judicial review in that context had been "deliberately misinterpreted to create a legislature versus judiciary issue."

"The Lok Sabha Speaker, instead of being concerned with the subversion of the democracy by the Governor and the pro tem Speaker, was concerned only with the remedy adopted to check the subversion," the resolution said.

Asked about the suggestion for a no-confidence motion against the Speaker, Mr Fernandes said: "The matter was discussed but no decision has been taken." Sources said that everyone wanted to "wait and watch" the situation rather than precipitate it.

Among those who attended the meeting were the Trinamool Congress leader, Mamata Banerjee, S.S. Dhindsa (Akali Dal), Ananth Geethe (Shiv Sena), B.J. Panda (BJD), Nitish Kumar (JD-U) and senior BJP leaders, Sushma Swaraj, Arun Jaitley and S.S. Ahluwalia. The TDP was represented by K. Yerran Naidu.

CPI(M) to take on BJP on Speaker issue

By Our Special Correspondent

NEW DELHI, MARCH 14. The Communist Party of India (Marxist) today asserted that the party would take on the Bharatiya Janata Party (BJP) for its "systematic attempt" to "undermine" the institution of Parliament and the Legislatures, especially the Speaker.

Basudeb Acharia and Nilotpal Basu, CPI (M) Parliamentary Party leaders, said that they would take up the matter with other parties to put the "BJP in the dock through available instruments." The party's stand can be seen before the National Democratic Alliance (NDA) made a formal statement against the Speaker, Somnath Chatterjee, this evening.

Later, in the wake of the latest missive by the Opposition against the Speaker, Mr. Basu said that all efforts would be made to take up "the BJP's systematic attempt" to undermine the institution. He said the CPI (M) would broach the issue with the other Left parties and constituents of the United Progressive Alliance in the next few days.

"The BJP has to answer a lot after hurling abuses at the Speaker," Mr. Basu told a press conference. He said the party would, in fact, welcome the earlier proposed move by the Opposition to bring a no-confidence motion against the Speaker. The move would provide an opportunity to political parties to discuss the issue in Parliament.

The CPI (M) said the BJP would be forced to say why it was "denigrating" the constitutional office of Speaker. They said the idea of asking the Centre to request the President to make a reference to the Supreme Court was mooted at the all-party meeting called by the Speaker and had the backing of those who attended it.

The Congress was guarded in its approach. The party spokesperson, Anand Sharma, said the Speaker was not only an eminent Parliamentarian but also an eminent jurist. "He not only understands the esteem of the office of the Speaker but also understands the Constitution."

The Congress said the BJP's statement on the Speaker was "politically motivated."

NDA, UPA nominate candidates for Jharkhand Speaker

By A Correspondent

RANCHI, MARCH 14. The United Progressive Alliance today nominated the Rashtriya Janata Dal legislator, Annapoorna Devi, as its candidate for the election to the post of Speaker of the Jharkhand Assembly, slated for tomorrow. The UPA also demanded secret voting instead of a voice-vote to ensure that the legislators, Independents in particular, could vote "without fear". The National Democratic Alliance's nominee is the former Speaker and Janata Dal (United) legislator, Inder Singh Namdhari.

Stephen Marandi, who was appointed convener of the UPA coordination committee, filed the nomination papers in four sets for Ms. Annapoorna Devi. Later, he told the media that the UPA's demand for secret voting was because of its fear that the Independent MLAs legislators were "under some threat" from the NDA leadership.

However, the Secretary to the

State Assembly confirmed that there was no provision for secret voting for a Speaker's election in the House business rules. But if the pro tem Speaker wanted it, the UPA demand could be considered, he said.

The name of Mr. Namdhari, the NDA nominee, was proposed by the Chief Minister, Arjun Munda, Upendra Nath Das, Pradeep Yadav and Sudesh Mahato. It was seconded by Raghubar Das, Radha Krishna Kishor, Yogeshwar Mahato and Kunti Devi.

Ms. Annapoorna Devi's name was proposed by Prakash Ram, Bandhu Tirkey, Sudhir Mahato and Binod Kumar Singh. Dulal Bhuiyan, Mr. Stephen Marandi, Pradeep Kumar Balmuchu and Thomas Hansda seconded it.

Later, Mr. Namdhari said that there was no doubt about his victory as the NDA had the support of 41 MLAs.

Ms. Annapurna Devi also said that she would emerge victorious as she had the magic number.

BJP demands debate on appointment, role of Governors

By Our Special Correspondent

CHENNAI, MARCH 13. The Bharatiya Janata Party today called upon the Central Government to initiate a debate on the appointment, role, functions and powers of Governors in the context of the developments in Goa and Jharkhand.

At a press conference here, the former president of the BJP, Venkaiah Naidu, said the institution of the Governor had become an "object of ridicule" and the "rehabilitation centre" for the politically unemployed.

"It is high time that the country gets into the task of a serious debate on this issue," Mr. Naidu said, adding that the Sarka-

ria Commission's report on Centre-State relations and the proceedings of the Governors' conference could form the basis for the discussion.

Replying to a question, he said the BJP wanted the Government to accept the Commission's report, but hastened to add that "let there be a debate first." He said that when the political developments as witnessed in Goa and Jharkhand took place, normally demands were made for the recall of the Governors but the discussion tapered off subsequently. To avoid recurrence of what happened in the two States, "a permanent remedy should be found," Mr. Naidu

said.

Asked whether his party would take the initiative for the debate, he said evolving a consensus was possible only for the Government in office though the BJP was willing to join any effort in that direction.

DMK's silence

He expressed surprise over the Dravida Munnetra Kazhagam's silence on the conduct of the Jharkhand and Goa Governments, as the party, he said, was otherwise known for making its stand vocal on issues such as State autonomy and federal structure.

Mr. Naidu criticised the Congress for reducing the plat-

inum jubilee celebration of the Dandi March into a "public relations show" for the Congress and its leadership.

He found fault with the Centre for not involving the Gujarat Government in the celebration. "You may not like him (Narendra Modi). But, he is the Chief Minister there. Taking everyone along is democracy," he said.

He also questioned the absence of the Prime Minister, Manmohan Singh, at the ceremony that took place at Ahmedabad on Saturday, whereas only the Congress president, Sonia Gandhi, was "visible everywhere."

Somnathda, time to heal

Little to be gained now in insisting the government pursue the presidential reference

LOK SABHA Speaker Somnath Chatterjee was within his rights to seek a presidential reference to the Supreme Court under Article 143, regarding its directions to the Jharkhand assembly. The Court had stepped in because all other institutions had abdicated their responsibility, and its orders could be considered justified under the circumstances. Yet, the issues raised by the Court's directives go to the very heart of parliamentary democracy. They potentially impinge upon both the authority of the legislature and the separation of powers. It is entirely appropriate that there be a serious debate on the constitutional issues involved. By raising the spectre of a presidential reference in the matter, Chatterjee sparked a useful debate.

At the same time, there is little to be gained at this juncture in formally insisting that the government pursue the presidential reference. This is so for a number of reasons. The debilitating constitutional deadlock in Jharkhand has, for the time being at least, been broken. A presidential reference at this stage will only prolong the political agony of the state. The tragedy of what transpired in Jharkhand is that every institution has now been tainted with either partisanship, or for overstepping the bounds of propriety, or both. The governor's conduct was indefensible, as was the pro-term speaker's attempt to violate the Court's directions. The UPA and

NDA clearly had partisan interests at stake. But many citizens will wonder why so many prominent figures of authority expressed so much consternation at the Court's directives while appearing unflustered at the actions of the governor. And whichever way the president acts in the matter, there is a real danger that he will come to be seen as partisan as well. Under these circumstances, insisting on a presidential reference will not be seen as what the speaker intends — as a clarification of constitutional principles, but as yet another cynical deployment of constitutional values to drag out an already appalling political melodrama.

The need of the hour is for the political process to regain some remnant of credibility and to make sure that institutions like the Supreme Court and the president are not dragged in too frequently to break political deadlocks. Indeed, those who worry that the Court overstepped its jurisdiction should, rather than seeking judicial intervention, draw the opposite lesson and ensure that the Court is not too frequently called in to fill in a constitutional vacuum. For the mere act of taking recourse to its authority enlarges it. This is one obvious lesson to be drawn from our recent history. The problems of democracy cannot be solved outside of democracy. It is for this reason that it will be advisable for the speaker to use his authority to heal the political process. Time to back down, Somnathda.

A farewell to Razi

As the situation settles in Jharkhand, one chore remains — wishing the governor godspeed

AS far as photo-ops go, this was one that was special. Arjun Munda clasped in a bear-hug by Syed Sibtey Razi after being sworn in as the new chief minister of Jharkhand. We still await an apt couplet in accompaniment from the governor — for trip off his tongue, it must — but the imagery was powerful. After a fortnight of acrimony that began with Razi's insistence on not returning Munda to chief ministerhood and instead installing a pretender to the office, it brought things full circle. Now, just one last act remains to give the Jharkhand narrative perfect symmetry, just one act of closure commensurate with the gravity of Razi's initiative.

The gale that Razi's summons to Shibu Soren unleashed has shaken the country's constitutional architecture. The process of restoration has begun. A spirit of conciliation is faintly visible: for instance, the Opposition is reconsidering plans to move a motion of no-confidence against the Lok Sabha speaker. To progress, it needs proof of good faith, an asser-

tion of accountability. Accountability requires pinning of responsibility. Responsibility has to be, in first appraisal, placed at Razi's door. Razi must quit Ranchi's Raj Bhavan.

The antics in Ranchi have called into question the mandate of different institutions to reverse gubernatorial misadventures. The constitutional arrangement of separation of power must of course be examined in tranquility. But the past fortnight must also keep the focus on the chain of command that permitted chief ministership by subterfuge, that externalised demonstrations of electoral majority from the legislature to Rashtrapati Bhavan and media gatherings. A perilous face-off with the judiciary was avoided — though once again, controversially — at the last minute, with the Union home minister directing the governor to sack Shibu Soren. The system clearly has ample scope to deal with such crises. The fact that it swung into action so late is a case for a thorough post-mortem.

Dispensable cry in governor debate

OUR BUREAU

March 13: The Ranchi Raj Bhavan has unwittingly shredded a gag that had held in check a question all parties wanted to ask but would not: do we need governors?

Nitish Kumar raised the question today, calling for a national debate on the role of governors in the wake of the Jharkhand upheaval that at one point threatened to pit the legislature against the judiciary.

"Governor has become a roadblock to proper functioning of democratically elected governments. It will be better if we do away with the post," the Janata Dal (United) leader and BJP ally said in Patna.

"Relevance of governors, including the desirability of doing away with the post, should be debated," he added, without commenting on the fact that when his alliance was in power, it also packed Raj Bhavans with loyalists.

All parties agree in private that the role of governors needs to be redefined. But

POWER AND PERKS

WHAT A GOVERNOR DOES

- Decides who may form government
- Dismisses governments
- Dissolves assemblies
- Recommends President's rule
- Gives assent to bills

WHAT A GOVERNOR EARNS

- Salary: Rs 36,000 a month
 - Vehicle: 2 cars
 - Orderly: 1
 - Personal security: 2 plainclothesmen, a pilot car with four armed guards
- Does not include expenses on Raj Bhavan security and upkeep*

once in power, no one has resisted the temptation to misuse Raj Bhavans — the main reason why such debates have largely remained academic.

The BJP, too, called for a debate on a governor's appointment, role, functions and powers, though the party did not go to Nitish's extent and suggest that the post be abolished.

"The entire gamut of appointment and tenure has to be prescribed," former BJP president M. Venkaiah Naidu said in Chennai. "Otherwise, the governors will go on doing like this and deal a mortal blow to democracy.

"It (the debate) has become all the more important and urgent in view of the murky

things that happened in Goa and Jharkhand."

Jharkhand governor Syed Sibtey Razi and his Goa counterpart, S.C. Jamir, have been at the centre of a controversy after they invited coalitions that had the Congress as a partner.

"Governors tend to act as agents of the party in power at the Centre and often become a hindrance in the functioning of democracy," Nitish said.

Ironically, Nitish himself was the beneficiary of a questionable decision by a Bihar governor in 2000 when he was sworn in at the helm of a government that lasted only a few days.

Nilotpal Basu, the Rajya

Sabha MP of the CPM, told **The Telegraph** in Delhi that "we have no problem with a debate on governors' role".

"In fact, we have asked for a comprehensive discussion on the issue," he added. Basu had on Friday called for a "public debate on the separation of powers of different state organs", while pressing for a presidential reference on the Supreme Court's order on the Jharkhand floor test.

Naidu said the Congress-led Centre should take a proactive role. "The BJP can definitely start a debate, but only the ruling party can evolve a consensus. The BJP is willing to join hands for evolving it."

But the Congress is not expected to entertain any proposal to abolish the governor's post, not the least because it is often seen as the party which has benefited the most from friendly Raj Bhavans.

The Congress, which insists that a strong Centre is one of the key factors that hold the country together, feels a governor is a representative Delhi can bank on when all other arms of governance collapse.

Constitutional experts divided over Speaker's action

By J. Venkatesan

NEW DELHI, MARCH 11. Constitutional experts are divided on whether the Jharkhand pro tem Speaker has committed contempt of court by adjourning the proceedings to March 15 instead of allowing the floor test in the House to be completed today as directed by the Supreme Court.

While senior lawyers Fali S. Nariman and C.S. Vaidyanathan say that the pro tem Speaker has committed contempt by not adhering to the Supreme Court directions, a leading Constitutional expert (who did not want to be quoted) and senior advocates, P.P. Rao and Rajeev Dhavan, are of the view that he has not.

Mr. Nariman says that the action will amount to contempt of court. Whatever may be the reasons, he has not obeyed the order.

The contention that a pro tem Speaker cannot conduct the floor test is not correct. A Speaker is a Speaker for the moment. Therefore, once the court gives a direction, he has

to obey it and not doing so will be contempt of court.

Mr. Vaidyanathan says that since there is a specific direction to the pro tem Speaker to conduct the floor test, the order should have been complied with. A leading lawyer, however, differs with them and says there is no contempt. It can well be said that the events were 'planned' but even then it cannot be said that the pro tem Speaker committed contempt. He tried to conduct the proceedings but when things went beyond his control he adjourned the House. According to the lawyer, in the light of the strong resentment shown by political parties over the order, the Supreme Court may not take such a serious view of the Speaker's action.

'No contempt'

P.P. Rao says the pro tem Speaker held the session, wanted to conduct the proceedings but was not in a position to implement the order because of the disruption by the members. "So long as the action of the pro tem Speaker is bona

fide, there is no contempt," he says. It must be noted that those members who spoke in the Assembly are immune from court proceedings and contempt will not lie against them. They will say that the apex court cannot regulate the proceedings of the House and therefore it is wrong to say that the pro tem Speaker committed contempt.

Rajeev Davan asserts that there is no contempt in adjourning the House. The legislators today wanted the Speaker to conduct the proceedings of the House as per the Rules of the Assembly and not as per the court order. According to the legislators the pro tem Speaker has a limited role of conducting the election of a Speaker and not to conduct the floor test. If the court on March 14 is to view today's developments as non-compliance of the order and issues contempt notice then "we are heading towards a possible clash between the Legislature and the Judiciary and this will mean a breakdown of the Constitution."

ঝাড়খণ্ড প্রসঙ্গে সরকার হেস্তনেন্ত চাইছে, ইঙ্গিত দিলেন সোমনাথ

এজিয়ার নিয়ে সংঘাতে কেন্দ্র-সুপ্রিম কোর্ট

স্টাফ রিপোর্টার, নয়াদিল্লি, ১০ মার্চ: ঝাড়খণ্ড বিধানসভায় শিবু সোরেন সরকারের শক্তিরক্ষা নিয়ে কোর্ট রাজ্যপালের সিদ্ধান্তে সুপ্রিম কোর্ট হস্তক্ষেপ করায় এখন কেন্দ্রীয় সরকারের সঙ্গে তাদের সংঘাত বাধতে চলছে। কেন্দ্রের ইউপিএ সরকারের মতে, সুপ্রিম কোর্ট তার এজিয়ারের বাইরে নাক গলাচ্ছে। আজ সর্বদলীয় বৈঠকের পরে লোকসভার স্পিকার সোমনাথ চট্টোপাধ্যায়ও বলেছেন, "আদালত ও প্রশাসন, কার কী এজিয়ার সে সম্পর্কে সুস্পষ্ট নির্দেশ সংবিধানে দেওয়া আছে। কিন্তু, সুপ্রিম কোর্টের উপর পূর্ণ আস্থা রেখেই বলাছি, ঝাড়খণ্ড সম্পর্কে তারা যে সিদ্ধান্ত নিয়েছেন, তাতে সেই বিভেদরেখাটাই অস্পষ্ট হয়ে যাচ্ছে। এবং সব মিলিয়ে একটা অস্বস্তিকর অবস্থার সৃষ্টি হয়েছে।" তবে বিচারব্যবস্থার ও প্রশাসনের এই সংঘাতের ফলে কাল রচিত বিধানসভায় শিবু সোরেনের সরকারের শক্তিরক্ষা আটকাচ্ছে না। ঝাড়খণ্ডে বিধানসভা নির্বাচনের উল্লেখ্য, এক নির্দল বিধায়কের

পরে কোনও দল বা গোষ্ঠীই গরিষ্ঠতা না পাওয়ায় এনডিএ এবং কংগ্রেস-জেএমএম জোট আলাদা আলাদা ভাবে সরকার গড়ার দাবি জানিয়েছিল। কিন্তু রাজ্যপাল সিংহের রাজি কংগ্রেস-জেএমএম জোটের নেতা শিবু সোরেনকেই সরকার গড়তে ডাকেন এবং শক্তি পরীক্ষার জন্য ২১ মার্চ পর্যন্ত সময় দেন। এ নিয়ে রটি ও দিল্লিতে বিরোধীদের হুমুল প্রতিবাদ শুরু হলে বিতর্ক রাষ্ট্রপতিভবন ও সুপ্রিম কোর্ট পর্যন্ত গড়ায়। রাষ্ট্রপতির কাছে এনডিএ জোট নির্দল-সহ প্রয়োজনীয় ৪১ জন বিধায়ককে হাজির করে। রাষ্ট্রপতির চাপের মুখে পড়ে রাজ্যপালও শিবু সোরেনকে ২১ তারিখের বাদলে ১৫ মার্চ আন্তাভাট নিতে বলেন। কিন্তু তার পরেই সুপ্রিম কোর্ট আর এক ধাপ এগিয়ে শিবু সোরেন সরকারকে ১১ তারিখ আস্থা ভোট নিতে বলে এবং একই সঙ্গে মনোনীত আংলো ইন্ডিয়ান বিধায়ককে ভোটাভুটিতে অংশ নিতে বিরত করে। উল্লেখ্য, এক নির্দল বিধায়কের

আজই দিয়েছেন। সংবিধানের ১৪৩ অনুচ্ছেদের আওতায় সরকার এ বার এই বিতর্ক নিয়ে সুপ্রিম কোর্টের কাছে আবার মত চাইতে পারে। নিয়ম অনুযায়ী কেন্দ্রীয় মন্ত্রিসভার বৈঠকে এই মর্মে প্রস্তাব গৃহীত হওয়ার পরে সেটা সুপ্রিম কোর্টের প্রধান বিচারপতির কাছে পাঠাতে হয় রাষ্ট্রপতির মাধ্যমে। তার পরে সুপ্রিম কোর্টের সাত বা নয় জন বিচারপতিকে নিয়ে গঠিত বেন্চের উপস্থিতিতে এই বিষয়টি সম্পর্কে তাঁদের মত জানাবেন।

বিশিষ্ট সংবিধান বিশেষজ্ঞ সিদ্ধার্থশঙ্কর রাণের মতে, সংবিধানের ১৪৩ অনুচ্ছেদের আওতায় বিষয়টি ব্যাখ্যা করে সুপ্রিম কোর্ট যেটা জানাবে, সেটা তাদের মতামত, রায় নয়। অর্থাৎ, সরকারের তরফে তা মান্য করার বাধ্যবাধকতা নেই। তবে সিদ্ধার্থবাবু এটাও মনে করিয়ে দেন যে, প্রচলিত রীতি অনুযায়ী সুপ্রিম কোর্টের মতামতকে সরকারের পূর্ণ এর পর ছয়ের পাতায়



অতান্ত গুরুত্বপূর্ণ সাংবিধানিক বিষয়ে আইনি প্রশ্ন দেখা দিলে সরকারের হয়ে রাষ্ট্রপতি সুপ্রিম কোর্টের মতামত চাইতে পারেন।

অবাঞ্ছিত হস্তক্ষেপ

রাষ্ট্রপতির পর এ বার সুপ্রিম কোর্ট। ঝাড়খণ্ডের নবনির্বাচিত বিধানসভার অধিবেশন ও আস্থা-ভোটের দিনক্ষণ লইয়া ক্রমাঙ্কিত চর্চায় আরও এক সাংবিধানিক কর্তৃপক্ষের দুর্ভাগ্যজনক যোগদান দেখা গেল। রাজ্যপাল তাঁহার এজিয়ারে থাকিয়াই এই নির্ঘণ্ট প্রস্তুত করিয়াছিলেন। কিন্তু জাতীয় বিরোধী পক্ষের চাপে রাষ্ট্রপতি রাজ্যপালকে তাঁহার ভবনে ডাকিয়া পাঠান, রাষ্ট্রপতির সহিত সাক্ষাতের পরই রাজ্যপাল ঝাড়খণ্ড বিধানসভার অধিবেশন ও আস্থা-ভোট আগাইয়া আনেন। বিরোধীরা অতঃপর সুপ্রিম কোর্টের দ্বারস্থ হইলে সর্বোচ্চ আদালত তাহা আরও আগাইবার নির্দেশ দিয়াছে। প্রশ্ন উঠিয়াছে, তবে কি রাজ্যপালের আর প্রয়োজন নাই? কবে নির্বাচিত আইনসভার অধিবেশন বসিবে, নির্বাচিত জনপ্রতিনিধিরা কবে সেই সভার সদস্য রূপে শপথ লইবেন, আস্থা-ভোট কবে গৃহীত হইবে, মনোনীত সদস্যদের আস্থা-ভোটের আগে মনোনীত করা যাইবে কি না— সব কিছুই যদি রাষ্ট্রপতি বা বিচারপতিরা স্থির করিয়া দেন, তবে সত্য-সত্যই রাজ্যপালদের আর করণীয় কিছু থাকে কি?

রাজ্যপাল বিধানসভার অধিবেশন আগাইয়া আনিয়াই ছিলেন। তাহা আরও আগাইবার নির্দেশ দিয়া এবং অধিবেশন ও তাহার আস্থা-ভোট পর্ব আদালতের নজরদারি ও তত্ত্বাবধানে সংঘটিত করার নির্দেশ দিয়া শীর্ষ আদালত রাজ্যপালের এজিয়ারে হস্তক্ষেপ করিয়াছে। নবনির্বাচিত জনপ্রতিনিধিদের উদ্দেশে রাজ্যপালের স্বাগত ভাষণ এবং সভার স্পিকার নির্বাচনের মতো জরুরি পরিষদীয় কৃত্যও শীর্ষ আদালত মূলতুবি রাখিয়াছে। ইহা কি বিচারবিভাগের অতি-সক্রিয়তা নয়, যাহা নির্বাচিত আইনসভার মর্যাদা ও সার্বভৌমত্ব এবং রাজ্যপালের সাংবিধানিক এজিয়ারে হস্তক্ষেপ করিতেছে? বিচার বিভাগ ভারতীয় গণতান্ত্রিক ইমারতের তিনটি অপরিহার্য স্তরের অন্যতম, শাসন বিভাগ ও আইন বিভাগের সহিত সমন্বয় সাধন করিয়াই যাহা গণতন্ত্রের রক্ষাকবচের কাজ করে। কিন্তু আইন বিভাগ তথা নির্বাচিত আইনসভাই ভারতের পরিষদীয় গণতন্ত্রে সার্বভৌম। তা ছাড়া, অন্য দুই বিভাগের সহিত সমন্বয় সাধনই এই গণতন্ত্রের শক্তি। তবু শাসন বিভাগের কাজে বিচার বিভাগকে প্রায়শ অবাঞ্ছিত হস্তক্ষেপ করিতে দেখা গিয়াছে। যুক্তি ছিল, শাসন বিভাগ অর্থাৎ আমলাতন্ত্র ও প্রশাসনের কর্তব্যে গাফিলতির জন্যই জনসাধারণের দুর্ভোগ দূর করিতে জনস্বার্থেই বিচার বিভাগ হস্তক্ষেপ করিতেছে। কিন্তু নির্বাচিত জনপ্রতিনিধিসভার এজিয়ারে আদালতের হস্তক্ষেপ উদ্বেগজনক। আরও উদ্বেগজনক এই জন্য যে নির্বাচকমণ্ডলীর প্রতি জবাবদিহির দায়বদ্ধ জনপ্রতিনিধিদের গণতান্ত্রিক বৈধতা বিচার বিভাগের কাজে খর্ব হইবার শঙ্কা রহিয়াছে।

এই প্রবণতা উত্তরোত্তর বৃদ্ধি পাইতেছে সংবিধানে বিচার বিভাগের এজিয়ার তথা আইন ও শাসন বিভাগের সহিত তাহার আন্তঃসম্পর্কের বিষয়টিতে কিছু অস্পষ্টতা থাকিয়া যাওয়ায়, যেমন রাষ্ট্রপতির এজিয়ার লইয়া রহিয়াছে সমূহ ধোঁয়াশা। ঝাড়খণ্ডের নির্বাচনোত্তর ঘটনাবলি প্রমাণ করিতেছে, এই অস্পষ্টতা ও ধোঁয়াশা অচিরে দূর করা দরকার। সুপ্রিম কোর্ট সহ সর্ব স্তরের আদালতের অধিকার ও এজিয়ারের সীমানাই সুনির্দিষ্ট হওয়া দরকার। নির্বাচিত আইনসভা ও তাহার সদস্যদের সার্বভৌমত্ব তাঁহাদের গণতান্ত্রিক দায়বদ্ধতা হইতে উৎপন্ন, যে-দায় বিচারপতিদের নাই। তাঁহাদের কেবল সংবিধানের প্রতি, সাংবিধানিক শাসনের প্রতি আনুগত্যের দায় আছে, যে-দায় জনপ্রতিনিধিদেরও আছে। আইনসভার গঠনে রাজ্যপালের এবং তাহার নৈমিত্তিক কাজকর্মে স্পিকারের ভূমিকা কোনও আদালতই কাড়িয়া লইতে পারে না স্পিকার নির্বাচন স্থগিত রাখিয়া স্পিকারহীন সভায় আস্থা-ভোট গ্রহণের আয়োজনও আদালতের কাজ নয়। শাসন পরিচালনার দায় আদালতের বা বিচারকদের নয়, সে দায় জনপ্রতিনিধিদের, মন্ত্রিসভার। ভারতীয় বিচারবিভাগ এমন অনেক বিষয় লইয়া আবেদন গ্রহণ করে ও এমন অনেক নির্দেশ দেয়, যাহাতে আপন বিভাগীয় সীমানা অতিক্রমের অভিযোগটি অত্যন্ত স্বাভাবিক ও সংগত হইয়া ওঠে। জনস্বার্থ সংক্রান্ত মামলার সূত্রে এই অতিসক্রিয়তা ইদানীং অনেক সময়েই রীতিমত প্রকট হইয়া ওঠে। কোনও সন্দেহ নাই, প্রশাসনের অপদার্থতা এবং আইনবিভাগের দীর্ঘসূত্রিতা অনেক সময় এমন অতিসক্রিয়তার অবকাশ তৈয়ারি করিয়া দেয়। কিন্তু অব্যাপারেসু হস্তক্ষেপ করিবার অবকাশ তৈয়ারি হইলেই তাহা ব্যবহার করিতে হইবে, ইহা কোনও যুক্তির কথা হইতে পারে না। ঝাড়খণ্ডে আস্থা ভোট প্রাপ্ত সুপ্রিম কোর্টের নির্দেশ দুর্ভাগ্যজনক এবং আপত্তিকর।

Involving constitutional offices in partisan politics

By Harish Khare

On May 30, 1996 this newspaper published on the front page a super-exclusive, report entitled, "A Confrontation Avoided." The story told of "a breath-taking but shortlived confrontation" between President Shanker Dayal Sharma and Prime Minister Atal Bihari Vajpayee. President Sharma had refused to read out to the two Houses of Parliament an address prepared by the Vajpayee Government, whose majority was still to be tested. Instead, the President had sent to the Prime Minister a draft of an address he wanted to read out.

President Sharma's argument was that "in the ordinary course, an address by the President under Article 87(1) represents the policies and programmes proposed to be implemented by the Council of Ministers and invites the attention and consideration of Parliament in this respect."

Mindful of Mr. Vajpayee's untested majority, the President had noted: "The circumstances obtaining relative to the summoning of the ensuing session of Parliament are materially different. Having regard to the composition of the 11th Lok Sabha and the provisions of Article 75(3) and Article 87(1) of the Constitution, I propose to address both Houses of Parliament assembled together and inform Parliament of the cause of summons as per the text attached herewith."

According to the May 30, 1996 story, which till today has remained unquestioned, President Sharma's alternative draft, attached with his letter of May 22, merely wanted to note the purpose of the Lok Sabha meeting. The crux of the draft text was: "The cause of summoning the present session of Parliament is to enable the House of the People to determine whether it has confidence in the Council of Ministers."

President Sharma's May 22, 1996 missive to the Government met all the standards of political correctness, but was against the grain of the constitutional arrangement. The Vajpayee-headed Council of Ministers correctly refused to be cowed down by the President; challenged into an eyeball-to-eyeball confrontation, the President blinked and two days later, on May 24, read out to Parliament the address as prepared by the Council of Ministers.

Whatever be President Sharma's calculations and considerations, *The Hindu* story of May 30 concluded: "Dr. Sharma chose to regard Mr. Vajpayee as a caretaker Prime Minister, a construction that cannot be easily read in the Constitution of India."

The purpose of recalling at some length this episode is to contrast the Bharatiya Janata Party's proclivity to embroil the Rashtrapati Bhavan in partisan

disputes when it is out of power and to snub and disdain the President of India when in office. For most of President K.R. Narayanan's Rashtrapati Bhavan tenure, the BJP was sniping at him, but earlier had no hesitation in hailing him for sending

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ing back for reconsideration the rule in Uttar Pradesh in 1997. I.K. Gujral Government's recommendation for President's

And, expectedly, the BJP does not want the Jharkhand Government to read out an address prepared by a government which still has to prove its majority.

In the current Jharkhand controversy, the BJP leadership has sought to suck in the Rashtrapati Bhavan into the vortex of partisan politics. On March 2, the day the Jharkhand Government administered the oath of office to Shibu Soren, the

National Democratic Alliance leaders led by Atal Bihari Vajpayee and L.K. Advani met the President and sought "his personal intervention" to correct what they alleged was a mala fide decision taken by the Ranchi Raj Bhavan.

The next day, the NDA took "41 MLAs" in full media glare to the Rashtrapati Bhavan. Instantly, the operative word in the media discourse became that "41 MLAs were paraded" before the President. The fact of the matter was that the President did not receive 41 MLAs; nor did the Rashtrapati Bhavan do any head count or any kind of verification.

Healthy convention

As a matter of healthy convention, the Rashtrapati Bhavan does not usually issue any communiqué on such occasions; the result was that the NDA got away by creating an impression that the President was endorsing their complaint

against the Jharkhand Governor. The NDA leaders further embroiled the Rashtrapati in their partisan dispute when they told the media that Mr. Kalam had "summoned" the Governor.

Again, on the night of March 2, the Union Home Minister, Shivraj Patil, met the President and Mr. Kalam is presumed to have brought up the allegations of the NDA delegation. Mr. Patil is understood to have suggested that the Governor could be asked to come to Delhi and explain to the President the considerations that went into his decision about inviting Mr. Soren.

But, again, in the absence of any correct statement of facts from the Rashtrapati Bhavan the NDA-instigated "the President summons" headline went unchallenged and it has become a fact, a "fact" even the Supreme Court of India subscribed to.

The BJP is not only inveigling

the Office of President, it has now involved the apex court in the Jharkhand controversy. No court of law has the administrative agencies to arrive at political facts. Though the NDA is claiming to have the support of five "independent" MLAs, it has been keeping these five legislators under lock and key. What the apex court could not know — nor was it pointed out to the MLAs — was that these five MLAs came into the BJP's custody when the Arjun Munda Government was still in the saddle in Ranchi.

Reports from Ranchi suggest that not all of these five legislators are masters of their own free will. By relying on the "avertments of the petitioner" the apex court allowed the BJP to get away with its strong-arm tactics. This script is now likely to be followed whenever there is no clear verdict and there may be a difference of only a few seats between this or that alliance.

Call for Presidential reference to Supreme Court on separation of powers

● Near-consensus at all-party meet convened by Speaker ● BJP leaders walk out

By Neena Vyas

NEW DELHI, MARCH 10. There was near-consensus today among the leaders of political parties, barring the Bharatiya Janata Party, that the Government should make a Presidential Reference to the Supreme Court under Article 143 of the Constitution to seek its opinion on the issue of separation of the powers of the judiciary and the legislature while maintaining the "fine Constitutional balance" for the democratic functioning of the State.

The immediate provocation was the Supreme Court order in the Jharkhand case as most political parties felt that the Court had "transgressed" its jurisdiction and "encroached" on that of the legislature by directing the legislature to take a trust vote on a particular date, record the proceedings and report back to the Court.

The suggestion that the Government should seek a presidential reference on the important Constitutional issue was reportedly made by the Rajya Sabha MP and jurist, Fali Nariman, at a meeting of the party leaders called by the Speaker, Somnath Chatterjee, here this evening. This was endorsed by a majority of the party leaders and later, a statement suggesting that this should be

done was issued by the Speaker.

Barring the Bharatiya Janata Party — its leaders walked out of the meeting called by the Speaker — all parties, including those of the National Democratic Alliance, went along with the decision that the Speaker should make a statement on the crucial issue related to Constitutional jurisdiction.

As the leaders left the meeting at the Parliament House library, several members said that the parties had endorsed the decision that the Speaker is the custodian of the House and would make a statement.

Mr. Chatterjee said: "In view of the order of the Honourable Supreme Court in the Jharkhand case, I felt that certain matters are to be considered by the legislatures because of several clear provisions in the Constitution relating to the relation between the legislature and the judiciary ... I will soon make a statement on the issue ..."

BJP walks out

Earlier, mid-way through the meeting all three BJP leaders who attended the meeting — the Leader of the Opposition in the Rajya Sabha, Jaswant Singh, the Deputy Leader in the Upper House, Sushma Swaraj, and the Deputy Leader of the BJP in the Lok Sabha, V.K. Malhotra — walked out. They said they did

not want to be party to any statement, motion or resolution on the issue inside or outside the House.

None of the leaders of the allied parties of the National Democratic Alliance left before the meeting ended. Those who attended the meeting from the NDA included Prabhunath Singh (Janata Dal-United), Yerran Naidu (Telugu Desam Party) and B.K. Tripathi (Biju Janata Dal). One member who attended the meeting said: "Only the BJP members walked out ... none of their NDA partners left ... that tells you whether the allies are with the BJP or not with the BJP on this."

Although Mr. Jaswant Singh said that he had been informed about the meeting a mere 10 minutes earlier, the Speaker told the press that this morning it was Mr. Malhotra who had suggested that a meeting of party leaders be called to discuss the issue. "And I called a meeting," Mr. Chatterjee said. Apparently, by afternoon it was decided to include members of the Rajya Sabha.

'Partisan role'

Briefing the press, Mr. Singh said that a ruling party should not take umbrage when a court order goes against it. "Anyone who sits in the chair has to learn to swallow the bitter pills." He

said that the Jharkhand Governor had played "a partisan role" by giving the Soren Government too much time to take a trust vote. When asked whether the outer limit of such time was 13 days, which was given to the Vajpayee Government in 1996, he said: "There is no outer limit." Was the BJP in favour of fixing the outer limit by law? His response was that there could not be a law for everything.

"My appeal to the Speaker on an important issue like this is, please do not divide the House." The BJP wished to "preserve the viability of the legislature, the functioning of the executive and the judiciary," he said. Mr. Singh was also asked whether he thought the 1996 Vajpayee Government and the 2000 Nitish Kumar Government in Bihar had done wrong by filling the nominated members vacancies reserved for Anglo-Indians. "That was done under the law, the numbers at that time were not crucial to deciding who would win or lose the trust vote."

When asked whether the BJP felt the courts had overstepped their limit by ordering video-recording of the trust vote in Jharkhand and asking the State Speaker to report the decision, Mr. Singh said he would not like to comment on a court order.

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TEMPERING VIGILANCE WITH RESTRAINT

THE SUPREME COURT'S strong words on the possibility of a fraud on the Constitution in the appointment of Mr. Shibu Soren as Chief Minister of Jharkhand and its direction to advance the floor test to determine his support in the Assembly represent a political setback to the United Progressive Alliance, which has left the Bharatiya Janata Party elated. It was not just that the National Democratic Alliance was within striking distance of a majority, with 36 MLAs of its own against the UPA's 26. Its publicly displayed support of 41 legislators in a House of 81 demonstrated to the nation that the Governor, Syed Sibtey Razi's appointment of Mr. Soren was indefensible. On the other hand, neither the UPA nor the Governor could offer a convincing reason publicly for the choice. In the circumstances, it could be argued with justification that the one month's time given to him originally — it was cut short after the Governor's meeting with the President — to demonstrate his majority support was just to enable him to convert his initial losing position into a majority through pressure and blandishments. Whatever the outcome of the composite floor test in the Assembly, the UPA would seem to have lost out in this round before national public opinion as not quite adhering to fairness and constitutional values.

Beyond the political fall-out are the larger questions touching on institutional relations among the judiciary, the executive, and the legislature. Under the scheme of things, neither the executive nor the legislature can claim supremacy even in their own spheres because it is the Constitution that is supreme. One of the judiciary's functions is to ensure that they stay within the bounds of the Constitution, and it is because of their large-scale violation of the rules that the courts have come to play so large a role in what should legitimately be political questions. Political leaders and parliamentarians are understandably agitated when the judiciary intrudes into the political space, but the issue of

the default of the executive and the legislature needs to be addressed side by side with any discussion of the overarching power the judiciary is assuming for itself. In the case of Jharkhand, the Governor's actions were not such as to reinforce confidence that he would be a fair and neutral umpire. In a situation of such desperation and bitterness, when all scruples seem to have been abandoned, there was legitimate doubt whether the voting in the Assembly would be orderly and fair. Some measure of judicial oversight became necessary over both the Governor's actions and the voting in the Assembly if public confidence in democratic institutions and their legitimacy was to be preserved.

The question remains though whether the Supreme Court should have made such strong comments suggesting possible fraud by the Governor at this stage of the hearing; and whether it should have advanced the date of the vote and gone into such minute details of the voting procedure within the Assembly. This is not the first time an order directing a composite floor test has been made — the apex court passed an almost identical order in very different circumstances in 1998, when the Kalyan Singh Ministry had been dismissed and its majority needed to be tested in the Uttar Pradesh Assembly. The procedure the court has laid down may look like a fair and efficient way of testing which of the two contending parties has a majority, but it is not the method of the Assembly's choosing and departs from its usual practice. This raises a troubling question: how much of Article 208, which allows State legislatures to frame rules of procedure for the conduct of business within the House, will remain after such a judicial order is passed? The Supreme Court's decision on the Jharkhand vote will no doubt ensure a fair and orderly resolution of the contentious issue, but it is not without some disquieting implications for relations among the constitutional institutions of the judiciary, the executive, and the legislature.

THE HINDU

11 MAR 2005

Court takes over trust vote

Jharkhand test date advanced

OUR BUREAU

New Delhi, March 9: The Supreme Court today virtually took over a key function of a governor and overturned a state cabinet recommendation, advancing the Jharkhand floor test to Friday and issuing a chain of directives that makes the trial of strength a court-supervised exercise.

The court said the government cannot nominate an Anglo-Indian legislator before the trust vote — a directive that has thrown the Congress-JMM alliance's calculations into disarray.

Nominated members have voting rights, except when finance bills are being considered. The extra vote, plus an anticipated disqualification of a rival legislator, could have tilted the balance in favour of the ruling alliance during the floor test. (See tally)

The vote will be videographed and the chief secretary and the director-general of police will have to ensure that no MLA is influenced by anyone. The Assembly will convene tomorrow for the oath-taking ceremony.

The impact of the court order is expected to be felt far beyond the borders of Jharkhand.

Rescheduling the dates recommended by the Soren cabinet and notified by governor Syed Sibtey Razi, the court said its order "shall constitute the notice" for convening the

Assembly and no separate notification would be required.

Issuing such a notification is one of the primary functions of a governor and the court order has fuelled a debate.

Justice Kuldip Singh, a retired Supreme Court judge, said: "When the MLAs have to take oath on March 10, the Assembly is actually convened. So there is no necessity for the Supreme Court to say that its order be construed as the formal notice for convening the Assembly, which is certainly beyond the court's constitutional limits."

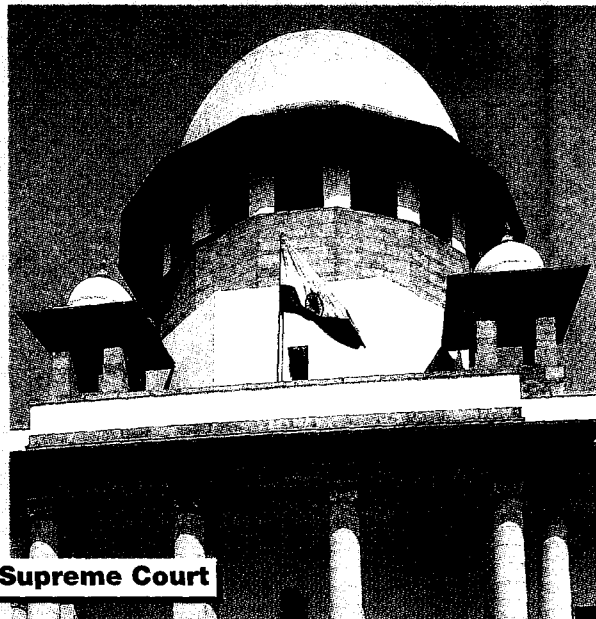
The political class, not keen to be seen on the side of the governor because of the controversial manner in which he swore in Soren, declined to go on record but said in private that the order is tantamount to interference in legislative business.

According to the schedule approved by the Jharkhand governor, the trust vote was supposed to take place on March 15, the sixth day after convening the House. The long gap had fuelled allegations that the stage was being set to facilitate "horse-trading".

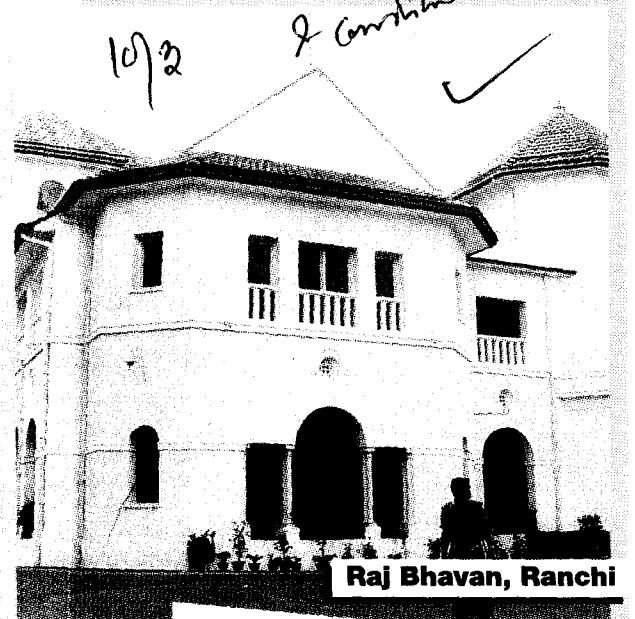
March 15 itself was a rescheduled date — a concession made by the governor after he was summoned by the President. Initially, Soren was given time till March 21 to prove his majority.

Today's interim order was pronounced on a petition filed by former chief minister Arjun Munda and a voter, challenging the governor's invitation

SUPREME COURT ISSUES



Supreme Court



Raj Bhavan, Ranchi

WHAT THE COURT ORDERED

- Floor test on March 11, not March 15
- No need for governor's notification for convening Assembly
- Don't nominate Anglo-Indian member before floor test
- Videograph floor-test proceedings
- Pro tem Speaker should tell court the test's outcome
- Onus on chief secretary and DGP to ensure MLAs vote "safely, freely and securely"
- House proceedings on March 11 should be peaceful. Any disturbance will be "viewed seriously"

How they stack up

TOTAL: 81, MAJORITY MARK: 41

NDA (41)

- BJP: 30
- JD(U): 6
- S. Mahto: Ajsu
- C.P. Choudhary: Ajsu
- Madhu Koda: Ind
- Harinarayan Rai: Ind
- Enos Ekka: Jharkhand Party

UPA (40)

- JMM: 17
- Cong: 9
- RJD: 7
- UGDP: 2
- FB: 2
- CPI(ML): 1
- NCP: 1
- Stephen Marandi: Ind

to Soren. The bench of Chief Justice of India R.C. Lahoti and Justices Y.K. Sabharwal and D.M. Dharmadhikari said the governor had "played a fraud on the Constitution" if what the petition said was true.

Munda had "made out a prima facie strong case" against Soren's swearing-in, they said.

The order included a direction that Friday's proceedings should have the one-point agenda of determining whether Soren or Munda commanded majority. This means that the governor's address and the Speaker's election, which were planned before the vote, could be held only after that.

The pro tem Speaker was to report the outcome of the floor test "faithfully" to the court than stick to the formality of placing it before the governor, the court said. The role of the Speaker is usually crucial in a floor test as he has the power to disqualify MLAs and spring the casting vote in the

event of a tie.

The NDA had been alleging that the pro tem Speaker, Pradeep Kumar Balmuchu of the Congress, was planning to disqualify Enos Ekka, who is now seen with the BJP alliance but whose party president is with the government.

■ See Page 6

Buta pledge to shake up bureaucracy

Agencies
Patna, March 9

BIHAR GOVERNOR Buta Singh on Wednesday said he would effect a major reshuffle to tone up the police and civil administration and improve law and order, which would be accorded top priority following imposition of President's rule in Bihar.

"Administrative reshuffle is a key to undertaking the exercise for improving law and order and provide full security to the people," he told reporters after a high-level meeting with top officials, including chief secretary K.A.H. Subramanian, home commissioner Girish Shankar and DGP Narayan Mishra at the main secretariat here.

"An administrative shake-up is on the cards," Singh said in reply to a query.

Singh said law and order and development, besides measures to check terrorism on the Bihar-Nepal international border would be accorded top priority.

Health, education, protection of human rights and welfare programmes for women, children and youths would be the other thrust areas in the steps to be taken up for all-round development of the state.

Sustained efforts would be made for infusing a sense of security among the people and help improve law and order and anti-socials would be firmly dealt with, he said. Special measures would be taken to stop terrorism on the international Bihar-Nepal border, he added.

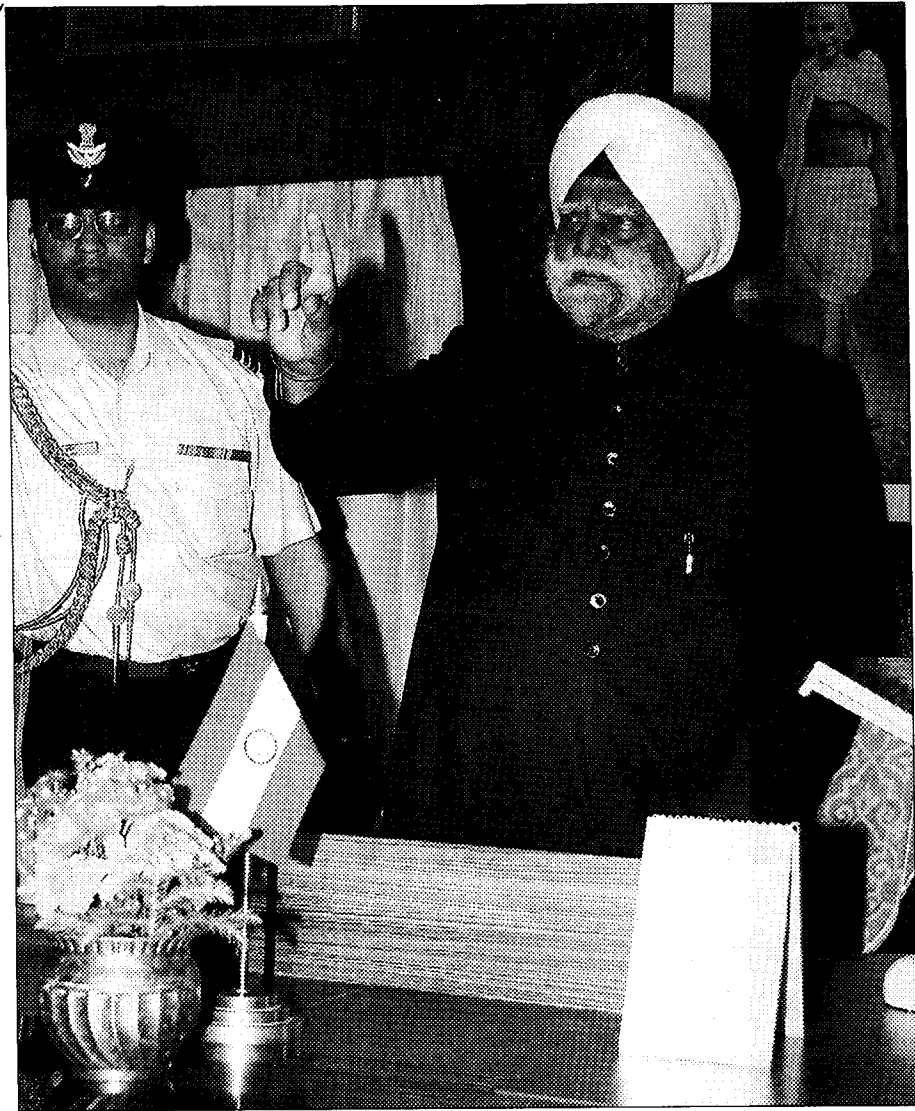
His statement on steps to check terrorism followed reports of Maoist rebels from Nepal sneaking into Bihar through the porous borders for shelter.

Talking about the circumstances leading to the imposition of central rule in Bihar, Singh said he had made frantic efforts for installation of "a popular government, but in vain.

"I had invited leaders of various political parties, groups, organisations and independents to ascertain whether they could together form a simple majority with the support of 122 MLAs in the 243-member Assembly.

"I was left with no option other than recommending President's Rule as none of them were able to convince me that they had the required numbers for a simple majority," the Governor said.

Asked about the appointment of his advisers, he said, "I will let you know as soon as their appointments



Buta Singh at the secretariat in Patna on Wednesday.

are made." Singh said he had come to the secretariat in the morning and held a high-level meeting with the top officials to spell out the priorities.

Earlier, Singh accompanied by principal secretary R.J.M. Pillai had reached the state Secretariat at 10:30 am sharp. The chief secretary

and other top officials received him there.

Report on evictions

Taking serious note of reports of politicians and bureaucrats occupying hundreds of government quarters in an 'unauthorised' manner, the Patna High Court on

Wednesday sought an action taken report on their eviction by March 21.

A division Bench comprising of the HC chief justice directed advocate general Shashi Anugrah Narayan to submit a status report for removal of the 'unauthorised' occupants of government quarters by March 21.

Yes, Guv'nor

UPA must stick together,
or it'll go to pieces

We welcome Bihar governor Buta Singh's decision to ask for President's rule in the state. Elections in February gave no clear winner; Lalu Prasad's RJD is the single largest party, but is nearly 50 seats short of a majority. Parties like the Congress, NCP and the communist parties can add less than 20 to the tally. UPA ally Ram Vilas Paswan's LJP can help the alliance form a government with its 29 seats, but Paswan is playing hardball. So, six months of Central rule will give ample time for these players to negotiate and form a government. President's rule will also take away the bargaining initiative from Prasad's RJD: The party has hurriedly staked claim to power with Rabri Devi its chosen head of government. Insurprisingly, this posture has alienated allies like Paswan, who see this as RJD's attempt to rush things through. With Buta Singh ruling as New Delhi's representative, this headlong urgency to form a government will go. With time on hand, we expect the UPA to be able to hustle up a government in a few months. If that doesn't happen, Bihar ought to have another election around August, as suggested by CPM boss Harkishen Singh Surjeet.

A short spell of President's rule will also allow the UPA to introspect on why Bihar's result is such a mess. It is simple to explain the reason for the electoral fiasco. The explanation does not involve complex dynamics of caste, religion or regional loyalties. The UPA finds itself in the situation it is in today because it was too myopic to replicate its Central alliance in Bihar. Simple arithmetic proves that a pre-poll alliance between the Congress, RJD, LJP, NCP and the communist parties would have won them 40 extra seats in Bihar and brought the opposition NDA to its knees, with a tally of 52. The BJP, which won 37 seats against a divided UPA, would have lost 22 of those to an allied front and its strength would have been down to a measly 15. In December 2003, shortly after losing polls in Rajasthan, Madhya Pradesh and Chhattisgarh, a committee led by Pranab Mukherjee found that the lack of pre-poll allies was the reason for Congress's failure. The party took this advice to heart and the UPA won the Lok Sabha polls last year handsomely. Nine months later, coalition building was forgotten, for reasons like hubris on the part of RJD, the ambitions of a few ageing Congressmen, and Paswan's hope of forming a Muslim-Dalit vote base. The UPA must understand that the coalition either sticks together, or falls together.

THE TIMES OF INDIA 08 MAR 2005

Lightning strikes at RAJ BHAVANS

Jharkhand case shows why Sarkaria Commission suggested governors be eminent persons not closely connected with politics, at least in recent years

■ SUBHASH C KASHYAP

IF ONE goes by the provisions of the Constitution, the Governor is appointed by the President and holds office during his pleasure. He takes an oath "to preserve, protect and defend the Constitution and the law" and to devote himself "to the service and well-being of the people" of the state. The Chief Minister has to be appointed by the Governor but the Council of Ministers is collectively responsible to the Assembly. This means that only the person likely to be most acceptable to the House ought to be appointed CM.

The office of the Governor is one of great responsibility and dignity. He is not only the head of the state but also a vital link between the Union and the state. Unfortunately, those in power at the Union level have come to treat it as a part of the patronage or spoils system. Governorship becomes a reward for past loyalty and a tacit assurance of protecting party interests in the future. The Sarkaria Commission and the National Commission on the Constitution have both suggested norms to govern the selection of governors only from

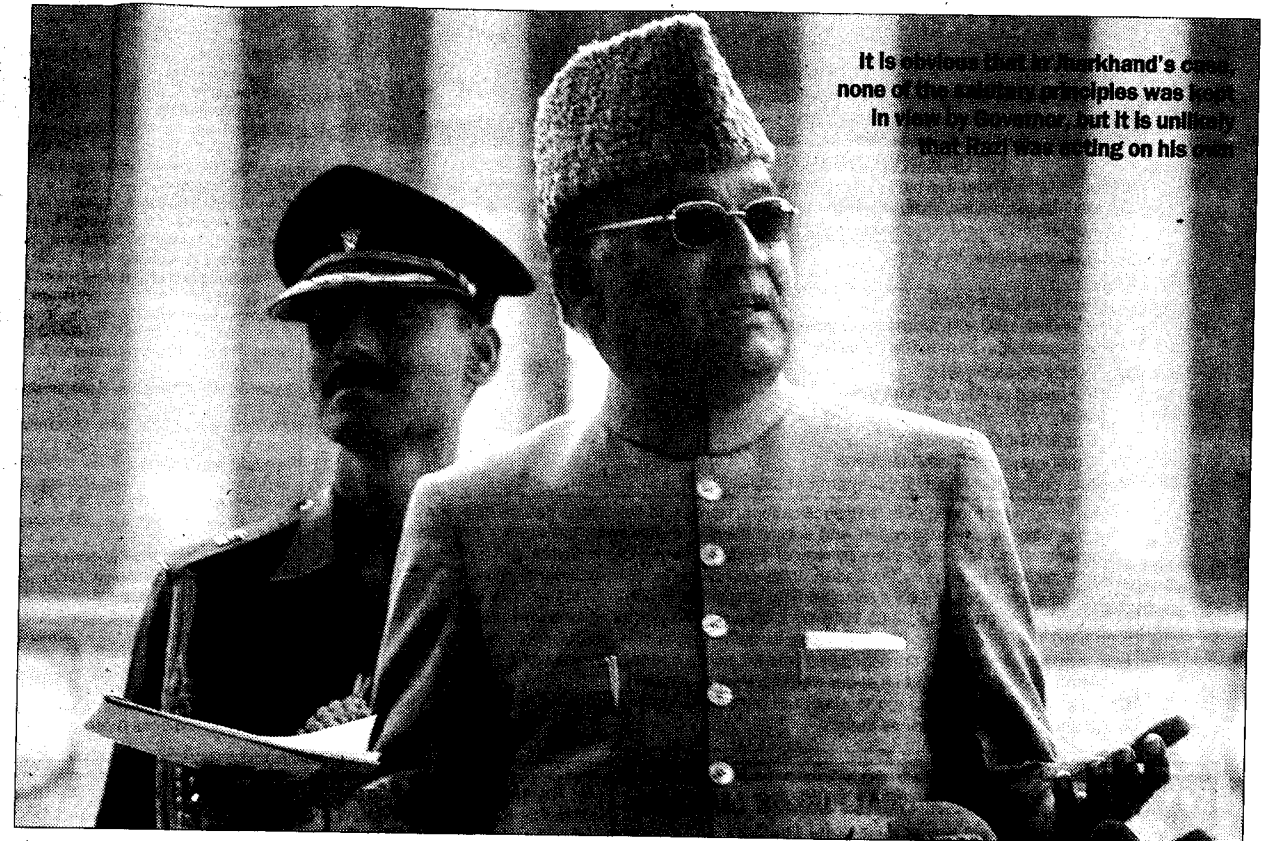
among eminent persons not too intimately connected with politics at least in recent years.

The Governor's office has often been misused both by the Centre and by the Governors themselves. Some Governors have shown utter lack of discretion and behaved irresponsibly inviting, even judicial indictment, e.g. in the 1994 Bommai case, the Supreme Court commenting on the conduct of the then Governor inter alia said that "all canons of propriety were thrown to the winds" and his act "smacked of mala fides". As a high constitutional functionary, the Governor "was expected to conduct himself more fairly, cautiously and circumspectly".

Where the elections return a 'hung' House with no single party or pre-poll alliance being in a position to command majority support on its own, the role of the Governor becomes most delicate and difficult. Unless the fullest care and caution are exercised, the Governor may get involved in unseemly controversies. The unfortunate stand of some of the Governors in the matter has in fact been largely responsible for the continuing phenomenon of horse-trading and instability of

governments.

The Sarkaria Commission, the SC (in the Bommai case) and the Constitution Commission have all held that the question of majority support should be settled only on the floor of the House. The Governor cannot act as a policeman keeping a head-count of supporters of different parties and leaders or verifying the lists of supporters, their signatures and the like. The Sarkaria Commission recommended, and the Constitution Commission endorsed, that in case there is no single party having absolute majority, the Governor should adhere to the following order of preference in calling the leaders to form the government: (i) leader of a pre-poll alliance, (ii) leader of the largest single party, (iii) leader of a post-poll alliance, (iv) leader of the group of parties some of which promise support to the government from outside, and lastly (v) leader who in Governor's own judgement was most likely to command a majority. It is obvious that in the Jharkhand case, none of the salutary principles was kept in view. Instead of following the order of preference and inviting the leader of the largest pre-poll alliance, who also happened to be the leader of the largest single party, the



It is obvious that in Jharkhand's case, none of the salutary principles was kept in view by Governor, but it is unlikely that Razi was acting on his own.

Governor decided to appoint a person of his own judgement. Even if the Governor wanted to go by the head-count, 41 members constituting majority were paraded before him. It was highly improper for the Governor to decide to meet some of the supporting members separately and individually.

The conduct of the Governor has generated almost universal condemnation for jeopardising respect for democratic institutions and constitutional offices. It has, in fact, caused tremendous damage to the image of the Congress and its leadership. However, it seems unlikely that he was acting on his own. After all, Syed Sibtey Razi is known to be a very

decent man. Once the constitutional culture and democratic norms are given a go-by, a vicious cycle is set in motion and one wrong is used to justify another wrong with wrongs getting multiplied. Houses of Parliament not being allowed to function is a case in point.

A way for the Governor to stay out of controversy could have been to send a message under Article 175(2) asking the House itself to elect its leader who could be appointed the chief minister. That way, the decision of majority support would have been taken on the floor of the House, chances of horse-trading would have been minimised and it would not have been necessary to ask such a chief

minister to seek a vote of confidence again. When the basic question to be determined is of who commands the majority support in the House, the most obvious and logical course is to ask the House itself. After all, in the 1998 UP case, the High Court had ordered the reinstatement of the former chief minister and the SC had ordered a special session of the Assembly to have a composite floor test between two contending claimants to chief ministership.

The writer is Honorary Professor, Centre for Policy Research. He was secretary of the Lok Sabha and Chairman of the Drafting Committee of the Constitution Commission

Paswan Does His Bit, But Fails To Come Up As Kingmaker In Round 1

Buta favours central rule in Bihar

Our Political Bureau
NEW DELHI 6 MARCH

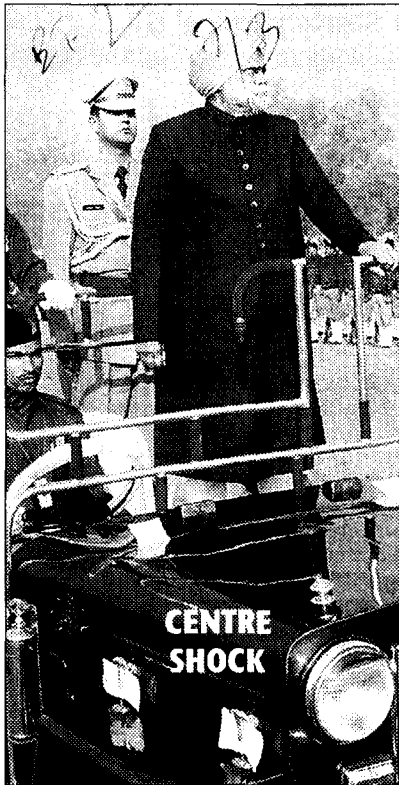
As expected, Governor Buta Singh on Sunday recommended the imposition of President's rule in Bihar. The governor despatched his report after a stock-taking session at the Prime Minister's residence on Sunday where the UPA leadership concluded that the state should be put under Central rule.

In the short run, Mr Singh will get to rule the state with a group of advisors. There is bound to be jockeying to get their favourite advisors, as the two leading lights of the UPA — Lalu Prasad Yadav and Ram Vilas Paswan — have major stakes in the establishment of a friendly arrangement in Patna.

The governor in his four-page report has listed the strength of various parties and combinations in the 243-member Assembly. The new Assembly has already been constituted and the outgoing Assembly, whose term was to expire on Sunday, was also dissolved by the governor. Once President's rule is imposed, the Parliament would have to pass a vote-on-account for Bihar before March 31.

Mr Ram Vilas Paswan, who had ambitions of emerging as the king or kingmaker, ended up in round one as neither. His project to deny the chief minister's post to Rabri Devi and Nitish Kumar may have succeeded for the time being but the JD(U) leader who has the backing of 94 MLAs and 10 Independents will remain a formidable claimant for the top post.

But Mr Paswan has reasons to be pleased with Sunday's development. It will help him save his *kursi* in New Delhi. His anxiety to protect his ministerial berth has been forcing



him to take hard positions against the BJP.

But equations within the UPA are sure to experience a lot of convulsions in the medium run. Already, the RJD has begun blaming Mr Paswan for the failure to install a "secular" government in Bihar. These noises are certain to become louder and there is likelihood of

Mr Yadav demanding the LJP leader's ouster from the government for the "betrayal".

But a re-alignment of forces in Patna will not be an easy task as the political considerations of major players continue to be irreconcilable. While it is politically imprudent to ask RJD, the single largest party, to abandon its claim for chief ministership, Mr Paswan's upper caste MLAs — they are in a majority — are sure to revolt against any suggestion of a deal with their bug bear, Mr Lalu Yadav.

Mr Paswan's attempts to thwart Mr Kumar's chances are resented by the NDA. While the JD(U) is angry with a Paswan-sponsored proposal to make its MLA Monajir Hassan the new chief minister, BJP has made it clear that Mr Kumar's chief ministership is non-negotiable.

The alliance, which has gained more depth in the recent days, will stay united and independent power deals may just not be possible. Mr Kumar, who hit out at Mr Paswan for the deadlock, said negotiations with him were possible only if he leaves the UPA.

"A canard is being spread that JD(U) is the villain of the piece for pushing the state towards President's rule. But it was because of Mr Paswan, who wants to remain a minister at the Centre and continue his anti-RJD posture in Bihar that a new government could not be formed," said Mr Kumar.

Mr Yadav, the main loser in the power game, however, will remain a political untouchable for a majority of MLAs. The Congress, which offered the support of its 10 MLAs, may now like to toe an independent line. In any case, Mr Yadav will have to be more sensitive to the concerns of the Congress as his court battles are far from over.

Buta prescribes President's rule

Vinod Sharma/Saroj Nagi
New Delhi, March 6

ADVENTUROUS GOVERNORS had landed Jharkhand and Goa in crises; the Constitutionally correct Buta Singh has merely preserved the tangled web that is Bihar politics, post-poll.

Buta today recommended President's rule for the state after hearing out rival claims and deciding that no new alignment was likely to emerge and break the deadlock in the Assembly.

How long will Central rule last? That depends on the very players who failed to cobble up a majority in the backdrop of a badly fractured mandate. President's rule will be withdrawn only when there is a possibility of the House throwing up a viable regime.

Can that happen in the near future? Yes, if Ramvilas Paswan crosses over to the BJP-JD(U), or if the JD(U) dumps the BJP and reaches a deal with Paswan or Lalu Prasad Yadav. But for these options to become real, Paswan, Nitish and Lalu will have to go against their electoral planks and overcome the bitterness in their personal relations.

Take, for instance, the much-talked-about JD(U)-LJP entente. If he concedes the CM's slot to Paswan, Nitish — who had promised a clean administration to voters — would lose credibility. At least four of the LJP's 29 MLAs have criminal records, and two of them are in jail.

Paswan, too, has his problems. If he rises to the bait, he might end up as Bihar's Chandra Shekhar, whose Congress-backed government at the Centre lasted four months. In the bargain, the LJP chief would lose the Muslims' trust and his Union Cabinet berth.

Fallen Fortress



Is Lalu-Rabri raj over?

Looks like, for now. But being the single largest party, the RJD may still be able to call the shots if a fresh attempt is made post-Central rule to put together a govt

The man responsible



Paswan could have given the RJD another chance, but didn't. Hopes a long spell of Central rule would force Cong-RJD to support him for CM

What now

Delhi will rule Bihar through the Governor. This might give ally Lalu some 'remote control' over the state. The major players may use the period to cool tempers and push through some kind of a deal

Today, the principal players kept blaming each other. Nitish slammed Paswan for bringing on President's rule, which the JD(U) leader believes will allow Lalu to rule Bihar through "remote control". The RJD attacked Paswan for ignoring the "mandate in favour of secular parties". Paswan expressed hope that a spell of Central rule would wash away the "garbage" of RJD misrule.

■ See also Page 4

Choosing Chief Ministers

By Rajeev Dhavan

Political parties should refrain from bringing constitutional governance to a halt simply because the Governor's discretion was not exercised in their favour.

DEMOCRACY CANNOT survive if unelected State Governors play games with post-election scenarios to please the party in power at the Centre that appointed them to office. The practice was evident in the aftermath of the general elections in 1967, when Governor after Governor used his discretion to choose Chief Ministers. In 2005, such abuse of power by Governors is once again being called into question. On February 2, 2005, Goa Governor S.C. Jamir sacked Chief Minister Manohar Parrikar in doubtful circumstances to peremptorily install the Congress in power. Now suspicion is being cast on the way Governors are handling post-election claims by parties to form governments in Jharkhand and Bihar.

Politically, all these manoeuvres are part of a larger canvas. The Congress is part of a secular front that does not want to see the Bharatiya Janata Party return to power — either at the Centre or in any of the States. Having lost power at the Centre in 2004, it is imperative for the BJP to re-capture power in as many States as possible to build a national image to return to power at the Centre. It is relatively easy to analyse our present discontents in consequentialist terms.

Politically, it is a straight choice between the secular front and the non-secular BJP alternative. The secular front accuses the BJP and its supporters of exploiting communal sentiments to capture power — most recently in Gujarat and elsewhere in 2002-2003. For those who support the secular front over communal alternatives, keeping the BJP and its allies out of power represents the triumph of secularism, which is basic to the Constitution.

However, such a consequentialist approach undermines rather than fulfils the goals of the Constitution. After 1967, Congress Governors played havoc with the constitutional enterprise. The worst example was that of Governor Sampuranand who, in 1967, refused to recognise a United Front post-poll alliance in Rajasthan and gave preference to the Congress which did not have a clear majority. After this, few Governors have concerned themselves with constitutional propriety.

Governor Dharam Vira of West Bengal sacked Chief Minister Ajoy Mukherjee because he wanted to face a confidence vote 19 days later

than the date suggested by the Governor. No amount of criticism of such gubernatorial actions remedies the situation. Political convenience triumphed over constitutional principles.

It was thought that matters might get better after the Supreme Court judgment in the S.R. Bommai case (1993). It laid down that the correct procedure was to test the majority of a government on the floor of the legislature. But there was no respite from political subterfuge. A disagreement between Governor Motilal Vora and Chief Minister Mulayam Singh over the date of the confidence vote led to the latter's dismissal in 1995. In 1996, Governor Romesh Bhandari refused to allow the BJP, as the largest party, to form a government in Uttar Pradesh and President's Rule was imposed to further throttle democracy.

The elections in Bihar and Jharkhand have once again thrown up challenges for the Governors of these States. The result in Haryana is abundantly clear. Having won 67 of the 90 seats, the Congress has a clear majority and has been called to form the government. In Bihar, no party has a clear majority. The single largest party remains Lalu Prasad's Rashtriya Janata Dal with 74 seats as against the Janata Dal (United)'s 55, the LJP's 30 and the BJP's 38. If some old English and Indian precedents of the 1960s were to be followed, the single largest party should be asked to form the government. But these precedents have no meaning today. Likewise, no significance attaches to whether an alliance was pre-poll or post-poll for the purpose of deciding who should be the Chief Minister.

The reason for this is obvious. Under the Constitution, the Chief Minister has to be shown as enjoying the confidence of the Lower House after the election. In the confidence vote, no distinction is made on the basis of a pre-poll or post-poll alliance. To introduce such a distinction for consideration by the Governor when it is irrelevant to the floor test in the Assembly is unhelpful and pointless. It follows that the BJP's absolute claim

to form a government in Bihar is incomplete and falsely premised. Whichever party can show an actual majority in Bihar can claim the right to form a government. This remains to be determined by Governor Buta Singh. For the BJP to cry foul before it can establish a clear majority seems unfounded except to create a political noise. In Bihar, the key to the numbers game lies with Ram Vilas Paswan, leader of the Lok Jan Shakti Party, who can make or break any claim from maturing.

But Mr. Paswan's suggestion that President's Rule be imposed until the dust settles strains credulity. If governments at the Centre can be formed without Emergency being imposed, surely government formation in the States can also take place without President's Rule being proclaimed. But there is a deeper game in the Paswan solution. If President's Rule is not imposed, the Rabri Devi Government will continue; and indirectly Mr. Lalu Prasad will remain in power. The only way of immediately getting rid of all the vestiges of the RJD rule in Bihar is to impose President's Rule.

In the past, President's Rule has been used as a device to allow the political situation to settle down. But in our view this was wrong. The corrective to democracy is not Emergency rule. Mr. Paswan's suggestion of imposing President's Rule in Bihar is to fulfil his agenda against Mr. Lalu Prasad. President's Rule should not be imposed. Instead, the secular front should concentrate on whether it can claim a majority in the legislature. Mr. Paswan must decide whether he belongs to the secular front. Mr. Lalu Prasad too must decide whether he can stoop to conquer.

A controversy has erupted over Governor Syed Sibtey Razi's decision to invite the leader of the Jharkhand Mukti Morcha, Shibu Soren, to form a government in Jharkhand. The argument cannot be over democratic principles but only with respect to the Governor's arithmetic. In Jharkhand, the BJP is the single largest party — just like Mr. Lalu Prasad's RJD in Bihar. It claimed a coalition of

36 including six members of the JD (U). But as the figures added up on the evening of March 1, 2005, the strength of the Congress-led, post-poll alliance was also a clear 36 in an 81-member House. Eventually, the 41-member list of the BJP alliance competed with a 42-member list of the Congress-led combine.

After going through the various tests such as the 'list' test, the 'parade' test and the personal 'interview' test, the Governor upheld the Congress' claim. This is very much in his discretion. He has imposed a confidence vote on the new Government. No doubt, whoever forms the Government has a strategic advantage. But the answer now lies on the floor of the Jharkhand Assembly.

Unfortunately, like any other disgruntled political party denied the promise of power, the BJP has decided to resort to agitation. Taking up the issue with President A.P.J. Abdul Kalam is nothing but political showmanship. The President has no role to play in the appointment of a Chief Minister. Indeed it would be wrong for him to do so. Nor can the President impose President's Rule without the advice of the Prime Minister. Typically, the BJP has also decided to disrupt proceedings in Parliament.

Parliament, too, has no role to play in the appointment of the Chief Minister. These are all political tactics — and, all the more ungainly for being so. The only constitutional option before the BJP is to challenge the Governor's action by defeating the confidence vote sought by Mr. Soren on the floor of the Assembly.

It would be sad and disturbing if Indian democracy went back to the situation of 40 years ago when governments at the Centre misused their Governors. Even now, Governors must put their house in order. The BJP's attempt to draw political mileage by comparing the Goa case with that of Jharkhand is without foundation. The Goa decision stands apart and has no bearing on the Jharkhand or Bihar situations. In the latter cases, the Governor is under a constitutional duty to examine which of the contesting claimants can form a stable government. In Jharkhand, he has made his decision. The decision has to be tested on the floor of the Assembly, not in courts of law.

Political parties should refrain from bringing constitutional governance to a halt simply because the Governor's discretion was not exercised in their favour.

PRESIDENT SUMMONS GOVERNOR

Statesman News Service

NEW DELHI, March 3. — A day after JMM leader Mr Sibhu Soren was sworn in as chief minister, the President summoned the Jharkhand Governor, Syed Sibtey Razi, for discussions and later met a delegation of 41 MLAs from the NDA camp in the state. Mr Razi is likely to meet the President tomorrow.

Dr APJ Abdul Kalam also called Union home minister Mr Shivraj Patil and Attorney General Mr Milon Banerjee to review the developments in Jharkhand — an issue which stalled Parliament for the second day today.

The BJP paraded the 41 MLAs from Jharkhand before the media to prove that their claims of majority support were not hollow. One ailing BJP MLA, Mr Tala Marandi, was brought on a stretcher. The five MLAs whose support has taken the NDA's figure to 41 — Mr Sudesh Mahato and Chandra Prakash Choudhury (both of All Jharkhand Students' Union), Mr Madhu Kora (BJP rebel who won as an Independent), Mr Harinarayan Rai (Independent) and Mr Enos Ekka (Jharkhand Party) — stressed that they were supporting the BJP of their "own free will and there was no pressure from any quarter".

The march of 40 MLAs for about 500 metres within the Rashtrapati Bhavan complex was reminiscent of the late NTR parading his MLAs in Delhi to prove that he enjoyed majority support. His government was restored and the Governor removed.

Mr Soren said in Ranchi that the UPA would definitely prove its majority on the floor of the House on 21 March as it has 42 legislators, including Mr Harinarayan Rai and Mr Enos Ekka (both incidentally are on the NDA list). He alleged that the two legislators were forcibly abducted by the NDA.

The BJP delegation that met the President demanded that Mr Soren be removed as chief minister and Mr



MLAs ON PARADE: Parties and politics were firmly in the President's court on Thursday. The 41 MLAs supporting the NDA in a House of 81 in Jharkhand, accompanied by Mr LK Advani and Mr George Fernandes, leave Rashtrapati Bhavan after having met Dr APJ Abdul Kalam. — PTI

Arjun Munda sworn in as he enjoyed the majority's support. The leader of the Opposition, Mr LK Advani, who led the delegation of MLAs, said after meeting Dr Kalam: "The *supari* killer Governor has acted in a shameful manner in making Mr Sibhu Soren the chief minister, but he was merely acting at the behest of the UPA."

The BJP also demanded that the President should direct the Governor not to nominate one Anglo-Indian MLA to the Jharkhand Assembly till

the trial of strength as it could tilt the balance in favour of the incumbent chief minister. They demanded that all the five Independent MLAs and their family members be provided adequate security.

Nomination of one member, since he has voting rights, would mean that the parties opposed to the NDA would also have 41 MLAs. This would thwart the BJP's plan to have a test of strength on the election of the Speaker for which Mr Inder

Singh Namdhari is likely to be the NDA's candidate, a BJP leader said. With the support of 41 in a House of 81, the NDA can have a Speaker of its choice.

The institution of the Governor should not be used to hijack the mandate of the people, the BJP leader said. By presenting 41 MLAs before the President, the NDA had proved that it had the numbers, he said.

Earlier, the BJP alleged that Mrs Sonia Gandhi and Dr Manmohan Si-

nggh disapproved the Governor's action only to salvage lost ground.

Ranchi to Delhi via Bhubaneswar

The five Independent MLAs backing the NDA reached Bhubaneswar from Ranchi today in a hush-hush manner (Great Jharkhand escape, page 4) and were escorted to the Biju Patnaik Airport to board the Delhi flight. They managed to reach the Capital in time to join the BJP and JD-U MLAs.

THE STATESMAN

04 MAR 2005

04 MAR 2005

রাজ্যপালের অধিকার

রাজ্যপালদের কি কোনও বিশেষ এজিয়ার থাকা উচিত, যাহার বলে তাঁহারা ত্রিশঙ্কু আইনসভা হইতে সরকার গঠনে নিজেদের পছন্দ বা পক্ষপাত প্রয়োগ করিতে পারেন? ভারতের পরিষদীয় গণতন্ত্রের অর্ধ শতকেরও অধিক কালের ইতিহাস ও অভিজ্ঞতা জানায়, এ প্রশ্নের নিঃসংশয় উত্তর— না! বিহার ও ঝাড়খণ্ডের নির্বাচনোত্তর পরিস্থিতি নূতন করিয়া তাহা প্রমাণ করিতেছে। বিধানসভা ত্রিশঙ্কু, সরকার গঠন করিতে রাজ্যপাল কাহাকে ডাকিবেন? যুক্তি ও নৈতিকতা দাবি করে— একক বৃহত্তম দল বা প্রাক-নির্বাচন জোটের পরিষদীয় নেতাকে। নির্বাচনোত্তর কালে 'গড়িয়া ওঠা' জোটকে কিছুমাত্র গুরুত্ব দেওয়া যুক্তিযুক্ত নয়। সেই হিসাবে বিহারে এবং ঝাড়খণ্ডে বিজেপি-সংযুক্ত জনতার জোট রাষ্ট্রীয় গণতান্ত্রিক মোর্চার নেতাকে রাজ্যপালের সরকার গড়িতে আহ্বান জানানোর কথা। অথচ ঝাড়খণ্ডের রাজ্যপাল সৈয়দ সিবতে কংগ্রেস-মুক্তি মোর্চার জোটের নেতা শিবু সোরেনকে সরকার শপথ গ্রহণ করাইলেন। বিহারের রাজ্যপাল বুটা সিংহও গরিষ্ঠ জোটকে না ডাকিয়া কালক্ষেপ করিতেছেন। ঘোড়া কেনাবেচার পথ এই ভাবেই প্রশস্ত হয়।

ঝাড়খণ্ডে রাজ্যপালের অভিসন্ধি অনুমান করিয়া রাষ্ট্রীয় মোর্চা জোট রাজভবনের সামনে রীতিমত ধন্য বসিয়া গিয়াছিল, হুমকি দিয়াছিল প্রয়োজনে রাষ্ট্রপতি ভবনের সামনেও ধন্য বসিবে। রাজ্যপালের আচরণের প্রতিবাদে লোকসভার বাজেট অধিবেশন বিরোধীরা অচল করিয়া দিয়াছেন। আগামী কয়েক দিন বাজেট লইয়া জরুরি আলোচনা ও বিতর্কের পরিবর্তে গোয়া এবং ঝাড়খণ্ডে রাজ্যপালদের অপকর্মই সংসদের আলোচ্য হইয়া উঠিবার আশঙ্কা। রাজ্যের সীমানার মধ্যেই যে বিতর্ক মিটিয়া যাওয়ার, তাহা কেন্দ্রীয় আইনসভার অমূল্য সময়ের অপচয় ঘটাইবে। এ সব কিছুই হইত না, যদি রাজ্যপালরা একক গরিষ্ঠ দল বা জোটকে পত্রপাঠ সরকার গড়িতে ডাকিতেন। তাহার পর সেই সরকারকে বিধানসভার কক্ষে গরিষ্ঠতা প্রমাণে আস্থা-ভোট লইতে বলা যাইত। ঝাড়খণ্ডের রাজ্যপাল কিন্তু আপন 'বিচার-বিবেচনাবোধ' প্রয়োগ করিয়া গরিষ্ঠ জোটের দাবি উপেক্ষা করিয়াছেন। ইহা সরকারিয়া কমিশনের আগের ইন্দিরা গাঁধীর কংগ্রেসি জমানাকে ফিরাইয়া আনিয়াছে, যখন আইনসভার কক্ষ নয়, রাজভবনের হল বা লনে পরিষদীয় গরিষ্ঠতার প্রমাণ লওয়া হইত। কমিশন বহু আগেই এই অগণতান্ত্রিক প্রবণতা রদ করার সুপারিশ করিয়াছিল। সেই সুপারিশকে সাংবিধানিক বৈধতা দিতে কোনও কেন্দ্রীয় শাসক দলই তৎপর হয় নাই। ইন্দিরা-উত্তর আমলে কেন্দ্রীয় শাসক গোষ্ঠীর 'এজেন্ট' হিসাবে রাজ্যপালদের কাজ করার প্রবণতা কিঞ্চিৎ হ্রাস পাইয়াছিল। পরে আবার তাহা ফিরিয়া আসে। সনিয়া গাঁধীর আমলেও সেই ট্র্যাডিশন?

কিন্তু প্রশ্ন কোনও বিশেষ জমানা বা বিশেষ রাজ্যপালকে লইয়া সীমিত থাকিতে পারে না। অবিলম্বে সাংবিধানিক ফাঁকটি ভরাট হওয়া দরকার। রাজ্যপালদের ব্যক্তিগত বিবেচনা বা বিচারবুদ্ধির উপর কোনও সিদ্ধান্ত ছাড়িয়া রাখা কেবল ঝুঁকির কাজ নয়, অনৈতিক। এ ব্যাপারে সংবিধানে যে অস্পষ্টতা ও বিভ্রান্তি রহিয়াছে, পত্রপাঠ তাহা ঘোচানো দরকার। সেই সঙ্গে জরুরি আইনসভায় আস্থাভোটের বিষয়টিও আরও দায়বদ্ধ হওয়া দরকার। জার্মানিতে যেমন অনাস্থা আনয়নকারী দল বা জোট একই সঙ্গে বিকল্প সরকার গড়িয়া দিতে বাধ্য থাকে। এখানেও যে দল বা জোট নির্বাচিত সরকারের প্রতি অনাস্থা জ্ঞাপন করিবে, তাহার পক্ষে বিকল্প সরকার গড়ার আগাম প্রতিশ্রুতির নিশ্চয়তা বাধ্যতামূলক করা হোক। তাহা হইলে আইনসভার সদস্যদের কেনাবেচার প্রবণতাও বন্ধ করা সম্ভব হইবে। সব নির্বাচনপ্রার্থীকেই স্মরণ রাখিতে হইবে, সরকার গড়ার জন্যই নির্বাচন অনুষ্ঠিত হয়, রাজ্যপাল বা রাষ্ট্রপতির শাসন জারির জন্য নয়। শাসনব্যবস্থায় কোনও শূন্যতা থাকিতে পারে না। কোনও দল বা গোষ্ঠী-যদি ক্ষমতাসীন সরকারের বিরুদ্ধে অনাস্থা জ্ঞাপন করিয়া ভোটভূটীতে সেই সরকারকে পরাস্ত করে, তবে বিকল্প একটি সরকারকে ক্ষমতাসীন করা তাহাদের সাংবিধানিক দায় হওয়া উচিত। এই মর্মে এবং রাজ্যপালের ক্ষমতা ও এজিয়ার নির্দিষ্টভাবে শনাক্ত করিয়া অবিলম্বে সংবিধান সংশোধিত না হইলে গোয়া কিংবা ঝাড়খণ্ডের মতো অগণতান্ত্রিক কাণ্ড ঘটতেই থাকিবে। উইংসের বাহিরে অপেক্ষা করিতেছে রাজ্যপাল বুটা সিংহের বিহারও।

ANADABAZAR PATRIKA

05 MAR 2005

NDA seeks Kalam's intervention

NEW DELHI, March 2. — After months in the shadows, the NDA seized the political initiative today, criticising Jharkhand Governor Mr Sibtey Razi's decision to invite the UPA combine to form a government in the state. NDA leaders met President Dr APJ Abdul Kalam to protest and also disrupted Parliament.

The NDA has 41 MLAs, including those supporting it from outside. Now, it wants to parade them at Rashtrapati Bhavan and

Chhattisgarh chief minister Mr Ajit Jogi had threatened relatives of some NDA MLAs asking them to pressure MLAs to vote for the UPA.

Hundreds of BJP workers joined a spontaneous march to Mrs Sonia Gandhi's residence, shouted anti-Sonia slogans and burnt a hurriedly-made effigy to give vent to their anger.

The Jharkhand episode created bad blood even at the Speaker's meeting when defence minister Mr Pranab Mukherjee lashed out at the Opposition saying he would not allow the



BJP president Mr LK Advani and former Prime Minister Atal Behari Vajpayee speak to the media after meeting the President. — PTI

before the media to reinforce its claim to form a government in Jharkhand.

The NDA MPs meet tomorrow to plan Parliamentary strategy and nation-wide protests. They have already described the recent actions of Mr Razi and the Goa Governor Mr SC Jamir as acts worse than those during the Emergency.

Mr LK Advani said that at least during the Emergency there was a measure of honesty in the government's action. Today the same was done "without the same honesty," he added.

He pointed out that the NDA had paraded all the 41 MLAs in front of the Governor for his satisfaction.

He demanded that both Governors — Mr Jamir and Mr Razi — be recalled as they had "besmirched the institution of Governor." Describing the Jharkhand episode as unprecedented, he said the Governor had no other option but to invite the NDA.

He indicated that the Centre had kept the BJP in the dark about Mr Razi's likely move. Dr Manmohan Singh had assured Mr Advani that the Governor would act in accordance with the Constitution and that if the BJP had shown the numbers it had no reason to worry.

NDA convener Mr George Fernandes agreed with what Mr Advani said and charged that Mr Priya Ranjan Das Munshi and former

adjournment of the House. BJP leaders insisted that the government should give some commitment that the Governor would not misuse his authority.

On Mr Mukherjee's charge that the Opposition violated its promise of not disrupting the House, Mr Advani said that after what has happened in Jharkhand, the government should not expect cooperation from the Opposition.

The NDA's commitment was in the context of Goa and not Jharkhand which was a new development, he stressed.

During their meeting with Mr Kalam, the NDA delegation described the Governor's act as "delinquent." Mr Atal Behari Vajpayee, who led the delegation, said the Governor was "trampling upon all the canons and conventions of Parliamentary democracy. He is contemptuously disregarding explicit directives of the Supreme Court in the Bommai case."

The NDA argument rests on the fact that the NDA was the largest pre-poll ally in the hung Jharkhand Assembly. The other grouping — JMM-Congress alliance — had fewer seats than the NDA, Mr Advani pointed out. Sensing that there could be trouble, the NDA gave letters of support from five other MLAs and paraded them before the Governor to strengthen its claim, Mr Advani added.

GOVERNED BY POLITICS



Musavir Sibtay Razi, Buta Singh and SC Jamir

NEW DELHI, March 2.

Parliament has been stalled for two consecutive days over the actions of two state Governors. On Tuesday, the NDA stopped the functioning of the two Houses to protest the dismissal of the BJP-led government in Goa by Governor SC Jamir. Today, the uproar was over the Jharkhand Governor Syed Sibtay Razi's alleged "dilatatory tactics" to prevent the NDA coalition from forming a government in Jharkhand. With Mr Razi swearing in JMM leader

Sibu Soren as chief minister this evening, Parliamentary business will definitely suffer tomorrow.

Is it the turn of the Bihar Governor next? Mr Ram Vilas Paswan's refusal to join a coalition which has either the RJD or the BJP in it has only complicated matters. Mr Buta Singh has his task cut out to ensure installation of a government that reflects the people's mandate.

In recent years, the post of Governor has lost some of its constitutional sanctity and has become increasingly politicised. The NDA was accused of appointing RSS sympathisers as

Governors. The three men now under the scanner, however, are dyed-in-the-wool Congressmen.

Mr Jamir was Nagaland's first MP and was appointed parliamentary secretary in the Nehru government in 1961. He has been the chief minister of Nagaland thrice and was defeated in 2003 by an alliance between the BJP and a regional party.

He ran into problems with the NSCN-IM which accused him of sabotaging their talks with the Centre on the Naga problem. They alleged that he was supporting the rival faction, NSCN (Khaplang). An NSCN backed

organisation also urged the Centre and the state government in 2003 to investigate all charges of corruption and ill-gotten wealth against Mr Jamir.

Syed Sibtay Razi was minister of state for home in the Narasimha Rao government. A former member of the Youth Congress, he has been elected to the Rajya Sabha from UP three times. Mr Buta Singh had had a colourful innings.

A Mazhabi Sikh, he first became a minister in 1974. Controversy has dogged him, including his shift of constituency from his native Punjab during the years of militancy to Jalore in Rajasthan.

As home minister he reportedly advised Rajiv Gandhi to open the locks of the Babari Masjid in 1986 and he was also implicated in the JMM MPs' bribery scam of the Narasimha Rao government.

In 1998 he contested the Lok Sabha elections as an Independent backed by the BJP. He became communications minister in the Vajpayee government but had to depart quickly after being charge-sheeted in the JMM case. Soon enough he was back in the Congress.

Governor plays god for Soren

10 HOURS THAT SHOOK RANCHI

9.30 am: Governor calls five Independent MLAs supporting NDA

2.30 pm: He invites Shibu Soren

3: BJP workers hit the road, enforce a bandh

5.10: Soren sworn in, Stephen Marandi his deputy

6: NDA members charter plane to Delhi

7.30: Bandhu Tirkey, just made minister, reaches airport and forces MLAs to get off



Governor Syed Sibtay Razi greets Shibu Soren after the swearing-in. Ranchi burns after BJP workers go on the rampage. Pictures by Prasanth Mitra

OUR BUREAU

Ranchi, March 2: The Jharkhand governor today handed the state a chief minister — Shibu Soren, whose alliance had won 10 seats less than the largest pre-poll coalition.

In a throwback to the era of political intrigue in Raj Bhavans, Congress ally and JMM leader Soren received the invitation to power barely four hours after five Independent legislators met governor Syed Sibtay Razi and pledged support to the BJP-led alliance.

In less than three hours, a seven-member government was sworn in to succeed the four-and-a-half-year-old NDA government.

The invitation and coronation catapulted the state on to the national political stage and set off a chain of events — including a high-voltage airport drama — that made the day one of the most tumultuous since the Mannohan Singh government assumed power at the Centre.

The BJP-led combine, which had won 36 seats in the 81-member Assembly, and the Congress alliance claimed before the governor that they had the support of 41 members each — the number needed for a simple majority.

The irrefragable feat was achieved because both lists had a common name — Ainoosh Ekka, who belongs to a one-MLA party christened the Jharkhand Party.

Soren will have to prove majority in the House by March 21, the deadline fixed by the governor.

If the BJP alliance claimed the support of five Independents to reach the magic figure, the Congress banked, among other sources, on a quid pro quo with Laloo Prasad Yadav.

The RJD chief, who is struggling to cling to power in Bihar, claimed in Patna that he had ensured a UPA government in Jharkhand and 'made' Stephen Marandi — a staunch opponent of Soren till yesterday — the new chief minister's deputy.

A grateful Congress reciprocated by offering a letter of support to Laloo Prasad in Bihar. Soren's move to induct two RJD ministers in the

QUOTE

I decided to invite Soren to form a government with an open mind

JHARKHAND GOVERNOR
SYED SIBTEY RAZI

evening was further indication of the 'deal' and it is being widely speculated that Bihar governor Biju Singh is set to go a Razi in Bihar.

Fireballs of protest exploded in Ranchi. NDA supporters hit the streets in the state capital and have called a 'chakra jam' in Jharkhand on Thursday.

In the evening, two ministers, fresh from the swearing-in, made an abortive bid in Ranchi to block a plane carrying NDA legislators to Delhi.

The plane landed in Delhi late tonight with 33 passengers. They are expected to be paraded before the President tomorrow.

In Delhi, Parliament was crippled and the Opposition is thinking of boycotting the entire budget session. The BJP, which itself was not impervious to charges of Raj Bhavan misuse when in power, likened the governor's action to "almost the same as the Emergency of 1975 without the same honesty".

But governor Razi defended himself, saying: "I decided to invite Soren to form a government with an open mind. After verifying the reports by different sources, I felt that Soren can provide a stable government in the state."

■ Ranchi rocks, Page 6

GOVT GIVEN 19 DAYS TO PROVE MAJORITY

Razi risks all, swears in Soren

Sandeep Sarkar in Ranchi

March 2. — Jharkhand Governor Mr Sibtey Razi turned out to be a true Congressman when he swore in Mr Sibhu Soren as chief minister today although the Constitution prevents him from being biased towards a particular party. Mr Razi overlooked the fact that the NDA had a majority with 41 legislators, and invited the UPA led by the Jharkhand Mukti Morcha chief to form a government.

Mr Soren has been asked to prove his majority on the floor of the Assembly by 21 March.

JMM rebel Mr Stephen Marandi has been appointed deputy chief minister. Those who took the oath as ministers are Mr Girinath Singh (RJD), Mrs Annapurna Devi (RJD), Mrs Joba Manjhi (UGDP), Mr Bandhu Tirkey (UDGP) and Mr Kamlesh Singh (NCP). The Congress, which has not been inducted into the ministry, is likely to get the Speaker's post.

Mr Razi ignored the NDA despite five Independents having informed him this morning that they were with the NDA. He said he was satisfied that the UPA could provide a stable government.

With the BJP-JD(U) combine bagging 36 seats and the five Independents — Mr Sudesh Mahato, Mr CP Choudhary, Mr Enos Ekka, Mr Harinarayan Rai and Mr Madhu Koda — supporting them, the NDA tally has gone up to 41.

According to a late night report, sources in Ranchi and Delhi said only five Independent MLAs, accompanied by two BJP MLAs, would be first flown to Mumbai and from there to Delhi. The BJP and JD-U MLAs would fly to Delhi directly tomorrow.

The UPA has 40 MLAs: JMM-17, Congress-9, RJD-7, Forward Bloc-2, UDGP-2, CPI (ML)-1 and NCP-1 and JMM rebel Mr Stephen Marandi.

Though the Governor announced yes-



Mr Sibhu Soren with the Governor after being sworn in. — PTI

NDA leaders meet Kalam

NEW DELHI, March 2. — The NDA today hit out at Mr Sibtey Razi's decision to invite the UPA to form a government. NDA leaders met the President to protest and disrupted Parliament. The NDA which has 41 MLAs, including those supporting it from outside, wants to parade them at Rashtrapati Bhavan and before the media to reinforce its claim for forming a government. The NDA MPs will meet tomorrow to plan their parliamentary strategy. — SNS

Details on page 4

terday that he would meet all the 12 Independents and find out which coalition they supported, he met just seven Independents with Mr Marandi and Mr Bandhu Tirkey being the other two. Soon after meeting Mr Soren, the Governor invited him to form a government.

The BJP has called a 12-hour Jharkhand bandh tomorrow and started widespread protests in Ranchi and Jamshedpur.

Mr Lalu Prasad claimed that he had played a vital role in government formation in Jharkhand. "I approached Mr Marandi to side with the UPA," he said.

THE STATESMAN

03 MAR 2005

A crisis made to measure

By Rajeev Dhavan

J. Corroborative

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If Governor S.C. Jamir was suspicious about the confidence vote in the Goa Assembly, he could have discussed the matter with Chief Minister Manohar Parrikar. At best, he could have prorogued the House and asked for a fresh motion of confidence.

GOA'S GOVERNANCE has had more than its tale of woe. Since 1963, Goa has known 24 administrations — including President's Rule in 1990-1991 and 1999. During 1963-1990, Goa was ruled by three Chief Ministers. Since 2005, there have been 14 Chief Ministers. In the earlier crisis of 1990, Speaker Luis Barbosa led seven Assembly members out of the ruling party to become Chief Minister himself, resulting in proceedings in the Supreme Court. In December 1990, the Barbosa Government fell. The Speaker, S.V. Sirsat, disqualified two legislators — a decision upheld by the Supreme Court in the Ravi Naik case (1994). In January 1991, Speaker Sirsat disqualified Mr. Naik from the membership of the House. He was removed from the post of Speaker. His decision was reversed by the Deputy Speaker who was told by the Supreme Court in the K.G. Jhalmi case (1993) that he had no inherent powers to review the earlier decision.

Unfortunately, Goa is not the only State where Speakers have exercised their extraordinary powers extraordinarily. In 1965, the Speaker of the Uttar Pradesh Assembly summoned judges of the High Court to answer a case for contempt. In 1968, the Speaker of the Punjab Assembly adjourned the House to prevent the State's budget being passed. Following the Anti-Defection constitutional amendment of 1985, Speakers virtually have unbridled powers to determine 'defection' cases, which they have exercised amidst controversy in Mizoram (1988), Goa (1990-1991) and Nagaland (1990). In 1993, the Manipur Speaker claimed immunity from a Supreme Court order but fortunately relented to avoid a major crisis. In 1997, there was a major crisis in Uttar Pradesh which reached the Supreme Court.

In the past, following the principles of comity, the Supreme Court has expressed reluctance to interfere with the Speakers' decisions. But in the Uttar Pradesh case there was a sharp division between Justice K.T. Thomas who felt that the Speaker's decision was perverse and Justice M. Srinivasan who felt that the Court's jurisdiction was limited. The matter was referred to a Constitution Bench where it has become infructuous. Undoubtedly, Speakers can unsettle constitutional governance. By the time the courts intervene, governments have changed hands many times over.

The present Goa crisis articulates all the ills of parliamentary democracy in India. On January 29, 2005, Congress MP Churchill Alemao made

a prophetic statement that his party would topple the incumbent Goa Government in 24 hours. In a democracy, governance is to be won by fair means, not by unfair toppling. The Kerala Government was toppled in 1959 alleging a breakdown of law and order. After 1967, government after government fell due to defections, the imposition of President's Rule or both. Although strengthened in 2003, the Anti-Defection law of 1985 has made little difference. Toppling a government simply to grab power is an invidious constitutional practice — irrespective of

LAW AND SOCIETY

which political party practises it. In this, all Indian political parties are guilty — no less the BJP which was victim of the Congress' ploy in Goa.

By playing political algebra, by January 31, the Congress convinced Governor S.C. Jamir that the BJP-led Government of Chief Minister Manohar Parrikar had lost its majority. Indian governance has gone astray in making the Raj Bhavan the arbiter of whether a government has a majority in the Assembly. Once a Parliament or Assembly is constituted and a government sworn in, no President or Governor should force a newly elected government to seek a vote of confidence. A vote of confidence invites instant *hara-kiri*. Surely, it is for the Opposition to table a motion of no-confidence.

Unfortunately, Indian constitutional practice permits the Governor to force incumbent governments to invite a vote of confidence rather than wait for a no-confidence motion from the Opposition. Raj Bhavans create instability. Even if newly elected governments of doubtful majority should seek a vote of confidence immediately after being sworn in, this cannot apply to incumbent governments. An Opposition wanting to topple a government should have the courage to table a motion of no-confidence on the floor of the House. It should not rush to the Governor to seek his assistance to do so. What has made Raj Bhavans the site of deals and counter-deals is their power to order confidence motions under threat of dismissal. Governors should simply tell defectors and Opposition parties not to soil the Raj

Bhavan with their politics but to fight it out in the Assembly.

Governors should not force Chief Ministers into confidence motions under threat of dismissal. Governor Dharam Vira of West Bengal was wrong to do so in 1967, when he eventually dismissed Ajoy Mukherjee's Government. A similar pressure by Governor Motilal Vohra led to Mulayam Singh's dismissal as the Chief Minister of Uttar Pradesh in 1995. Further examples abound. Governor Jamir should have assumed that the Parrikar Government had a majority until he was defeated on the floor of the House by a no-confidence motion. He should simply have sent the dissidents and the Opposition packing from the Raj Bhavan to field their grievances in the Assembly. But once a Raj Bhavan becomes a hotbed of politics, there is no stopping it. Governor Jamir is himself a seasoned politician — not unfamiliar with the debris of toppled governments.

In 1988-1989, President's Rule was imposed in Nagaland, the Assembly was dissolved and Mr. Jamir emerged as the victorious Chief Minister after the elections. But in 1990, Governor M.M. Thomas dismissed Mr. Jamir from office — denying him even the right to show his strength in the Assembly. In 1992, Governor Thomas drew the curtains on Mr. Vamuzo's Government to impose President's Rule resulting in elections — from which Mr. Jamir again returned victorious in 1993. Mr. Jamir had been both the victim and indirect beneficiary of suspect exercises of gubernatorial power.

When Mr. Parrikar faced the Assembly, there was considerable confusion. Politics had begun to oil the confidence vote. The better view is that the Speaker was probably wrong and acted in a partisan manner in throwing MLA Filipe Neri Rodrigues out of the House before the voting process. But around 5-00 pm on February 2, 2005, there was an alleged vote which the Parrikar Government won by 17 votes to 6. Then there was pandemonium. The Assembly was adjourned at 5-40 p.m. Surprisingly, around 6-10 p.m., Governor Jamir dismissed Chief Minister Parrikar's

BJP-led Government to install a Congress-led Government of Pratapsinh Rane who, in turn, has been given 30 days to prove his majority. Even if we leave aside the allegations that Congressmen camping in the Raj Bhavan engineered this dismissal, Governor Jamir's one-line order of dismissal of a government without even hearing Mr. Parrikar who had proved his majority is indefensible.

No Governor can overturn the decision of a Speaker who is no less a constitutional authority than the Governor himself. It is only the courts that have judicial review over a Speaker's ruling. The haste with which the dismissal was effected seems partisan. If the Governor was suspicious, he could have discussed the matter with Mr. Parrikar. At best, he could have prorogued the House and asked for a fresh motion of confidence.

Despite the exhortations of the Bhagwan Sahay Committee (1972), the Sarkaria Commission (1988) and the Constitution Commission (2002) that placing good people in charge of governance will solve India's constitutional ills, this has not happened. Indian politics is run on the basis of unprincipled opportunism. No Constitution can function without an inner institutional morality. Perhaps, the Constitution-makers were wrong in not incorporating an Instrument of Instructions for making Indian governance work.

To some extent, the Supreme Court laid down some ground rules in the Bommai case (1993) to ensure that the floor of the House, and not the corridors of Raj Bhavans, determine the fate of governments. The Supreme Court could be asked to lay down a code for these situations in the Goa case or its advisory jurisdiction. Governors must be appointed from a panel approved by a presidential or legislative committee. Determining anti-defection cases should be taken away from the Speaker and reposed in an independent body — even the Election Commission. Governors and Speakers should be de-barred from further public office.

The power of Governors to order confidence motions from incumbent governments should be taken away so that Raj Bhavans do not become mini-legislatures for toppling governments.

If the Goa crisis does not shock us, it is because we have become accustomed to such abuses of power. But if nothing is done, worse will follow. Parliamentary democracy was devised for good governance, not as a charter for the unscrupulous to grab power by any or all means.

'Speaker murdered democracy on House floor'

■ We all accept that the Speaker of the Goa Assembly wanted to save the BJP government at all costs, but two wrongs never make a right. The haste with which you dismissed the government without exploring other options is a clear indication of your bias towards the Congress. You made a mockery of democracy, the people and the Constitution.

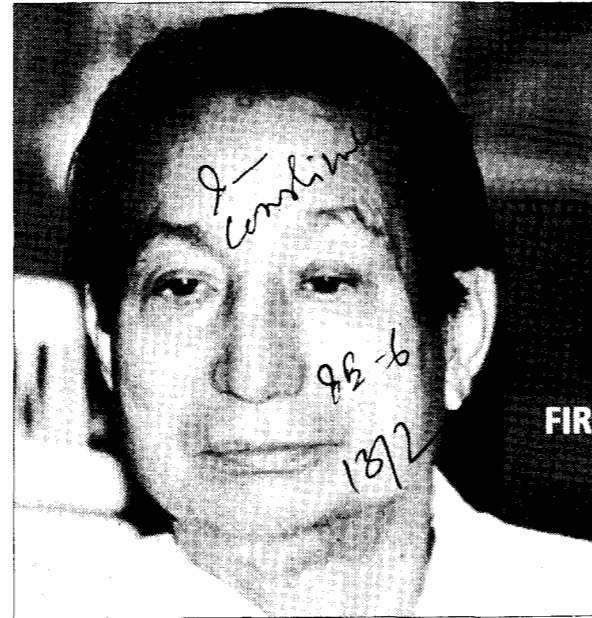
Pranav Sachdeva

I do not think I acted in haste. The political crisis in Goa at that time can be understood only when all the political events in the preceding days are considered. The BJP-led government in Goa was reduced to a minority on January 29, 2005, when four BJP MLAs resigned and two MLAs withdrew their support. I could have dismissed the government at that point of time, but since it is always better to decide majority or minority of the ministry on the floor of the Assembly, I summoned the House on February 2 to take up the motion for vote of confidence. However, the proceedings of the House were a complete sham and the Speaker made

a mockery of democratic norms. He murdered democracy on the floor of the Assembly and so I had to step in to protect and safeguard the Constitution of India. And I don't see any bias in swearing in Pratapsingh Rane's government because the United Legislature Party (ULP) had the majority from January 29 itself. Soon after dismissal of the Manohar Parrikar government, the 18 members of the ULP had met me and asked me to swear them in. And when the ULP had the necessary numbers, I think I would have committed a constitutional wrong if I had not sworn in the chief minister that very evening. There cannot be a vacuum in government.

■ Why did not you give another chance to Parrikar to prove his majority when you came across conflicting reports about the proceedings of the Assembly? Have you not contributed towards destabilising the government of the state and lowered the prestige of the post of Governor?

Richard Machado



**FIRING LINE: S C JAMIR
GOA GOVERNOR**

To begin with, I have certainly not lowered the prestige of the post of Governor. On the contrary, I think I have elevated it because as the constitutional head of the state, I have put my foot down to protect the sanctity of the Constitution. I, as Governor, would have been a party to the murder of democracy if I had not taken the decision to dismiss the government. I applied my mind consciously and honestly and took the decision in the interest of the people. As to giving Parrikar another

chance to prove his majority, the question does not arise since even though knowing fully well that his government was in a minority, I had given him the opportunity to prove his majority in the first place.

■ The whole crisis shows a deal between yourself and the Centre or some kind of a quid pro quo arrangement. Is it true?

VP Damodar

No. I withdrew my pleasure from the Parrikar gov-

ernment under Article 164 of the Constitution after considering all legal and constitutional aspects. It was my independent decision, which I took on time to save democracy.

■ What will happen if Rane fails to win the confidence vote? Will it reflect on the Governor?

Vaicunth Fondekar

If Rane fails to win the vote of confidence, he will have to resign. It has nothing to do with the Governor.

■ Parrikar and Speaker Vishwas Satarkar have charged that you dismissed the government even before the House was adjourned.

Mahendra Khandeparkar

The Assembly was adjourned at 5.24 pm whereas I withdrew my pleasure at about 5.50 pm. Therefore the allegation is factually incorrect.

■ The Speaker has alleged that by criticising him you have shown contempt for

the Assembly.

Rakshada Dessai

I merely mentioned what had actually happened in the House. My statement is fully confirmed by various cameras which recorded the entire proceedings of the House. Therefore, the question of contempt of the House does not arise.

■ Why have you taken a week to give 30 days for the Congress-led ULP Government to prove its majority?

Anand Lawande

On February 5, I asked Rane to prove his majority within on or before March 4. As is the practice, in such kind of political scenario, Governors usually give a period of 30 days.

■ In your opinion, how relevant is the gubernatorial post of Governor, considering it is regarded as a parking place for either dissatisfied party leaders or those past their prime by most parties.

S Mahesh

I don't think the post of Governor is a parking place, as you put it. The post continues to be useful and relevant in a parliamentary

democracy. The Governor is the constitutional head and functions as such.

**FIRING
LINE
NEXT WEEK**

VASUNDHARA RAJE

Rajasthan Chief Minister



Vasundhara Raje could have hardly expected her new year to begin like this, with stories of tigers missing in reserves and her officials struggling for answers. Her idea of holding a yagya for the welfare of Rajasthan would hardly seem the answer to the problems the state is facing. The BJP also lost the panchayat elections recently in the state. Having led her party to an unexpected win in the Assembly polls, has Vasundhara Raje lost her track in governance? Ask her at firingline@expressindia.com

■ One of the most prominent possible solutions that has been thrown up in the wake of the Goa crisis is to ensure that a Governor or Speaker cannot re-join active politics once his tenure is over. Will you willfully set a moral precedent by doing this even if no law is enacted in this regard?

Gaurav Dua

The present crisis is not a new phenomenon. It has happened before in Goa and other parts of the country. Whether the Governor or Speaker should rejoin active politics is a personal choice and I have no comments.

■ Why can't a chief minister be elected by secret ballot in the Assembly leaving no scope for foul play by the Speaker or the Governor?

Subhash C. Agrawal

In parliamentary democracy, the leader who commands majority in the House is invited to form the government and therefore, there is no need for a secret ballot as such. As for foul play by the Governor, the question does not arise.

Dismissal of democracy in Goa

By Era Sezhiyan

Unless the Governor and the Speaker function justly within the powers assigned to them and cooperate with each other, it is difficult to work out successfully the legislative system.

THE VEXATIOUS decisions taken by such constitutional authorities as the Speaker and the Governor during and after the deliberations of the Goa Assembly on a confidence motion involving the Manohar Parrikar Government have resulted in a further loss of confidence of the people in the parliamentary system. Under the Constitution, a State Legislature consists of the Governor, the Assembly and the Council wherever there is one, just as Parliament consists of the President and the two Houses of Parliament. Unless the Governor as the executive head and the Speaker as the presiding officer of the legislature function justly within the powers assigned to them and cooperate with each other, it is difficult to work out successfully the legislative system.

When the provisions on the Governor were discussed in the Constituent Assembly, some leading Congress members themselves expressed apprehensions about the possible misuse of the position of Governor in independent India. Biswanath Das (Orissa, General) was categorical: "You are going to have the party system on basis of democracy; it may be that a Party absolutely different from that in the Centre may be functioning in office in a province. What then would be the position? The Governor has to be appointed on the advice of the Prime Minister of the India, Leader of another party... The Prime Minister of today is one of the tallest of the few in the world. You may expect justice and you do get justice in his hands. "But there may be a Prime Minister in the Centre who may have his own axes to grind... You cannot have democracy and autocracy functioning together. In the provinces you are going to have democracy from toe to the neck and autocracy on the head, but these are bound to fail. You are inviting friction. I would have cited how the Governor who was an agent of British imperialism, had all along been attempting to smash my party. What was being done by the Governor under the British imperialism may also be repeated by the party now, though I have no hesitation in saying that my leaders would not look to or even think in the way in which things are being done."

Prime Minister Jawaharlal Nehru said eminent people from other

walks of life who had not taken "too great part" in politics would be chosen for the post of governorship, in preference to those who appeared "to be part of the party machine."

However, the impartial qualifications envisaged by Nehru and the other Constitution-makers were soon lost sight of, to make the Study Team of the Administrative Reforms Commission 1967, headed by M.C. Setalvad, report: "Circumstances devalued the post, and with that there was logical fall in the standard of selection for Governors. The post came to be treated as a sinecure for mediocrities or as a consolation prize for 'burnt out' politicians." Since then, the situation has deteriorated further.

On the legislative crisis in Goa, it appears that the attitude and decision of the Speaker have been against the accepted norms of legislative procedures in his disallowing an independent MLA to participate in the voting and in announcing the result with the flawed inclusion of an Opposition Member. Under Article 212 of the Constitution, the validity of proceedings in a legislature shall not be called into question on the ground of any alleged irregularity of procedure. However, there is some limit to the immunity from the judicial interference if the powers provided were to be misused indiscriminately in negation of the parliamentary system, a basic feature of the Constitution.

In the case of *State of Punjab v Satya Pal* (AIR 1969 SC 903), the Supreme Court observed: "Art.174 (2) (3) which enables a Governor to prorogue the Legislature does not indicate any restrictions on this power. Whether a Governor will be justified to do this when the Legislature is in session and in the midst of its legislative work, is a question that does not fall for consideration here. When that happens the motives of the Governor may conceivably be questioned on the ground of an alleged want of good faith and abuse of constitutional powers."

The questionable attitude of the

Goa Speaker has been compounded by a more questionable order of the Governor in dismissal of the Ministry "in exercise of powers vested under Art. 164(1) and other enabling provisions." Article 164(1) provides that "the Ministers hold office during the pleasure of the Governor."

During the discussion on June 1, 1949 in the Constituent Assembly on the "pleasure of Governor," B.R. Ambedkar explained: "I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. 'During pleasure' is always understood to mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence of the majority, it is presumed that the President [or Governor] will exercise his 'pleasure' in dismissing the Ministry."

Manohar Parrikar has claimed that the Governor's order dismissing him as Chief Minister was received at his office even before the Speaker could send his report on the outcome of the result of the confidence motion. It is strange that while the Governor appointed Pratapsinh Rane as Chief Minister at a midnight ceremony, it is still dark to many outside the Raj Bhavan as to why the Governor did not at once fix a time limit for the Chief Minister to prove his majority in the Assembly.

Previously, the Centre resorted to indiscriminate use of the powers under Article 356 to dismiss State Governments and dissolve Assemblies not amiable to it. But the situation changed after the Bommai case (AIR 1994 SC 1918) in which the Supreme Court held: "If the Proclamation issued is held to be invalid, then notwithstanding the fact that it has been approved by both Houses of Parliament, it will be open to the Court to restore the *status quo ante* to issuance of the Proclamation and hence restore the Legislative Assembly and the Ministry. In appro-

priate cases, the Court will have power by an interim injunction, to restrain holding of fresh elections." In the same manner, an undemocratic action of a Governor may also be reversed by the Courts

After the Supreme Court judgment in the *Bommai Case*, the Centre has been reluctant to use the powers under Article 356. In solving the political crisis of Goa, the Governor preferred action under the 'pleasure' provision and the press reported: "Centre feels relieved."

It is said that justice is fusion of morality and law. A law, or more so a basic law, will be general in its contents and may not deal with every possible incident that may be attracted by it. The provisions of the Constitution and statutes are to be applied suitably to a given situation by the administration and, wherever necessary, by the interpretation of the courts.

Ambedkar stressed the need of constitutional morality to have a healthy Constitution for the country. In the general discussion on the Draft Constitution on November 4, 1948, Ambedkar quoted historian George Grote: "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole is the indispensable condition of government at once free and peaceable, since even any powerful and obstinate minority may render the working of a free institution impracticable without being strong enough to conquer ascendancy for themselves."

So, an obstinate minority without any regard for constitutional morality, if given a chance, may seriously upset the working of a democratic system. In Goa, both are parties with minority strength in their bid to form a government, somehow.

The discretionary powers of the Government and the legislature mean they can legally take action. But they should be restrained by conventions which A.V. Dicey called "the constitutional moralities of the day." Without conventions and constitutional morality, there can be no Constitution.

In Bihar, Haryana, and Jharkhand, elections are in progress and exit polls are being taken to ascertain the changing trends in popular support to the parties in the fray. In Goa, there has already been an exit poll for the democratic system itself.

12 FEB 2005

Governor's action premeditated: Parrikar

By Anil Sastry

PANAJI, FEB. 11. The ousted Goa Chief Minister, Manohar Parrikar, claimed that he had documentary evidence to prove that the action of Governor, S.C. Jamir, in dismissing his government was "premeditated."

"In fact, the decision to dismiss my government had been taken on February 1 itself, even before the Assembly was convened," he told reporters here this evening at the State unit's BJP headquarters. There was a little delay in gathering the documents, which held up filing of the writ petition before the Supreme Court today, he

added.

Mr. Parrikar alleged that Mr. Jamir had created a "political vacuum" for five-and-a-half hours on February 2 when he "arbitrarily dismissed" the Government without asking the former to be caretaker Chief Minister. "It was only when the Advocate General opined that there cannot be any vacuum, Pratapsinh Rane was sworn in hurriedly," he claimed.

The malafide intention of the Governor was evident when he prorogued the House on February 2 at 6.45 p.m., Mr. Parrikar alleged. Quoting Article 174 (2) (a) of the Constitu-

tion, he said prorogation could be done only on the aid and advice of the Council of Ministers, whereas on that day at that particular time, no Government existed.

Though the Governor's action in proroguing the House was not significant, Mr. Parrikar said it only showed his intention. "He perhaps feared that the Speaker would convene the Assembly the next day itself compelling Mr. Rane to seek a vote of confidence," he alleged.

Mr. Parrikar said the party would intensify its campaign against the Governor after the public meetings that are to be

addressed by the BJP's senior leaders. The party would bring out VCDs featuring the Assembly proceedings, attempts by Congress members preventing Independent member Filipe Neri Rodrigues from moving out of the House and attacking the Marshal, and Mr. Rane sitting on the chair of the Speaker, he said.

Party spokesperson, Laxmikant Parsekar, said senior leaders Murlji Manohar Joshi, Madan Lal Khurana, Venkaiah Naidu, Mukhtar Abbas Naqvi and L.K. Advani would partici-

pate in the campaign to be held at various towns in the State starting from Saturday.

9-1
Constitution
K9-11
9/2

Defeating the anti-defection law

By K.V. Prasad

NEW DELHI: The decision of the Congress to reward two former Bharatiya Janata Party legislators with ministerial berths in the newly-installed Prapatsinh Rane Government in Goa is perhaps the first calculated move by a political party to circumvent the anti-defection law, which was recently given more teeth.

A year ago Parliament had passed the 91st Constitutional Amendment Act, limiting the size of the Ministry to curb defection and dissuade the practice by disqualifying such legislators/parliamentarians for appointment to a remunerative political post. Now, the Congress has shown how the spirit behind the 91st Amendment can be

for such an unhealthy practice that could be replicated with impunity. A way has been found to get around the lofty principle of discouraging the "Aya Ram Gaya Ram" tendency in Indian politics.

It can be argued that the four MLAs who resigned from the Assembly and of which two will be part — as Ministers — do not have the right to vote. It can be argued further that the legislator concerned has gambled by resigning his/her membership of the House, running the inherent risk of not being re-elected.

The argument is legally defensible but the question is about the larger responsibility of political parties at a time when the need for electoral reforms has assumed importance. Should this deterrent (of losing membership or denying any remunerative political post) not be stretched further to prevent defectors from holding such posts by taking advantage of other provisions in the Constitution.

A politician may argue that all that the Act stipulates is that only a member belonging to any political party or an Independent disqualified from being a member of the House under the 10th Schedule shall also be denied any remunerative political post till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected. The Act also defines remunerative political post as an office under the Central/ State Government where salary or remuneration for such office is paid out of public revenue. It also extends to a body, incorporated or otherwise, which is wholly or partially owned by the Central/ State Government.

What has just been witnessed in Goa opens up new vistas in States where the verdict is fragmented, especially when either the term of the House ends within the stipulated six-month period or when political parties decide to call for early elections. This would mean the floor-crossing legislators are technically rewarded with little or no fear of any punishment.

NEWS ANALYSIS

nullified. The provision that a legislator, who gets elected on a party symbol or as an Independent, cannot shift sides without paying a price, either by being denied Ministership or by losing the seat, has been sidelined, albeit with finesse.

On the face of it, Pandurang Madkaikar and Isidore Fernandes were among the four legislators who resigned from the 40-member Assembly, a move that created turbulence for the Manohar Parrikar Government. Within days, the two legislators have become Ministers in the new regime under the Constitutional provision that permits a Chief Minister/Prime Minister to appoint any person of his or her choice in the Council of Ministers. The provision has a rider that such a person would cease to be a Minister at the expiry of six consecutive months if he or she is not a member of Parliament [Article 75 (5)] or the Legislative Assembly/Council [Article 164 (4)].

In the process, the Congress has rewarded legislators who changed sides by avoiding altogether scrutiny under the amended Act. The move cannot be faulted on technical grounds but it does open a window of opportunity

Foul Play *of Constitution*

Dismissal of Goa Govt Unconstitutional

8/2 By Rajindar Sachar

Democracy has been seriously abused in Goa. How else should one describe the Goa governor's dismissal of the Parrikar ministry and his indecent haste in swearing in a Congress ministry? This action, as the Supreme Court said almost 30 years back, is reminiscent of the happenings in the age of Stuarts of England in the 16th century.

No doubt, the Speaker's action in expelling independent MLA Rodrigues was equally indefensible, as he had not been disqualified as a member of the assembly. But that does not justify the action of the governor, which suggests that he had decided before hand to dismiss the Parrikar ministry. If the governor was of the view that the Speaker had denied the right of voting to the legislators for whatever reason, he could have asked the chief minister to have a fresh vote in the legislature. Parrikar legally would have had to comply with this direction.

The governor cannot plead that he could not risk asking the chief minister to seek a fresh vote of confidence, on the pretext that the Speaker could have adjourned the assembly to defeat the vote being taken. This fear is unfounded. Decades back, the Supreme Court while interpreting Article 174(2) of the Constitution had held that the governor had the power to prorogue the House, even if it is in session and further that the House can be re-summoned thereafter to transact the business directed by the governor (in this case) to seek a vote of confidence. And if Parrikar had refused to do so, the governor could legally have dismissed Parrikar and either recommend President's rule under Article 56 or could swear in Rane ministry but with a caveat to him to prove his majority within a week.

The governor, however, did not adopt this constitutional method. He tried to exercise royal power a la Henry VIII, which is extant since the middle ages in England. In fact, a king of England was even hanged for defying Magna Carta principles. Notwithstanding this history, the governor invoked Article 4, as if to suggest that the chief minister is in the personal service of the governor.

Surely, S C Jamir, a former chief minister, must know our Constitution envisages a parliamentary system of government both at the Centre and in the states and that neither the president nor the governor can exercise any power at his pleasure. A governor's power is restrained by the Constitution, and he is not meant to act like Henry VIII. On acts of presumptuous arrogance, the Supreme Court gave a firm warning years back when it warned, "No one is an imperium in our imperia in our Constitutional order. Unchecked power

is alien to our system".

To make matters worse, the governor swore in the 'expelled' Rodrigues as a minister. It appears that the chief minister has derived some perverse pleasure from this unseemly episode of toppling the government. The sad reality is that the Constitution of India was framed by gentlemen, to be implemented by gentlemen. But when rulers of a different kind occupy such constitutional positions, aberrations bringing disrepute to the high office are bound to take place.

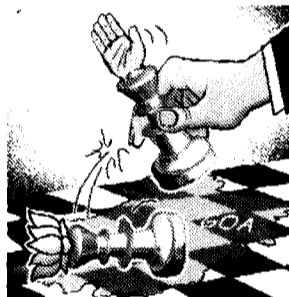
This event threatens to plunge the country into bitter political fights. Shouldn't the Congress and the BJP show some respect to the norms of democratic functioning? It is obvious that with MLAs changing loyalties, the chances of either of the party being allowed to form a stable government seem next to impossible.

The Rane ministry is already threatened with a split. The wisdom of both parties lies in their joint request to the governor to dissolve the legislature and order fresh elections. It should also be agreed that the Rane government resign immediately, with no caretaker government in the interim. During this interim, governor's rule should apply, without Jamir at the helm, who has forfeited the right to act as a neutral referee. He is rightly accused of having functioned as a stooge of the Congress to score a penalty kick in the goal of the BJP. A new governor must be appointed for Goa under whom fresh elections take place. Such a course may stem the tide for bitter-street fighting and restore the system to its normal functioning. After all, it is for the people to elect their representatives.

The sanctity of the Constitution is at stake, and it is for political parties to act decisively rather than adopt an amoral position. Questions of convention, probity and political behaviour cannot be left to the wooden and slow approach of courts. The present situation can only heighten political friction and bitterness. The two main political parties should rise above their petty political postures and think of the institutions at stake.

The criteria for selection of governors are a matter of concern. At present, governors owe their appointment to the sole pleasure of the Centre and can therefore afford to behave in a partisan manner. Gubernatorial appointments should be made by a committee consisting of the prime minister, the chairperson of the Rajya Sabha, Speaker of the Lok Sabha and the leaders of the Opposition of both Houses. The power of removal should also be vested in the same committee, to be exercised by a unanimous vote.

(The author is former chief justice, Delhi high court.)



It was murder of democracy: Jamir

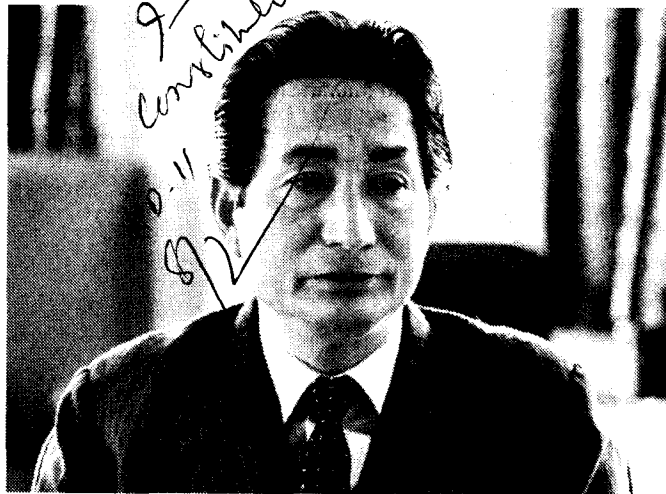
NEW DELHI, FEB. 7. The Goa Governor, S.C. Jamir, today charged the Assembly Speaker, Vishwas Satarkar, with committing "open murder of democracy."

He was referring to Mr. Satarkar's role in the Manohar Parrikar Government winning the vote of confidence in the House on February 2.

"I cannot see democracy being murdered on the floor of the House by using the powers of the Speaker. Therefore, in order to safeguard [the] Constitution I had to take the decision [the dismissal of the Government]," he told NDTV in an interview.

Mr. Jamir, who has come under attack from the Bharatiya Janata Party and its allies in the National Democratic Alliance after the events of February 2, asserted that the supremacy of the Speaker in the House held good as long as he followed the rules and procedures.

"Violation of rules and proce-



dures, flouting of [the] Constitution does not give him that kind of power in the House," he said.

Rejecting the charge that his action was "pre-meditated," Mr. Jamir said the House was adjourned at 5.24 p.m. and he

issued the order only after 6 p.m. "So, how can they say so," he asked.

Asked what was the hurry in swearing in the new Congress Government that very evening, the Governor said that he took the action to avoid any vacuum.

"If I had to put the House under suspended animation, then I had to write to the President. Secondly, ... there should not be any vacuum," he said.

"You cannot have a vacuum after a Government loses its majority. The Government paraded 18 MLAs with letters of support in front of me. How could I ignore this," he asked.

"My conscience is clear. I have done what I believe was the right thing to do. Why should I resign or be dismissed?"

On the charge that he was taking instructions from 10 Janpath, residence of the Congress president, Sonia Gandhi, the Governor said: "I may have been a Congress Chief Minister once, but I know my role and responsibilities as Governor. Those who make such charges should prove it, else this was just a baseless allegation." — PTI, UNI

তাজিকিস্তানের সঙ্গে ঘনিষ্ঠতার চেষ্টা ভারতের

স্টাফ রিপোর্টার, নয়াদিল্লি, ৬
ফেব্রুয়ারি: মধ্য এশিয়ায় নিজেদের
প্রভাব বাড়ানোর লক্ষ্যে তাজিকিস্তানের
সঙ্গে সামরিক সম্পর্ক আরও জোরদার
করছে ভারত।

সম্প্রতি প্রতিরক্ষামন্ত্রী প্রণব
মুখোপাধ্যায়ের সঙ্গে দেখা করতে
এসেছিলেন তাজিক প্রতিরক্ষামন্ত্রী
জেনারেল এস খাইরাল্লোয়েভ। দুই
দেশের যৌথ সামরিক মহড়ার
পাশাপাশি ভারতে তাজিক সেনাদের
প্রশিক্ষণের সুযোগ বাড়ানো হবে।
নয়াদিল্লির মূল লক্ষ্য, তাজিকিস্তানের
মাধ্যমে আফগানিস্তানের সঙ্গে সম্পর্ক
দৃঢ়তর করা, যা পাকিস্তানের বিরুদ্ধে
দীর্ঘমেয়াদি কূটনৈতিক লড়াইয়ে
সাহায্য করবে।

জম্মু ও কাশ্মীরের উত্তর-পশ্চিম
দিকে অবস্থিত তাজিকিস্তানই এখন
একমাত্র বিদেশি রাষ্ট্র, যেখানে
ভারতের সামরিক ঘাঁটি রয়েছে।
ফারখোর শহরে ভারত তৈরি করেছে
একটি সামরিক হাসপাতাল।

তা ছাড়া, রাজধানী দুশানবে থেকে
প্রায় ১০ কিলোমিটার দূরে অইনি
শহরে একটি ফৌজি বিমানবন্দর
পুনর্নির্মাণে ভারত তাজিকিস্তানকে
সাহায্য করেছিল। সামরিক সূত্রে বলা
হয়েছে, মালবাহী ও যুদ্ধবিমান এখন
নামতে পারে এখানে। প্রায় ৫০ কোটি
টাকা খরচ করে নয়াদিল্লি এই ঘাঁটি
বানিয়ে দিয়েছে।

গত সরকারের আমল থেকেই
তাজিকিস্তান ও নয়াদিল্লির সম্পর্ক

বাড়তে শুরু করেছিল। নতুন সরকার
তাকে এগিয়ে নিয়ে যেতে চায়।
প্রতিরক্ষামন্ত্রী প্রণব মুখোপাধ্যায়ের
বক্তব্য, “মধ্য এশিয়ায় স্ট্র্যাটেজিক
পরিপ্রেক্ষিতে তাজিকিস্তানের অবস্থান
অত্যন্ত গুরুত্বপূর্ণ। তা ছাড়া,
আফগানিস্তানের সঙ্গে তাজিকদের
সম্পর্ক ভাল। সব মিলিয়ে আমাদের
কাছে তাজিকিস্তানের সঙ্গে ভাল
সম্পর্ক রাখা জরুরি।”

প্রতিরক্ষামন্ত্রী জানিয়েছেন,
তাজিকিস্তানের সেনাদের প্যারাসুট
প্রশিক্ষণ দেওয়া হচ্ছে। ভারতের
বিভিন্ন কলেজে আগামী দিনে আরও
বেশি সংখ্যক তাজিক প্রশিক্ষণ পাবে।
এ ছাড়া, দুই দেশ যৌথ অনুশীলনও
শুরু করছে।

আফগানিস্তানে তালিবান শাসনের
বিরুদ্ধে যখন রাষ্ট্রপুঞ্জ আর্থিক
নিষেধাজ্ঞা জারি করে, তাকে পূর্ণ
সমর্থন করেছিল তাজিকিস্তান।
পাশাপাশি, সেই সময়ে ভারতের
সঙ্গেও আফগানিস্তান সম্পর্কও
তলানিতে এসে ঠেকে।

কিন্তু আফগান যুদ্ধের পরে সুযোগ
পেয়ে নয়াদিল্লি কাবুলের সঙ্গে ঘনিষ্ঠতা
পুনরুদ্ধার করেছে, যা পাকিস্তানের
উপরে চাপ বজায় রাখার ক্ষেত্রে
অত্যন্ত গুরুত্বপূর্ণ বলে মনে করেন
সামরিক বিশেষজ্ঞেরা। এর পাশাপাশি
তাজিকিস্তানকে পেলে মধ্য এশিয়ায়,
বিশেষত পাকিস্তানের উত্তর-পূর্ব দিকে
ভারত নিজেদের প্রভাব বাড়াতে
পারবে।

গোয়া: পুরানো প্রশ্ন

রাজ্যপাল কি কোনও নির্বাচিত সরকারকে বরখাস্ত করিতে পারেন? বিশেষত যে-সরকার তাঁহারই অনুজ্ঞা শিরোধার্য করিয়া সদা বিধানসভায় আস্থা-প্রস্তাবে জয়ী হইয়াছে? আবার, বিধানসভার স্পিকার কি আস্থা-প্রস্তাবের মুখে কোনও বিধায়কের সদস্যপদ খারিজ করিতে পারেন, যদি সেই বিধায়ক সরকারের প্রতি অনাস্থা জানাইতে উদ্যত হন? বিধানসভা কিংবা লোকসভার অভ্যন্তরে স্পিকার নিশ্চয়ই সার্বভৌম, কিন্তু তাঁহার আচরণে যদি নিরপেক্ষতার কঠোর অনুশীলনের বদলে পক্ষপাতিত্বের সংকেত ধরা পড়ে, তখন করণীয় কী? গোয়ায় বিজেপির মুখ্যমন্ত্রী মনোহর পারিকর সরকারের আস্থা-ভোটে জয় সত্ত্বেও রাজ্যপাল কর্তৃক সেই সরকারকে বরখাস্ত করিয়া বিরোধী দল কংগ্রেসের সরকারকে শপথ গ্রহণ করানোর ঘটনা এই সব পুরানো বিতর্ককে নূতন করিয়া উস্কাইয়া দিয়াছে। রাজ্যপাল এস সি জামির কংগ্রেসের সংস্কৃতি ও রণকৌশলের অভিজ্ঞ খেলোয়াড়। সে জনাই হয়তো নাগাল্যান্ডের এই প্রাক্তন মুখ্যমন্ত্রীকে গোয়ার রাজভবনে পাঠানো হয়। যে ভাবে তিনি বিধানসভায় শক্তিপারীক্ষার রায়কে উল্টাইয়া দিয়া কংগ্রেসের সুবিধা করিয়া দেন, তাহাতে আশির দশকে বিরোধীশাসিত রাজ্যগুলির কংগ্রেসি রাজ্যপালদের কথা মনে পড়া অনিবার্য। বিধানসভার বদলে রাজভবনকে পরিষদীয় গরিষ্ঠতা প্রমাণের রেফারি করিয়া তোলার এই প্রবণতার প্রেক্ষিতেই সরকারি কমিশন গঠিত হয়। কমিশনের সুপারিশ আজও অগ্রাহ্য হইতেছে।

সত্য, স্পিকার বিশ্বাস সাতরকরের কর্মপদ্ধতি লইয়াও প্রশ্ন উঠিতেই পারে। বিজেপির সরকার গরিষ্ঠতা হারানোর ফলে সৃষ্ট সঙ্কটের প্রেক্ষিতেই বিধানসভায় আস্থা-ভোটের আয়োজন হয়। সেখানে তিনি কংগ্রেস-সমর্থক এক নির্দলের ভোটাধিকারই কাড়িয়া লন এবং তাহার ফলেই সরকার আস্থা-ভোটে জয়ী হয়। সভায় স্পিকারের ক্ষমতা সার্বভৌম হইলেও তিনি এ ভাবে সে ক্ষমতা প্রয়োগ করিতে পারেন কি না, নির্বাচিত জনপ্রতিনিধিকে কোনও বিষয়ে সভায় ভোটাভুটির সময় নিজের পছন্দমতো ভোট দিতে বাধা দেওয়া যায় কি না, সেই প্রাসঙ্গিক প্রশ্নটিও আবার উঠিয়াছে। প্রশ্নটি নিছক আইনের নয়, নৈতিকতারও। সেই বৃহত্তর বিচারে, এ ব্যাপারে এমনকী দলীয় ছইপ জারি করিয়া জনপ্রতিনিধিকে পক্ষে বা বিপক্ষে ভোট দিতে বাধা করার মধ্যেও অগণতান্ত্রিকতা রহিয়াছে। একই রকম অগণতান্ত্রিক দলত্যাগ-বিরোধী আইনও। বিশেষত আইনের সেই অনুচ্ছেদ, যাহা জনপ্রতিনিধির ভোটাভুটির স্বাধীনতা খর্ব করে। এই সব প্রশ্নে অনেক অস্পষ্টতা রহিয়াছে, যাহা দূর হওয়া দরকার। আছে অনেক অসঙ্গতি এবং ফাঁকফোকরও। রাজ্যপাল বা রাষ্ট্রপতির ভূমিকা সম্পর্কেও সাংবিধানিক অস্পষ্টতা বিদ্যমান। গোয়ায় যেমন রাজ্যপাল ভোটাভুটির প্রক্রিয়ায় সম্ভ্রষ্ট না হইলে নূতন করিয়া ভোটগ্রহণের আঞ্জা দিতে পারিতেন। তাহার পরিবর্তে নিজের 'প্রজ্ঞা' ও 'বিবেচনাবোধ' প্রয়োগ করিয়া 'জয়ী' পক্ষকেই বরখাস্ত করিলেন। রাজ্যপাল তথা রাষ্ট্রপতির প্রজ্ঞা ও বিবেচনাবোধের ভূমিকা নিশ্চয় গণতন্ত্রে থাকিবে। কিন্তু তাহার সীমাস্তগুলি স্পষ্ট ভাবে নির্ধারিত হওয়া দরকার। ভারত যে গণতন্ত্র অনুশীলন করে, অনুশীলনের মধ্য দিয়াই তাহার অনেক ঘাটতি প্রকট হইতেছে। সেগুলির সংশোধন জরুরি। গোয়ার ঘটনা তাহাই আবার চোখে আঙুল দিয়া দেখাইয়া দিল।

Constitution Bench to hear Single Directive

Press Trust of India

NEW DELHI, Feb. 4. — Taking note of important constitutional issues raised in petitions seeking quashing of the controversial Single Directive provision in Central Vigilance Commission Act protecting top bureaucrats, a three-judge Bench of the Supreme Court (coram: Sabharwal, Dharmadhikari and Tarun Chatterjee, JJ) today referred the matter to a Constitution Bench.

The petitions were filed by Mr Subramanian Swamy and People's Union for Civil Liberties. They had questioned the introduction of the Single Directive provision in the CVC Act by the NDA government, which was supported in the Supreme Court by the present UPA government.

It had sought the quashing of Section 6A of the Act which barred the CBI from registering corruption cases against bureaucrats of the rank of joint secretaries and above without taking prior permission from the government. The Supreme Court had quashed the Single Directive provision on 18 December 1997 and an attempt made by the NDA government to bring it into the CVC Bill 1999 was thwarted by the court. However, a Joint Parliamentary Committee had recommended introduction of the Single Directive provision on the basis of which Parliament had passed the necessary amendment.

The UPA government had stated through Solicitor General Mr GE Vahanvati that the amendment was necessary to protect the bureaucrats from vexatious litigations by disgruntled elements. — PTI

THE STATESMAN

05 FEB 2005

UP Governor

rejects A/2 Ordinance

J. Compt. & Auditor
Statesman News Service

LUCKNOW, Feb. 3. — The Uttar Pradesh government proposes, the Governor disposes.

In the latest episode of the ongoing spat between the Mulayam Singh government and the Governor, Mr TV Rajeshwar, the latter has refused to sign on the dotted line.

The government had sent to Raj Bhavan the draft of an Ordinance to amend the Uttar Pradesh University Act and formulate rules for time-bound polls to students' unions.

After withholding his assent for a few days, the Governor apparently wants the Act to be amended through a Bill in the Legislature, which had been summoned by him in the second week of this month.

Promulgation of an Ordinance when the Houses had been summoned amounted to breach of propriety, it was pointed out.

The Cabinet had approved the drafts of the Ordinance to be signed by the Governor under Article 213 of the Constitution. Almost at the same time the government had asked him to convene both Houses of the Legislature for the budget session under Article 174.

Sources said actions under the two articles of the Constitution were somewhat anomalous. It was learnt that the government would seek the Governor's approval of a Bill which would be passed during the session.

THE STATESMAN

04 FEB 2005

Governor accessory in 'premeditated murder' of democracy

Nandu R. Kulkarni in Mumbai

Feb. 3. — That the fate of the BJP government in Goa was already decided by the Governor, Mr SC Jamir, became clear after analysing the political manoeuvres of the Congress leaders with tacit sanction of the constitutional head of this tiny state.

Amidst the game of defection and political compromises played by the Congress and the BJP, the Governor instead of adhering to his statutory position had no qualms proclaiming his affiliation to the Congress which has surprised the political observers here. Under the circumstances to expect that Mr Parrikar government would survive even after passing the floor test became doubtful. Analysts say it was a day when the Governor merrily indulged in partisan politics.

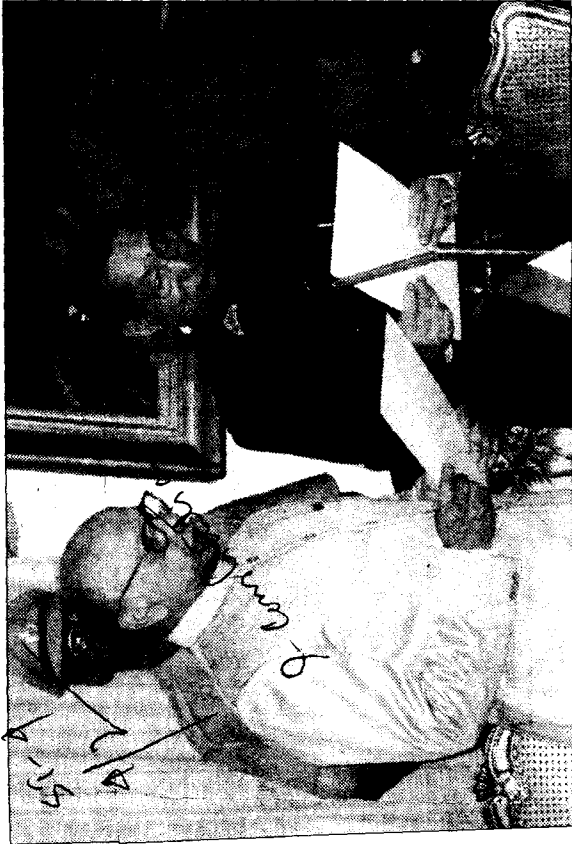
Yesterday's events are amply clear to suggest that the BJP government fate was sealed even before it won the vote. Only some excuse was needed to sack it, analysts say.

Within minutes of winning the vote of confidence, a telephone call was made to Raj Bhavan. The

Governor instantly signed the dismissal of the BJP government. Mr Parrikar and his Cabinet colleagues were shocked when they were told about Mr Jamir's order. The Raj Bhavan fiat sacking the government came even before the business before the Assembly was concluded.

The state that had seen 13 chief ministers between 1990 and 2000 is now once again in the throes of political instability, albeit after four years. The majority test was advanced by a day at the behest of the Governor. The chief minister had no qualms or hesitation to face the Assembly as his game plan to defeat the Congress's design was already in place.

Political analysts point out how the delegation of local Congress leaders headed by Mr Pratapsinh Rane called on the Governor at Raj Bhavan yesterday morning. Both the Congress and Mr Jamir had anticipated that the Independent MLA Mr Felipe Neri Rodriguez would be disallowed to vote as he had been pronounced a defector. The Governor to preempt such move by the ruling BJP had asked the Speaker Mr Vishwas Satarkar to ensure that all MLAs



Pratap Singh Rane being sworn in as the Goa chief minister by Governor Mr SC Jamir on Wednesday night. — PTI

we allowed to exercise their votes. With the BJP and the Congress numbers tied at 18 each Mr Rodriguez's vote was crucial to the floor test. The Speaker's ruling asking the Independent MLA to leave the House and his subsequent eviction with the deployment of marshals

Venkaiah condemns 'evil design'

CHENNAI, Feb. 3. — Condemning the dismissal of the Manohar Parrikar-led coalition government in Goa, the BJP today said the action had been part of an "evil design" to destabilise a popularly elected government.

"The BJP condemns the midnight murder of democracy. Normally it is thieves and robbers who act in the night. The sequence of events in Goa were part of a pre-planned conspiracy," former BJP president, Mr M Venkaiah Naidu, said here. The BJP demanded that the Governor be "sacked".

Nowhere in the world is the swearing-in of a chief minister held at 11.30 p.m, he said. "This is an assault on the federal system. We will fight it legally and politically." Mr Naidu said the Congress had appointed as Governor a "full time

Congressman, who was defeated in the elections". He acted as a Congress agent, the BJP leader said.

Peculiar, says Left

Terming the developments in Goa as "peculiar", Left parties today said the Speaker's decision to disqualify some members even before the vote of confidence was "wrong" and the best option would be to seek a fresh mandate, PTI adds from New Delhi. "Disqualification of some of the members by the Speaker even before the vote of confidence was wrong... However, the best option now is to go back to the people," CPI-M Politburo member Mr Sitaram Yechury, along with other Left leaders, told reporters. — SNS

the Constitution since Mr Jamir, former chief minister of Nagaland found the Speaker's action "partisan".

Later, the close-to-midnight swearing in of the new chief minister, Mr Pratapsinh Rane, of the Congress in great haste gave the aggrieved BJP no chance to

approach court or the President to challenge the governor's decision. The Congress out classed Mr Parrikar in the game of defection and political manoeuvre, albeit with the governor's blessings, which the BJP chief minister had deployed in the past to beat the Congress.

Parrikar fired, Rane new CM

Press Trust of India

PANAJI, Feb. 2. — Capping a day of dramatic political developments, a Congress-led government was sworn in in Goa tonight hours after the BJP-led ministry had been dismissed by the Governor after winning a vote of confidence in the Assembly in highly controversial circumstances.

A two-member Congress ministry with former chief minister Mr Pratapsinh Rane as chief minister and Independent MLA Mr Philippe Neri Rodriguez as his deputy was administered the oath of office and secrecy by Governor Mr SC Jamir at a ceremony at Raj Bhavan at 11:30 p.m., marking yet another chapter in the turbulent politics of Goa where

MLAs defect frequently and governments change hands at regular intervals.

Mr Rodriguez was rewarded with the post of deputy chief minister for it was his eviction from the Assembly earlier in the day that set off pandemonium in the House with Congress members rushing to the Well and staging a dharna and shouting slogans.

Mr Rane, the 67-year-old agriculturist, was elected leader of the Congress Legislature Party and also the head of the new political front, United Legislature Party, formed by the Congress. He had earlier been Goa chief minister four times from 1980 to 1985, 1985 to 1989, for three months in 1990 and 1994 to 1999.

Earlier, the Governor dismissed the two-and-half-year-old BJP government shortly after chief minister Mr Manohar

Parrikar had won the vote of confidence in the Assembly amidst pandemonium after the Speaker, Mr Vishwas Satarkar, had Mr Rodriguez removed by the police from the Assembly for "disorderly conduct." The Speaker later said Mr Rodriguez failed to appear before him despite intimation in connection with a petition filed by the BJP seeking his disqualification. Mr Satarkar claimed before the media that the Parrikar ministry had won the confidence motion by 18-6 votes. Soon after the floor test, the House was adjourned and the Opposition met the Governor demanding the government's dismissal.

Mr Parrikar accused the Governor of being "partisan" and said his dismissal was "pre-meditated" by the Congress.

More reports on page 5

BJP to move Kalam on Parrikar's dismissal

Statesman News Service

NEW DELHI, Feb. 2. — The BJP today used choice invectives such as "murder of democracy", "reprehensible," "undemocratic," "arbitrary", "unconstitutional" and "partisan" to describe the Goa Governor's decision to dismiss the Manohar Parrikar government. The party described the event as "without precedence" that "a government which proved majority was dismissed".

While the party is contemplating a legal remedy, it has decided to meet the President, Dr APJ Abdul Kalam,

tomorrow to seek his intervention. The former Prime Minister, Mr Atal Behari Vajpayee, and the leader of the Opposition, Mr LK Advani, are to be members of the high-profile BJP delegation. BJP leaders feel the party will have an edge in the Assembly polls in Haryana, Jharkhand and Bihar by presenting them as being haunted by the ruling Congress at the Centre.

After a hurriedly convened meeting of senior BJP leaders, Mr Advani demanded immediate removal of Mr SC Jamir from the Governor's post. The chain of events suggested that

the Governor had acted as a henchman of the Congress party with scant regard for constitutional responsibilities", he said.

"It is now obvious that the Governor's reprehensible action is part of a pre-mediated conspiracy to destabilise the BJP government in Goa," he said. "The fact that he acted without even seeking a report from the Speaker... conclusively establishes that he has followed the diktat of the Congress high command... It appears that the Governor had kept the dismissal letter ready even before the confidence vote was taken."

Constitutional experts blast Jamir move

Press Trust of India

NEW DELHI, Feb. 2. — The fast-paced action of Goa Governor Mr SC Jamir dismissing the BJP government drew mixed response with some constitutional experts terming this as a "completely illegal" act but some others justifying it.

Former Attorney-General Mr Soli J Sorabjee said: "If the procedure and the manner in which the vote on motion of confidence took place was not proper, the Governor should have insisted on following the correct procedure and could have asked the chief minister to prove his majority in the House under that procedure." "Dismissal of an elected government in this manner is prima facie patently illegal," he said. Former Solicitor-General Mr Harish Salve termed the action of the Governor as "completely illegal" and said

"from what appears from the news reports, the action of the Governor appears to be high-handed. Some day the Supreme Court will examine the legality of the partisan action of the Governor." Mr Arun Jaitley termed this as an action of a "partisan Governor for partisan purposes."

Congress leader and senior advocate Mr AM Singhvi justified the Governor's action by saying that "to save democracy there was no other option but to dismiss the government." Former law minister Mr Shanti Bhushan justified the Governor's action saying that Article 164 of the Constitution provided the procedure for the dismissal of the state government.

"The Governor's action appears to be right as the Speaker was acting in a partisan manner in throwing out an Independent MLA from the House," he added.

Congress justifies Governor's action

NEW DELHI, Feb. 2. — Gearing up to stake claim to form the next government in Goa, the Congress today justified the Governor, Mr SC Jamir's move dismissing the Manohar Parrikar government in the wake of its controversial victory in the vote of confidence in the Goa Assembly.

The Congress Central leadership here said Mr Jamir had no other option than to dismiss the Parrikar government after "the Speaker conducted the proceedings of the House in a dubious manner to ensure an artificial majority for the BJP".

Referring to the Speaker, Mr Vishwas Satarkar's controversial move to debar Independent MLA Mr Phillip Neri Rodrigues from voting midway during today's proceedings of the House, Mr Ahmed Patel, Mrs Sonia Gandhi's political secretary, said, "This was unconstitutional and undemocratic."

The ball is now in the Governor's court since President's Rule has not been imposed in the state. The Congress-led ULP, which held a meeting tonight in Panaji, has already staked its claim to replace the Parrikar government. — SNS

Judicial activism: boon or bane - III

JUDICIARY cannot usurp the functions of Parliament and legislatures. This argument though not without force fails to notice that it is vain to invoke Parliament or the legislatures as is evident from the fact that no measures or steps have been taken for years to remedy several social evils.

Furthermore violations of human rights often take place owing to non-implementation of laws. For example, inaction to enforce laws enacted to protect young children in workshops or failure to implement regulations to prevent pollution and environmental degradation. One of the main reasons for judicial intervention is the failure of the executive to implement the laws made by Parliament and state legislatures, and to discharge its legal and constitutional obligations. Judges can't remain mute spectators in such cases. Unlike the legislature and the executive courts cannot prevaricate nor procrastinate.

Judges realised the enormity of the situation and the subversion of the Rule of Law by reason of continued violations of beneficial social legislation. The Supreme Court responded by liberalising or relaxing the strict rule of locus standi. In SP Gupta's case it held that if a legal wrong or legal injury is caused to a person who by reason of poverty or disability or socially or economically disadvantaged position is unable to personally approach the court for relief, any member of the public or organisation acting bona fide can approach the Court for enforcement of the fundamental rights of such persons.

Lord Sedley perceptively observed in the 1995 Paul Seighart Memorial Lecture, that "modern public law has carried forward a culture of judicial assertiveness to compensate for, and in places repair, dysfunctions in the democratic process."

Let me refer to two striking instances of judicial activism or rather judicial legislation in India. The first is the decision of the Supreme Court in *Vishaka*. The Court was confronted with the persistent and pervasive problem of sexual harassment in the workplace. There was no legislation dealing with this evil. The Court referring to various international covenants and taking note of the absence of domestic law occupying the field issued several directions. These directions included definition of sexual harassment, the preventive steps that can be taken, the disciplinary action and criminal proceedings that may be adopted for sexual harassment. The Court also devised a complaints mechanism and a complaints committee. This judgment, no doubt laudable in intent and beneficial to the victims of sexual harassment, is a classic instance of pro tem ad hoc judicial legislation. This is clear from its ruling that "these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field." It is a matter of regret and shame that as yet no legislation has been enacted by Parliament.

Another instance of judicial legislation is the Supreme Court's judgment in *Association for Democratic Reforms*. The anxiety of the Court was to deal with political corruption in the context of elections. The Court issued directions requiring each candidate seeking election to Parliament or a state legislature to furnish information on certain matters, namely about past criminal convictions, pending criminal cases, assets of the candidate including those of his or her spouse and of dependants, over-dues of any public financial institution or government dues, and the educational qualifications of the candidate.

The reasoning of the Court is this information is necessary in order to enable citizens to make an informed choice regarding the selection of candidates which is essential for the healthy functioning of democracy in the country.

The vexed problem is: Can the law be "interpreted" or created to meet and redress the economic and social demands and deficiencies that the judges have identified?

It is in the field of Public Interest Litigation that judicial activism tends to go haywire. What is often forgotten is that the

Concluding part of speech by SOLI J SORABJEE delivered on the occasion of the Shyama Prasad Mookerjee Special Lecture

genesis of PIL was for the protection of the fundamental rights of persons who on account of poverty, indigence or economic and social disabilities can't themselves approach the court. PIL was not and is not meant for rectifying town planning violations or for enforcing provisions of a municipal law.

Utmost care must be taken not to confuse judicial activism with judicial showmanship or judicial adventurism. Judicial activism does not mean a trigger-happy approach of striking down laws that are unpalatable to the personal predilections of judges. Judicial activism does not warrant issuing directions and making orders which are beyond the judicial sphere and do more credit to the heart than to the head. It is doubtful whether the judiciary can direct the administration to construct roads and erect buildings, to secure lands in a particular locality for accommodating certain persons or locating some industries, to appoint managers at a remuneration fixed by the Court or to give ad-hoc directions for huge monetary payments. Such orders have serious fiscal and budgetary implications and are more in the realm of the legislature and the executive.

Courts must not also venture into fields in which they don't possess the requisite expertise and where they don't and can't get full and effective assistance. Most importantly, there should be no judicial authoritarianism. If the law of the land provides for retrenchment compensation at a certain amount, courts can't and shouldn't order retrenchment compensation at three times or five times the rate. This kind of cowboy jurisprudence is baneful. It tends to make the judiciary a super legislature and disturbs the constitutional balance.

Judges must not instill in themselves the belief that the judiciary can solve all the problems that afflict our nation. Every matter of public interest cannot be the basis of a PIL, for example, increase in the price of onions or railway fares or the dilapidated conditions of railway stations or the retention of the word "Sindh" in our national anthem. It must also be remembered that the PIL is not a pill for every ill. Judges should be vigilant to ensure that genuine Public Interest Litigation does not degenerate into Private Interest Litigation, Political Interest Litigation and above all Publicity Interest Litigation.

However having said that it must be recognised that thanks to PIL, the rule of law has been upheld and constitutional values preserved. Numerous under-trial prisoners languishing in jails for inordinately long periods have been released; persons treated like serfs and held in bondage have secured freedom and have been rehabilitated; inmates of care homes and mental asylums have been restored their humanity, the condition of workers in stone quarries and brick kilns and young children working in hazardous occupations has undergone a humanising change. Thanks to juristic activism in the arena of environmental and ecological issues, accountability in the use of hazardous technology has been made possible and has yielded salutary results.

So, is it permissible for the judiciary to indulge in ad hoc judicial legislation and display super judicial activism? The debate is ancient and continuing and I can only say there is no universal prototype of judicial activism. It

largely depends on the prevailing situation in a particular country, its laws or absence of laws and the level and quality of public administration. It ultimately depends on the outlook, the temperament, the approach and indeed the personality of the judge. Is the judiciary mainly concerned with laws of property, contracts and amalgamations and mergers of companies? Or is it deeply concerned to uphold and protect the basic human rights of the people especially those of the exploited and the downtrodden? Is it taking human suffering seriously and responding to it with sensitivity? Quest for justice, especially social justice, and relief of human suffering are the paramount motivation for judicial activism. Although judicial activism and judicial legislation are controversial it can't be gainsaid that on balance it has been a boon. And remember that fundamental rights of our people will remain ornamental declarations and teasing illusions and will be translated into living realities and become meaningful if there are activist, sensitive and sensible judges. And blessed is the country which possesses such judges in which case judicial activism will certainly be a boon. I venture to say that India is one such country. And thank the Almighty for that.

Concluded.

Judicial activism: boon or bane - II

THE Supreme Court of the Republic of Ireland has also adopted the judicial technique of spelling out fundamental rights which are not expressly mentioned in the Irish Constitution. The view taken by some judges of the Irish Supreme Court is that there are rights which are anterior to and are not merely derived from the Constitution. The unenumerated personal rights doctrine in Ireland has been largely influenced by natural law thinking. It is interesting that in Ireland in a number of cases, the Preamble has been invoked to justify judicial activism in the interpretation of the Constitution.

Our Supreme Court has also deduced or spelt out quite a few fundamental rights which aren't expressly mentioned in the chapter on fundamental rights. This judicial exercise is performed on the premise that certain unspecified rights are implicit or inherent in the enumerated guarantees. For example, our Constitution doesn't specifically guarantee freedom of the press as a fundamental right. In several decisions of the Sup-

reme Court freedom of the press has been held to be implicit in the guarantee of freedom of speech and expression. Freedom of the press has thus acquired the status of a fundamental right by activist judicial interpretation.

There's no central legislation in India as yet securing freedom of information. In SP Gupta's case (1981) the Court deduced the right to know and the right of access to information by a creative interpretation of the free speech guarantee in the Constitution. The Court reasoned that in an open democratic system like India the citizen's right to know is inherent in the free speech guarantee.

Our Supreme Court has been rather hyperactive in deducing fundamental rights not expressly mentioned in the Constitution. It has inferred as fundamental rights inter alia the right to privacy, the right to travel abroad, the right to education, freedom from cruel and inhuman punishment or treatment. Can anyone deny judicial activism has been a boon in these cases?

Text of speech by
SOLI J SORABJEE
delivered on the
occasion of the
Shyama Prasad
Mookerjee Special
Lecture

Criticism frequently made about judicial activism is based on the doctrine of separation of powers. It is argued that the making of policy is the prerogative of the executive and not the courts, and that courts can't make orders that have the effect of invalidating a policy or requiring the executive to pursue a particular policy.

Although there are no bright lines that separate the role of the legislature, the executive and the courts from one another, there are certain matters that are pre-eminently within the domain of one or other of the

three wings of government. Our Supreme Court has ruled in more than one decision culminating in its landmark decision in *Balco Employees' Union v Union of India* that it is not "within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy merely because "a different policy would have been fairer or wiser or more scientific or more logical."

However, that doesn't mean a particular policy or a policy decision is immune from judicial review. Our Supreme Court has made it clear that if the policy is in contravention of a constitutional provision or in breach of a mandatory statutory provision or mala fide judicial intervention will be available. Where state policy is challenged as inconsistent with the Constitution, courts have to determine whether in formulating and implementing such policy the State has failed to give effect to its constitu-

To be concluded.

Judicial activism: boon or bane - I

JUDICIAL activism and activist judges have become buzzwords in the controversy surrounding the role of the judiciary in our constitutional scheme. These expressions are rather slippery. It is hard to give these words any universal definition with a firm content.

According to *Collins English Dictionary*, activism is "a policy of taking direct and often militant action to achieve an end, esp. a political or social one." Webster's *New Twentieth Century Dictionary* defines activism as "the doctrine or policy of being active or doing things with decision." Another dictionary meaning is "policy of vigorous action".

In light of these meanings judicial activism would denote a judiciary which discharges its functions in a vigorous and decisive manner to achieve an end. What is that end? Dispensing justice with a view to righting wrongs or providing or fashioning remedies where none exist in the judicial perception.

Under our Constitution Judicial activism plays a dominant role in public law to which I will refer later. It is most generally known that even in private law there have been notable instances of judicial activism which have had beneficial consequences.

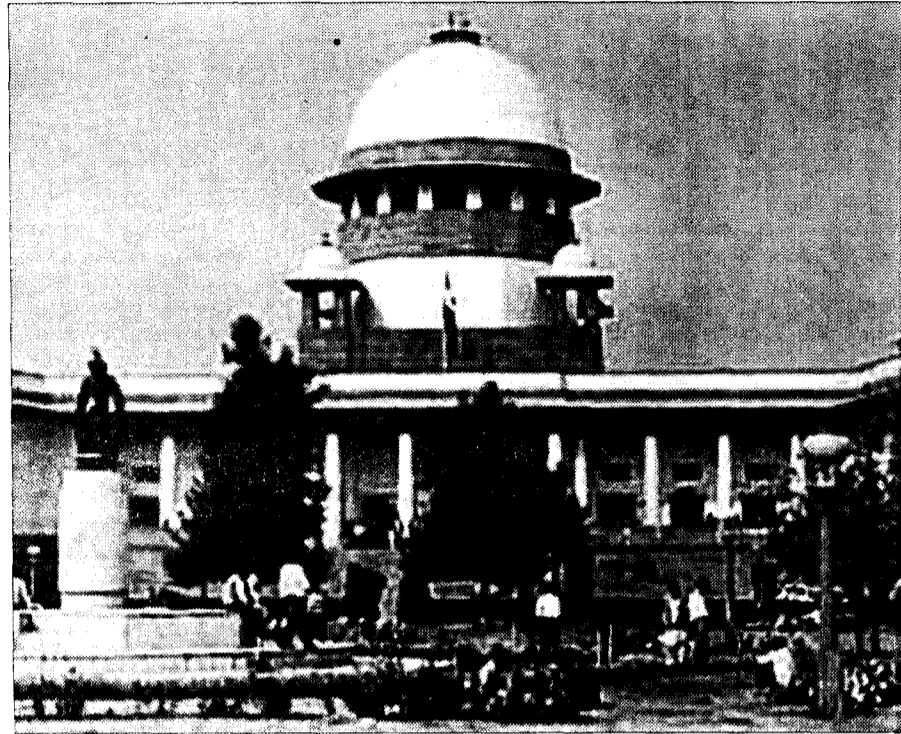
The thinking in the past was that the role of the judiciary is merely to decide cases by interpreting the Constitution and by applying the law to a given set of facts before it. This fairytale about judges not making law has now been jettisoned. As one jurist has said, none now accepts the "childish fiction that... common law is not made by judges, but is a miraculous something made, by nobody, existing from eternity, and merely declared from time to time by the judges."

A classic instance of judicial activism in private law in England is the landmark decision of the House of Lords in *Donoghue v Stevenson* in 1932, popularly known as the Snail in the Ginger Beer case. The issue in that case was whether the manufacturer of an article intended for consumption and contained in a dark receptacle which prevented inspection, owed a duty to the consumer of the article to take care that there was no noxious element in the article and whether he neglected such duty and was consequently, liable for any damage caused to the consumer by such neglect.

Lord Atkin enumerated the legal principle in his inimitable way: "The rule that you are to love your neighbour becomes in law: You must not injure your neighbour, and the lawyers' question: Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

Prior to *Donoghue v Stevenson* there was no generally recognised legal principle which imposed on a person a duty to take reasonable care not to injure another. Lord Atkin in *Donoghue* evolved a principle which created a duty of care emanating from a general relation-

Text of speech by SOLI J SORABJEE delivered on the occasion of the Dr Shyama Prasad Mookerjee Special Lecture, Calcutta University



ship of proximity based upon foreseeability of harm. Lord Atkin could certainly be described as an activist judge.

In 1970 the House of Lords in its decision in *Home Office v Dorset Yacht Co.* further developed the common law of negligence. The approach of the House of Lords in that case can again be described as an activist judicial approach. This was in contrast to the non-activist role which was articulated by Viscount Dilhorne in the said case. According to him, "we are concerned not with what the law should be but with what it is. The absence of authority shows no such duty now exists. If there should be one, that is, in my view, a matter for the legislatures and not for the courts."

Subsequently, in 1978 the House of Lords affirmed the presumptive duty doctrine in *Arms v London Burrough Council*. Lord Scarman, who recently passed away, dissented and rejected this type of judicial decision making, stating: "the objective of the judges is the formulation of principle. And, if principle inexorably requires a decision which entails a degree of policy risk, the court's function is to adjudicate according to principle, leaving policy curtailment to the judgment of Parliament..." Lord Scarman's role was clearly not that of an activist judge.

These cases illustrate there is scope for judicial activism even in private law matters and that there can be judicial differences on the subject. Viscount Dilhorne and Lord Scarman were excellent judges, but their temperament and outlook were different from that of their brother judges who were in the activist mode.

An established historical fact is that the common law of England was made and is continuously being made and evolved by judges who

would be described as "activist". For example, the rule of *audi alteram partem*, that is, that no person shall be condemned unheard, was evolved by judges who realised the importance of prior hearing before taking any action to the prejudice of a person. The reasoning was that "although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law shall supply the omission of the legislature."

Another striking instance of judicial activism is the doctrine of giving reasons for an adverse decision even when the statute doesn't expressly so provide. For a long time in England no such duty was imposed on administrators. In 1992 Lord Donaldson of Lynton MR in *Reg. v Civil Service Appeal Board, ex parte Cunningham* held: "I don't accept that, just because Parliament has ruled that some tribunals should be required to give reasons for their decisions, it follows that the common law is unable to impose a similar requirement upon other tribunals, if justice so requires."

The Privy Council in a recent judgment in *Marta Stefan v General Medical Council* (1999) opined that although there was no express obligation to give reasons in the statute or the rules, such an obligation may nevertheless be found to exist by operation of the common law as a matter of fairness. An unreasoned order is like the inscrutable face of the sphinx. That is not conducive to fair administration.

The rule evolved by the judiciary about giving reasons promotes good governance because it (a) ensures transparency and openness in decision making; (b) minimises arbitrariness and incorporation of extraneous factors; (c) enables the aggrieved person to effectively pursue his

remedy of appeal, revision or review that would be virtually impossible in the absence of reasons; and (d) satisfies a basic requirement of fairness and natural justice because the person who is adversely affected must know why his application has been rejected or the reason why his licence has been cancelled.

In India this rule about giving reasons is firmly established. In 1952 Justice Subba Rao in the Madras High Court evolved this principle in *Vedachala Mudaliar v State of Madras*. Later Supreme Court decisions laid down that reasons must be given in support of a decision both as a matter of fairness and good administration. This salutary development would not have been possible but for "judicial activism" displayed by "activist judges".

In countries where there is a Charter of Rights or a Bill of Rights, judicial activism is the rule. That is evidenced by the generous and purposive interpretation placed upon the Bill of Rights, an expansive interpretation avoiding the austerity of legal tabulism in order to give meaning and substance to fundamental rights. The Supreme Court of Canada has deduced fresh fundamental rights which are not expressly mentioned in the Charter. This judicial technique provoked a scathing comment from US judge Robert H Bork, the former solicitor general of the USA and President Reagan's failed nominee for the Supreme Court. Bork thundered: "The adoption of the Charter, however, emboldened judges and introduced the era of judicial activism. For the first time, the judiciary vigorously used its authority to strike down laws that infringed on what the judges themselves considered fundamental rights not mentioned in the Charter..."

What Bork overlooks is that there's nothing novel about judges adapting the language of the Constitution so as to apply its values to new situations. Chief Justice Charles Evans Hughes of the US Supreme Court stated: "If by the statement that what the Constitution meant at the time of its adoption it means today it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the condition and outlook of their time, would have placed upon them, the statement carries its own refutation."

A classic instance of this judicial technique of deducing fresh rights was adopted by the US Supreme Court in *Griswold v Connecticut* or the Contraceptive case. There was a law in Connecticut which made the use of contraceptives a criminal offence. The police could barge into a bedroom to "search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives." It was contended that the statute breached the right of privacy. Privacy is not expressly mentioned in the US Bill of Rights. Nonetheless privacy was deduced in that decision on the reasoning that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy."

To be concluded.

(The author is former Attorney General for India.)

SC order to enforce discipline, nationwide

All plus-2 results by June 10

OUR LEGAL CORRESPONDENT

New Delhi, Jan. 12: The Supreme Court today ordered all states and Union territories to declare 10+2 examination results by June 10 every year so that entrance tests for medical and other professional courses can be held on time.

A bench of Justices Y.K. Sabharwal, D.M. Dharmadhikari and Tarun Chatterjee set June 15 as the deadline for bri-

the correct vacancy position intimated by the chief secretary to the directorate general of health services by July 26. The head of the institution or the head of the health department of the state should also verify the vacancy position in each medical/dental college.

By October 31, the states, through chief secretaries and health secretaries, would have to file a report on admissions to the DGHS with details about the adherence to the time schedule and admission granted according to the prescribed quotas, including those of the management, the state and the all-India quota. "The recalcitrant states, particularly officers personally, will have to face the consequences for violation," the order stressed.

By January 31, a report on feasibility of conducting counselling through videoconferencing will have to be filed, the court said. It gave the DGHS three months to file a report on the "aspect" of increasing the all-India quota "from 15 to 20 per cent".

The court said if any private college exceeded its management quota in an academic year, its quota shall stand reduced for the next year.

The judges ruled against "mid-stream admissions", admissions in excess of the total seats or carrying forward unfilled seats to the next academic year.

The guidelines came on a petition that protested against the delay in conducting counselling by state governments which resulted in 15 per cent of all-India quota seats lapsing to the states' kitty almost every year.

The court posted the matter for further hearing in the third week of January.

THE PRESCRIPTION

- All states, Union territories to declare results by June 10
- Students must be given marksheets by June 15
- Heads of boards will be held responsible
- Admission to medical courses to be over by July 25
- By Oct. 31, every state to file compliance report
- Chief/health secy to be penalised for failure
- Private colleges will be penalised for exceeding management quota
- No mid-year admission or carry-forward of unfilled seats

nging out marksheets and said heads of education boards would be personally liable if the directive is not followed. However, Bengal — where plus-2 results were published on July 27 last year — was exempted from following the deadline this year.

The omnibus order laid down 15 guidelines to streamline admissions to medical colleges.

The court said results of medical and dental entrance tests for the current academic year should be declared before June 15. The admission process, including counselling, should be over by July 25 and

Election bar on convicted lawmakers

HT Correspondent
New Delhi, January 12

BAD NEWS for convicted lawmakers with jail sentences of two years or more. Even though an appeal pending in a higher court may save their seats for the current term of the House, they are ineligible to file papers for the next election.

A Supreme Court ruling, clarifying the electoral laws ahead of the next round of Assembly polls, said this today.

Section 8(4) of the Representation of the People Act states that an MLA or MP can't be disqualified because of conviction in a criminal case if their appeal is pending in a higher court. Lawmakers have been using this immunity to convince returning officers to accept their nomination papers for subsequent polls, too.

"The benefit of such a saving is available only so long as the House continues to exist and the person continues to be a member of a House," a Bench headed by Chief Justice R.C. Lahoti clarified. "It ceases to apply if the House is dissolved or the person ceases to be a member (that is, if the lawmaker loses his seat due to some other reason — for instance, under the anti-defection law — he can't contest a bypoll)."

The court made the comment while disposing of an election petition filed by Ramesh Dalal against Nafe Singh from Haryana's Bahadurgarh Assembly seat. The latter's election was set aside on the ground that under Section 8(3),

Cracking the whip



A convicted MP/MLA may not be disqualified from his legislature if his/her appeal against the conviction is pending with a higher court. But he/she can't use this rule — Sec 8(4) of the Representation of People Act — to escape disqualification from the next round of elections

Section 8(4) applies only as long as the House exists

he was disqualified on the date of filing nominations.

The Bench of Justices Lahoti, Shivraj Patil, B.N. Srikrishna, G.P. Mathur and K.G. Balakrishnan also clarified that the purpose of Section 8(4) was not to confer an advantage on any person but to protect the House.

"Therefore, it would cease to apply as soon as the House is dissolved.... Once the House is dissolved and a person ceases to be a member, on the date of filing of nominations, there is no difference between him and any other candidate who is not a member. Treating such two persons differently would be discriminatory and would incur the wrath of Article 14," the Bench added.

Centre justifies removal of Governors

By J. Venkatesan

NEW DELHI, JAN. 9. The Centre has asserted in the Supreme Court that the term of office of five years for a Governor is subject to the doctrine of pleasure of the President embodied in Article 156 (1) of the Constitution.

In its reply to the notice issued by the apex court on a petition filed by B.P. Singhal, former BJP Member of Parliament, challenging the removal of four Governors appointed during the NDA regime, the Home Ministry said: "The five-year tenure is not absolute and can be abridged at the pleasure of the President," implying that the President has unfettered powers to order the removal of Governors and they could not be questioned in a court of law.

In July 2004, the United Progressive Alliance Government re-

moved Kailashpati Mishra, Kidar Nath Sahani, Babu Parmanand and Vishnu Kant Sashtri as the Governors of Gujarat, Goa, Haryana and Uttar Pradesh. Admitting the petition from Mr. Singhal challenging their removal, the court had sought the response from the Centre.

The Centre submitted that the exercise of a power founded on the doctrine of pleasure, even though the same was on the aid and advice of the Council of Ministers, could not be questioned by the court, particularly, in view of the bar of Article 361(1) of the Constitution granting immunity to the President. The affidavit denied the allegation that the four Governors were removed due to ideological differences.

It said the allegation of the petitioner that Governors were removed for their difference in

ideology was apparently based on some media reports and not on facts. The Centre said that the Constitution did not specify any grounds for revoking the pleasure of the President resulting in the removal of the Governor and added that the Constitution also did not specify any procedure for the removal.

On the contention that the Sarkaria Commission had recommended that the Governor's tenure of five years in a State should not be disturbed except very rarely and that too for some compelling reasons, the Centre said that this recommendation did not mean that a Governor should get a fixed tenure of office for five years under all circumstances. It said that no grounds were required to be mentioned by the President while revoking his pleasure to remove a Governor. Fur-

ther a Governor had no fundamental right to continue for five-years in office.

The Centre said that while an elaborate procedure for the removal of high constitutional dignitaries such as the President, the Vice-President and the Chief Justice of India had been provided for in the Constitution, as far as Governors were concerned it was sufficient that if an order was issued by the President revoking his pleasure to the continuance of the Governor at any point of time during his five-year term.

The Centre sought the dismissal of the petition as it was misconceived. The petition comes up for hearing tomorrow.

A petition filed by 12 Members of Parliament of the AIADMK seeking to implead themselves in the case is also listed for hearing along with the main petition.

গড়ব নতুন আন্দামান : মনমোহন

পুনর্গঠনে এখনই ২০০ কোটি • বিশেষজ্ঞদের নিয়ে কমিটি

ভোলানাথ ঘড়ই, পোর্ট ব্লেয়ার

৮ জানুয়ারি— ধুংসের মধ্য থেকেই আন্দামানের মানুষকে নতুন জীবন, নতুন ভবিষ্যৎ গড়ে তোলার ডাক দিলেন প্রধানমন্ত্রী মনমোহন সিং। এবং জানালেন, এর জন্য যা যা করার দরকার সবই করবে কেন্দ্রীয় সরকার। অন্তর্বর্তী সাহায্য হিসেবে এদিনই মঞ্জুর করলেন ২০০ কোটি টাকা। জানালেন, দ্বীপপুঞ্জের ভূতন্ত্র ও কম্পনপ্রবণতা, সামুদ্রিক জোয়ার-ভাটা, জলোচ্ছ্বাস ইত্যাদি পুঙ্খানুপুঙ্খভাবে খতিয়ে দেখতে একটি বৈজ্ঞানিক বিশেষজ্ঞ দল তৈরি করা হবে। এবং দ্বীপপুঞ্জের ভবিষ্যতের উন্নয়নকে যাতে সুরক্ষিত রাখা যায় তা দেখা হবে। প্রাকৃতিক দুর্যোগের আগাম সতর্কতার ব্যাপারে সারা দেশের জন্যই একটি জাতীয় কর্মসূচি নেওয়া হবে বলে জানান প্রধানমন্ত্রী। আন্দামানের জন্য ঘোষিত ২০০ কোটি টাকার মধ্যে ২৫ কোটি টাকা খরচ করা হবে ১০ হাজার বাড়ি নির্মাণে। ২০০ কোটির বাইরেও ১০ কোটি টাকা দেওয়া হবে কর্মসংস্থানে, আরও ১০ কোটি আদিবাসী পরিষদের কাজে। জানা গেছে, প্রধানমন্ত্রী আজ এখানে এসেছিলেন ১৫০ কোটি টাকার প্যাকেজ নিয়ে। আন্দামানের সাংসদ মনোরঞ্জন ভক্ত এতে খুশি হতে পারেননি। তাঁর আর্জিতে বাড়িয়ে দেওয়া হয় আরও ৫০ কোটি। এ মুহূর্তে আর্ন্তদের ত্রাণ, চিকিৎসা, গৃহহীনদের পুনর্বাসন ছাড়াও সড়ক ও টেলিযোগাযোগ গড়ে তোলার ওপর বিশেষ জোর দেন মনমোহন সিং। সুনামিদুর্গত স্কুলপড়ুয়াদের স্বার্থে প্রধানমন্ত্রীর আর্জি : দশ ও বারো ক্লাসের পরীক্ষা মাস দুয়েক অন্তত পিছিয়ে দিক সংশ্লিষ্ট বোর্ডগুলি। চেন্নাই থেকে



ফৌজি বিমানে পোর্ট ব্লেয়ারে প্রধানমন্ত্রী। ছবি: এ এফ পি

এদিন সকাল সওয়া নটার পোর্ট ব্লেয়ারে বিমান বাহিনীর উৎক্রেণ বিমানবন্দরে এসে নামেন প্রধানমন্ত্রী। সঙ্গে ছিলেন যোজনা কমিশনের ভাইস চেয়ারম্যান মন্টেক সিং আলুওয়ালিয়া। পোর্ট ব্লেয়ার থেকে কপ্টারে সোজা চলে যান বিপর্যস্ত ক্যাম্পবেল বে দ্বীপে, তারপর কার নিকোবরে।

ফিরে এসে বিকেলে রাজনিবাসে বৈঠক করেন উপরাজপাল রাম কাপসে এবং ফৌজি ত্রাণ কর্তাদের সঙ্গে। ফিরে যাওয়ার আগে সন্ধ্যায় সাংবাদিক সম্মেলন। অন্তত জোরের সঙ্গে

৪ পাতায় : বাড়ল একটি ওঙ্গি মানব

প্রধানমন্ত্রী বলেন, দেশের দুর্যোগে ত্রাণ এবং পুনর্বাসনের কাজ সামলানোর সর্বোচ্চ সামর্থ্য ভারতের আছে। বৃথিয়ে দেন, পশ্চিমের মুখাপেক্ষী নয় ভারত, ত্রাণের অছিলায় বিদেশিদের অবাধ গতিবিধিও অনুমোদন করবে না সরকার। তবে প্রধানমন্ত্রী বলেন, আন্দামানের পুনর্গঠনের জন্য

যদি বিদেশি অর্থ সাহায্য এবং প্রযুক্তির দরকার হয়, তা অবশ্যই নেওয়া হবে। সাংবাদিকরা সুনির্দিষ্টভাবে জানতে চান, অক্সফাম বা এই জাতীয় আন্তর্জাতিক বেসরকারি সংস্থাগুলির সাহায্য নেওয়া হবে কিনা। প্রধানমন্ত্রী বলেন, দীর্ঘমেয়াদি পুনর্বাসন প্রকল্পে কোথাও যদি দরকার পড়ে, সাহায্য নেওয়া যেতে পারে। বিকেলে পোর্ট ব্লেয়ারের আই টি এফ গ্রাউন্ডের ত্রাণ শিবিরেও গিয়েছিলেন প্রধানমন্ত্রী। আই টি এফ মাঠে আইল্যান্ড ট্রেড ফেয়ার। এ সময় সেখানে পর্যটন মেলা চলার কথা। পর্যটনের জন্য নির্মীয় স্টলগুলি সুনামির ধাক্কায় রাতারাতি ত্রাণ শিবির হয়ে যায়। মেহে, সান্ত্বনায় প্রধানমন্ত্রী হাত বুলিয়ে দেন দুর্গত শিশু, মহিলাদের মাথায়। পরে সাংবাদিকদের বলেন, ত্রাণ শিবিরগুলিতে মা-বাবা হারানো শিশু আর স্বামী-হারানো মহিলাদের দেখা ছিল সবথেকে যত্নগার অভিজ্ঞতা। কেন্দ্র এঁদের জন্য বিশেষভাবে ভাববে। কার নিকোবরের মালাকায় একটি শিবিরে আছেন ১৩০০ নিকোবরি। মনমোহন তাঁদের বলেন, আমি দিল্লি থেকে এসেছি। আপনাদের দুঃখের সঙ্গী আমি। অন্য কিছু শিবিরে পাঞ্জাবি, তামিল, মারাঠি ভাষাভাষী দুর্গতরা আর্জি জানান, আমাদের নিজেদের রাজ্যে পুনর্বাসনের ব্যবস্থা করুন। পাঞ্জাবি মহিলা গুরনাম কাউর প্রধানমন্ত্রীকে দেখে কান্নায় ভেঙে পড়েন। তাঁর সর্বশ্ব খোয়ানোর বিবরণ শুদ্ধ করে দেয় মনমোহনকে। পোর্ট ব্লেয়ারে সাংবাদিকরা প্রশ্ন করেন, হাজার কুড়ি মানুষ নিখোঁজ। নিখোঁজদের পরিবার কি ঠিকঠাক ত্রাণের সুযোগ পাবে? নাকি আইন অনুযায়ী ৮ বছর অপেক্ষা করতে হবে?

এরপর ৪ পাতায়

গড়ব নতুন আন্দামান

১ পাতার পর

প্রধানমন্ত্রী বলেন, এটা অস্বাভাবিক পরিস্থিতি, অতৃতপূর্ব ঘটনা। প্রয়োজনে নিয়মকানুন বদলের কথা ভাবতে হবে। কতদিনে শেষ হবে পুনর্গঠনের কাজ? এবার প্রধানমন্ত্রী বলেন, এভাবে দিনক্ষণ বলে দেওয়া কঠিন। তবে পরবর্তী বর্ষের আগে যাতে শেষ করা যায়, তা দেখতে হবে। পুনর্বাসন প্রসঙ্গে প্রধানমন্ত্রী জানান, স্থায়ী বাসস্থানের কথাই ভাবা হচ্ছে। আমরা চাই এমনভাবে বাড়িগুলি তৈরি হোক, যা বিপর্যয় প্রতিরোধ করতে পারবে এবং পরিবেশের দিক থেকেও অনুকূল হয়। ত্রাণ বন্টনে গোলমাল নিয়ে প্রশ্ন উঠলে প্রধানমন্ত্রী বলেন, প্রতি দুর্গত মানুষের কাছেই ত্রাণ পৌঁছে দিতে হবে। সন্ধ্যা ৭টায় বায়ুসেনার বিমানে ফিরে যান প্রধানমন্ত্রী।

AAJKAL

9 JAN 2005

Defence set-ups reel under tsunami blow

Car Nicobar
9/1

By Saibal Sen/TNN

Port Blair: Thousands dead, crores lost, and now it seems the tsunami has also dealt a hard blow to the country's strategic defence establishments.

As the country's defence planners go back to the drawing board, they reckon it will take a long time—a year at the least—to regain the advantages India had enjoyed in the region. In the meantime, it will be advantage China,

trol," ANC Air Commodore K K Vijay Kumar said.

The air force's forward base supply unit at Car Nicobar has been reduced to rubble. Only 6,000 feet of the 9,000-foot runway remains. The Air Traffic Control unit has taken a heavy pounding; it now operates with just one satellite phone.

But more than all this, it's the state of the manpower that's worrying the bosses. The 1,700-odd personnel, who saw 106 of their

unit of their choice. "But this means we have to bring in fresh people here," Kumar added. The air force is now scouting for higher locales on the western coast of Car Nicobar to build its administrative and residential quarters. "Earlier, the tribal chiefs did not allow us. Perhaps now they will realise that we are no aliens and are here to protect them," Kumar said.

The navy has not been spared either. Its warships are finding it impossible to manoeuvre in the

northern coastline of the Andamans—the closest point to Coco Island—as the water levels in these parts have plummeted. "We fear the ships will get grounded," said Commander Y Kumar. "Any strategic operation in these parts will have to be of an amphibious nature—in which troop movement is aided by ships. If the ships cannot manoeuvre, the military capabilities are severely dented," said Commodore Rajinder Kumar, commanding officer, INS Jarawa.

The navigation-



Nicobar islands has slowed down as government officials have been busy preparing for PM Manmohan Singh's visit on Saturday

which has reportedly built a runway in Coco Island—which it has taken on lease from Myanmar—just 35 nautical miles north of the Andaman and Nicobar archipelago, resulting in the country's only unified command—the Andaman and Nicobar Command (ANC)—beginning to worry.

The two vital components of the ANC—the air force and the navy—have been hit the hardest. "We were operational right from Day One. But the whole rebuilding will take at least a year. There are several things beyond our con-

own men and family members die, are drained psychologically. The entire lot has to be replaced. "It took us two days to remove these men and their families from Car Nicobar. But some still stayed back, helping us make 20-odd sorties a day," said Kumar. "The AN-36s landed on a kerosene-lamp-lit runway carrying more than their capacity. The Il-76s, too, carried more than what they can," he said.

To boost their morale, the personnel were given monetary incentives, plus a month's special leave and the option of joining a

al marks on some routes have been washed away by the tsunami. "Without navigational marks, it is risky to manoeuvre ships. The sea waters appear to have increased in the south," said a senior official. The INS Darshak and INS Sagard-wip, both surveyor ships armed with underwater sensors, are now trying to gauge the water depth. But both are having to help in the relief effort, which is slowing their job. "It might take at least a year to set up fresh routes and navigational marks," said Commodore Kumar.

Dual citizenship for NRIs who left after January 26, 1950

By Arunkumar Bhatt

MUMBAI, JAN. 7. Paying rich tributes to the 2.5 million knowledge and opportunity-seeking Indians settled abroad, the Prime Minister, Manmohan Singh, today offered dual citizenship to all those who migrated from the country after it became a Republic on January 26, 1950, provided their home countries allowed them to do so.

Dr. Singh said he would work towards the goal of getting Indian citizenship for every single overseas Indian who wished to get it. His announcement was applauded by about 1,900 delegates from the Indian diaspora in 70 countries at the three-day-long Third Pravasi Bharatiya Divas that he inaugurated.

The Prime Minister said the procedure for applying for Indian citizenship would be simplified and the Government was considering options, including the possibility of issuing smart cards to overseas citizens.

The Manmohan Singh Government has set up a Ministry of Overseas Indian Affairs to look after the interests of the Indian diaspora and the Pravasi Bharatiya Divas aims at further cementing their ties with the motherland.

The Pravasi Divas is celebrated on January 9 for it was on this day 90 years ago that the Great Pravasi (migrant), Mahatma Gandhi, returned home from South Africa to lead the country in its freedom struggle.

The chief guest today was Jules Rattanjoemar Ajodhia, Vice-President of Suriname, who is of Indian origin.

Many leading persons of Indian origin, including Singapore's Education Minister, T. Shanmugaratnam, Leader of the Opposition of Trinidad and Tobago, Basdev Pande, Chairperson of the European Parliament delegation for South-East Asia and SAARC, Nina Gill, chief executive of Cobra Beer, Karan Bilimoria and tennis star, Vijay Amritraj, are participating in the deliberations.

'Idea of India'

"We speak different languages, we practise different religions, our cuisine is varied and so is our costume... yet, there is a unifying idea that binds us all together, which is the idea of Indianness," the Prime Minister said. He called it "the empire of minds of the children of Mother India spread over all continents including the icy reaches of Antarctica, on which the sun truly cannot set."

The Prime Minister said that since the initiative of 1991 to liberalise and modernise the Indian economy, successive gov-

Highlights

- Dual citizenship for all overseas Indians who migrated after January 26, 1950, subject to the laws prevailing in their home country.
- All those who migrated after 1950 can enjoy all privileges of an Indian citizen except the voting rights.
- Registration process of People of Indian Origin (PIO) for granting dual citizenship will be simplified.
- New user-friendly form will be introduced, and introduction of a smart card is being considered.

ernments had taken steps that enabled the Indians abroad to invest at home. Mr. Ajodhia recounted the toil and achievements of the Indian community of 24,000 indentured labourers who worked on sugarcane and

coffee plantations in Surinam, replacing freed slaves. Many of them returned to India but those who stayed back had struggled and succeeded in many professions.

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What is dual citizenship

By Amit Baruah

NEW DELHI, JAN. 7. On December 23, 2003, Parliament passed the Citizenship (Amendment) Act, 2003. Those eligible to become citizens of India as on January 26, 1950, could now apply for dual Indian citizenship. Rules giving effect to this were notified in March 2004.

Dual citizenship allows the person to live in India indefinitely, unlike the Person of Indian Origin (PIO) card, which permitted a single stay for a period of six months. Dual citizens do not have voting rights. Neither can they be elected to public office. As per the amended law, persons of Indian origin who were citizens of Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, the Netherlands, New Zealand, Portugal, Cyprus, Sweden, Switzerland, United Kingdom and the United States were eligible to apply for dual citizenship.

Today's announcement by the Prime Minister, Manmohan Singh, extends dual citizenship to all PIOs who migrated from India after Ja-

nuary 26, 1950. It addresses a major anomaly that restricted dual citizenship to principally developed, Western nations. The Citizenship (Amendment) Act now needs to be amended further because the previous list specified 16 nations.

Taxation laws applying to dual citizens are similar to those applicable to Non-Resident Indians (NRIs). Dual taxation avoidance agreements signed by India with other countries are applicable. Any person who has been at any time a citizen of Pakistan, Bangladesh or any other country that the Central Government may notify in future is not entitled to dual citizenship.

The process of registering dual citizens has already commenced. Forms can be filled and submitted to the Indian collectorate or consulate concerned. They are available on the websites of select Indian missions abroad. So far, the process of registration is slow, information with the External Affairs Ministry suggests.

Obtaining dual citizenship costs \$275.

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