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ANTI-QUOTA PROTESTS ▮ No action against docs if they return to work, says SC; PM says moving fast on OBC quota

Just what SC ordered: Docs back to work

EXPRESS NEWS SERVICE
NEW DELHI, MAY 31

HOURS after the Supreme Court ordered them to resume work "forthwith" and called for restoration of normalcy in hospitals within three days, doctors and medical students in Delhi and Kolkata, protesting OBC reservation in premier education institutes, called off their nearly three weeks old strike.

The Supreme Court, in a conciliatory gesture, directed that disciplinary proceedings, notices and departmental actions initiated against doctors should also be withdrawn within three days of their resuming work.

"If strikes are permitted to continue, it would serve no result. Patients' right to get treated is inseparable from the right under Article 21 of the Constitution. Damage done to a patient sometimes is irretrievable," said the bench of Justices Arijit Pasayat and Lokeshwar Singh Panta.

After a general body meeting today, doctors decided to resume duties from tomorrow to avert a confrontation with the Supreme Court. They said they would continue to support the anti-quota agitation.

Health Minister Ramadoss plays Doctor at AIIMS. *Express photo*

The Health Ministry threatened to serve termination notices to striking doctors by 9 am tomorrow if they didn't return to work.

"We are hopeful that they will call off their strike by tonight and in the eventuality they do not join duty, tomorrow 9 am we are sending termination notices," Health Minister Anbumani Ramadoss told reporters here.

Meanwhile, Prime Minister Manmohan Singh, responding to a letter from Tamil Nadu Chief Minister M Karunanidhi, assured him that the Centre was committed to OBC reservation in educational institutions and that a Bill would be brought in Parliament in the monsoon session.

"I have urged all concerned to take necessary steps as expeditiously as possible to fulfill our common commitment to the OBCs," the PM said in his letter, a copy of which was released to the press today.

In Delhi, the bandh called by the Delhi Medical Association today in support of the anti-quota agitation was virtually total with basic services affected in government and several private hospitals.

27% OBC QUOTAS ▮ Justice Lahoti, whose 7-judge bench ruled against quotas in pvt colleges, says Art 15(5) could be struck down

Ex-Chief Justice: quota Bill illegal, so is amendment

R VENKATARAMAN
NEW DELHI, APRIL 11

FORMER Chief Justice of India Justice R C Lahoti, who presided over the seven-judge Supreme Court bench in the Inamdar case and ruled against quotas in private colleges, has broken his silence to slam HRD Minister Arjun Singh's move to bring a Bill for 27% OBC quotas in Central institutions.

"The proposed law will violate the Constitution and the principles laid down (in a series of Supreme Court rulings)," Justice Lahoti told *The Indian Express* today.

Asked about the Constitutional amendment, Article 15(5), which was passed this January to enable the Government to impose quotas, he said: "Maybe that itself will be struck down. The ball will be in the court's court now."

This is an echo of what another former Chief Justice of India, Justice V N Khare had told *The Indian Express* last week. Justice Khare had presided over the bench in the Pai and the Islamic Academy cases on quotas for minority institutions.

The proposed bill is based on that amendment which gives the state the power to make any special provision,

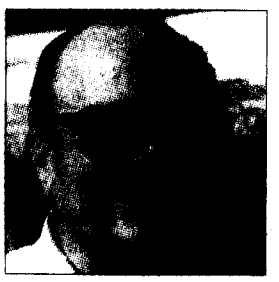
The judge breaks his silence

"by law" for the advancement of any socially and educationally backward classes of citizens.

Justice Lahoti's bench was set up to explain what Justice Khare's 11-judge bench had ruled in the TMA Pai Foundation case (October 31, 2002) and his five-judge bench in the Islamic Academy case (August 14, 2003).

For the first time, OBCs find mention in law, in draft Bill

VARGHESE K GEORGE
NEW DELHI, APRIL 13



FOR the first time, the category, Other Backward Classes (OBCs), will find mention in the law of the land, if the draft Bill for quotas in IITs, IIMs and other Central institutions is adopted by Parliament in its present form.

The draft Bill, a copy of which has been obtained by *The Indian Express*, clearly states: "Other Backward Classes of citizens means the class or classes of citizens who are socially and educationally backward, mentioned in article 340 (1) of the Constitution."

The draft Bill is named Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes of Citizens (Reservation of seats in Educational Institutions) Bill, 2006.

The Forum of OBC MPs had demanded the inclusion of the term in the law during the debate on the 93rd amendment to the Constitution in December 2005.

The 93rd amendement inserted a new, clause 5 to Article 15 and explicitly provided for reservation

» CONTINUED ON PAGE 2

Divided over Bill: NAC, even HRD staff

QUOTAS ▮ Two Joint Secy-level officers disagreed with rationale, over-ruled

SHUBHAJIT ROY
NEW DELHI, APRIL 13

THERE is a divide within ıe establishment on the issue f imposing 27% quota for)BCs—even within Arjun ingh's HRD Ministry.

Sources told *The Indian Ex-ress* that two of six Joint Sec-etary-level officers in the inistry's department of sec-ndary and higher education dissented" against Arjun Singh's move to impose OBC quotas in Central institutions.

These bureaucrats, it is earnt, cited two, now widely liscussed arguments: First, whether the amendment "automatically" leads to OBC quotas in institutions of excellence, like IIMs and IITs. And second, what effect it would have on academic standards.

The Minister, however, didn't make much of this dissent, and asked officials to prepare the draft Cabinet note. One of the dissenting bureaucrats told *The Indian Express*: "We raised objections on this issue but a majority thought they could pull it off. And the minister was not ready to relent as well."

This rift finds an echo not only in the National Knowledge Commission (NKC) but the National Advisory Council (NAC) too.

Former Vice Chancellor of Jawaharlal Nehru Technical University D Swaminadhan, an NAC member, who has been a member of Planning Commission told *The Indian Express*: "There cannot be a blanket reservation...we have to have minimum merit requirements. The under-privileged groups have to be looked after, but at the same time, standards have to be maintained...they can't be diluted."

Another NAC member and national coordinator of Lok Satta, a Hyderabad-based NGO, Jaiprakash Narayan said,"The manner in which quota is implemented needs to be carefully thought out. In case of IIMs and IITs, instead of a quota, there should be differential benchmarks for the general category and the underprivileged." Besides, Narayan said:"Intensive coaching programmes at state cost for two years needs to be imparted to students from these groups. And lastly, schools should be overhauled. One must replace competitive populism and lazy policymaking with cool reflection and imaginative solutions." Another NAC member, who did not wish to be named, said: "Focus on primary and secondary education is more important than quotas in higher education."

SC puts govt in dock on quota

Seeks Basis For Determining Who Belongs To OBC

By Dhananjay Mahapatra | TNN

New Delhi: In the midst of the raging country-wide agitation by students against UPA government's policy to implement 27% reservation for OBCs from June next year, the supreme court on Monday asked several searing questions wanting to know the rationale and the statistical data that propelled the decision.

"What is the basis for the determination as to who belongs to OBC?" was the first of the crucial questions addressed to Additional Solicitor General Gopal Subramaniam by a vacation Bench comprising Justices Arijit Pasayat and Lokeshwar Singh Panta.

It was hearing a PIL filed by advocate Ashoka Kumar Thakur which questioned the basis of the Manmohan Singh government's policy decision following the passage of 93rd constitutional amendment Act in February this year.

Taking serious note of the petitioner's plea that implementation of the OBC quota would divide the country on caste lines, the court said: "This has serious social and political ramifications. If necessary, this aspect will be dealt with appropriately."

After seeking responses of seven central ministries, including health, HRD, social justice and welfare and science and technology, within eight weeks, the court appealed to the striking doctors to drop their agitation assuring them that the OBC reservation policy has been put under scanner.

"Now that we have taken up the matter, the striking doctors should drop the agitation in the greater public interest. We are not passing an order but appealing to them," the bench said.

The other questions asked by the court, which may put the government in a spot, are: "What is the material/statistical data that laid the foundation of the policy" and "the modalities the government intended to adopt for implementation of the policy".

All these questions have to be answered specifically by the Centre supported by data, the Bench said while adjourning hearing on the Thakur's PIL for 14 weeks.

Another PIL by educationist Shiv Khera was also taken up later and the court sought the response of the Centre on this as well.

The court's mood was gauged by the ASG, who said the bench has "touched the core of the issue, that is the determination of the creamy layer among the OBCs. Both the questions are about identification of the creamy layer among OBCs."

Brushing aside the compliment, the bench said: "We do not know whether we have touched upon the core of the issue or not, but we want to find the cream of the matter."

These 14 weeks will be crucial for the Centre for just before the apex court's summer vacation, a five-judge constitution bench had reserved its verdict on a bunch of petitions challenging the legal validity of a series of legislations providing reservation withing reservation.

Facing the litmus test are the 77th, 81st, 82nd and 85th constitutional amendment Acts, all enacted to overcome the barriers put by the supreme court to check the governments' overtly pro-reservation policies. Experts are of the opinion that the verdict of the five-judge constitution bench on the four amendment acts would have a crucial bearing on the two PILs challenging the 93rd Amendment Act.

Taking serious note of the petitioner's plea that implementation of the OBC quota would divide the country on caste lines, the supreme court said: "This has serious social and political ramifications. If necessary, this aspect will be dealt with appropriately. Now that we have taken up the matter, the striking doctors should drop the agitation"

Police round up pro-reservation activists at the busy Hutatma Chowk in Mumbai on Monday

30 MAY 2006

Warrants against Jessica accused

NEW DELHI, March 22. -- Admitting the police appeal against the acquittal of all the accused in the Jessica Lall murder case, Delhi High Court today issued bailable warrants against nine persons, including Manu Sharma, and asked them not to leave the country.

A division bench (coram, Sarin, Goel, JJ) restrained the acquitted persons from leaving the country till further orders and asked them to appear before the court on 18 April, the next date of hearing.

The bailable warrants were issued after additional solicitor general Gopal Subramaniam and state counsel Mukta Gupta sought non-bailable warrants against those acquitted in the case on the grounds that one of them had already left for the USA and others may follow.

The Delhi Police had earlier challenged the 21 February acquittal order by the then additional sessions judge SL Bhayana against the nine persons. The appeal cited 92 grounds on which the prosecution sought to assail the judgement delivered by the trial judge. The Delhi Police in its appeal has criticised the trial court and said "the judgement passed by the court is manifestly wrong, bad in law and contrary to the facts and evidences on record." — SNS

23 MAR 2006

THE STATESMAN

Supreme Court judgment revisited

Subhash C. Kashyap

The verdict in the Bihar Assembly dissolution case would have done well to flag the responsibility of the Union Cabinet squarely and to have laid down some guidelines for future correctives.

PRIME MINISTER Manmohan Singh is reported to have commented (February 23) on the failure of the Supreme Court to reach a unanimous judgment in the Bihar Assembly dissolution case. The effort to dilute the validity of the severity of the indictment by taking shelter behind the two dissenting judges may be good politics but makes no constitutional or legal sense inasmuch as some of the most historic and path-breaking verdicts of the Supreme Court have been only majority judgments, for example, in the *Kesavananda Bharati* and the *Bommai* cases. It is always the majority judgment that is the binding verdict of the court and the law of the land.

Now that the dust has settled, it is time to make a few points of lasting constitutional relevance. First, it is difficult to disagree with what the judgment says but there is much to be said about what it fails to say. Even though the question of the validity of the proclamation of President's Rule (March 7, 2005) was not raised, the fact is that was the original sin. The purpose of holding elections is to elect people's representatives and to constitute a democratic government. That is why Article 164 provides that the Chief Minister "shall" be appointed by the Governor. He can theoretically appoint anyone but he has got to appoint someone. Normally, of course, he would appoint only one who is most likely to command the confidence of the House.

The Governor should not be allowed to take the plea that no government could be formed, unless he exhausts all possible options, including the one of asking the House itself to elect its Leader. In Bihar, the Governor rushed to recommend imposition of President's Rule under Article 356, which under the Constitution is a device of last resort to be used when everything else fails — when the discharge of Union responsibilities under Article 355 does not yield results, when directions issued to the State Government under Articles 256-257 are not complied with, and when under Article 365, it can really be held that the Government of the State cannot be carried on in accordance with the Constitution. Imposition of President's Rule immediately after the election without allowing the newly elected House to meet was nothing short of contempt of the electoral exercise and the verdict of the people. The representatives whom the people elect cannot be so unceremoniously sent home on the arbitrary advice of a Governor.

Secondly, when President's Rule was imposed and instead of being dissolved, the Assembly was kept under suspended animation, obviously the hope was that through some realignments, some leader could be in a position to stake claim to form a government. Thus the possibility of change in loyalties of Members was accepted as legitimate.

Thirdly, in the whole drama, there were at least four prominent actors involved. First, the Governor — a very prominent and active politician and former Union Home Minister of the ruling party. The arguments of likely horse-trading advanced by him were most untenable because for dealing with defections (or sale-purchase of legislators) we have the Tenth Schedule of the Constitution. Even thereunder, the law comes into play only after the defection has taken place and not at the prospect or threat of defection. Also there may be change of loyalties, which may be legal and protected under the merger clause. In any case, there is no provision that can justify dissolution of the House on grounds of threatened defections. In fact, there have been several instances both at the Union and State levels when governments were formed, facilitated or enabled to survive by defectors. Defectors may suffer disqualification but the government is in order so long as it does not lose the confidence of the House. The Governor perhaps gave himself out when he spoke of the likelihood of Nitish Kumar staking claim to form a government. And, it was not only the Governor speaking of the fear of horse trading; the Prime Minister himself referred to the worst kind of horse trading going on in Bihar.

Be that as it may, the Governor was only one of the players. Perhaps the most insignificant. He only made a recommendation, gave his own assessment of the situation. He took no decisions and no action. He had, in fact, no power to do either. Bihar being under President's Rule, the powers of the Governor to dissolve the Assembly under article 174(2) stood transferred to the President.

The second and the most important player in the Bihar drama was the Union Cabinet headed by the Prime Minister. The Cabinet took the decision to recommend to the President issuance of the notification dissolving the Assembly. It was the responsibility of the Cabinet to satisfy itself on points of law and fact before deciding on dissolution. It can be nobody's case that the Governor's report or recommendation was binding on the Cabinet. In any case, the unseemly haste with which a decision was taken and the proclamation signed by the President equally promptly could not be justified.

The third and, constitutionally and legally, the most responsible player was the President who allowed himself to be hurried into signing a blatantly unconstitutional order. He could have asked the powers that be to wait; he could have taken his own time, could have made necessary consultations, and should have taken a decision only after careful consideration. Also, he could have sent the matter back to the Cabinet for reconsideration. And, even thereafter, no President can be bound by any advice to do something palpably "unconstitutional."

When dissolution of the Lok Sabha was recommended by Prime Minister Indira Gandhi, President V.V. Giri asked her if the Cabinet had considered it. When, later a recommendation came from the Cabinet, President Giri kept it and when the notification was issued, it read "The President, on the recommendation of the Council of Ministers and after careful consideration ..." One President withheld his assent to a Bill passed by both the Houses and another refused assent to a Bill unanimously passed by both the Houses. The President's role is definitely not that of a rubber stamp. He can and must assert his constitutional authority whenever necessary. Inasmuch as what was declared unconstitutional by the Court in the present case was the Presidential notification, one cannot absolve the President's office of constitutional responsibility. One has to be more careful in future.

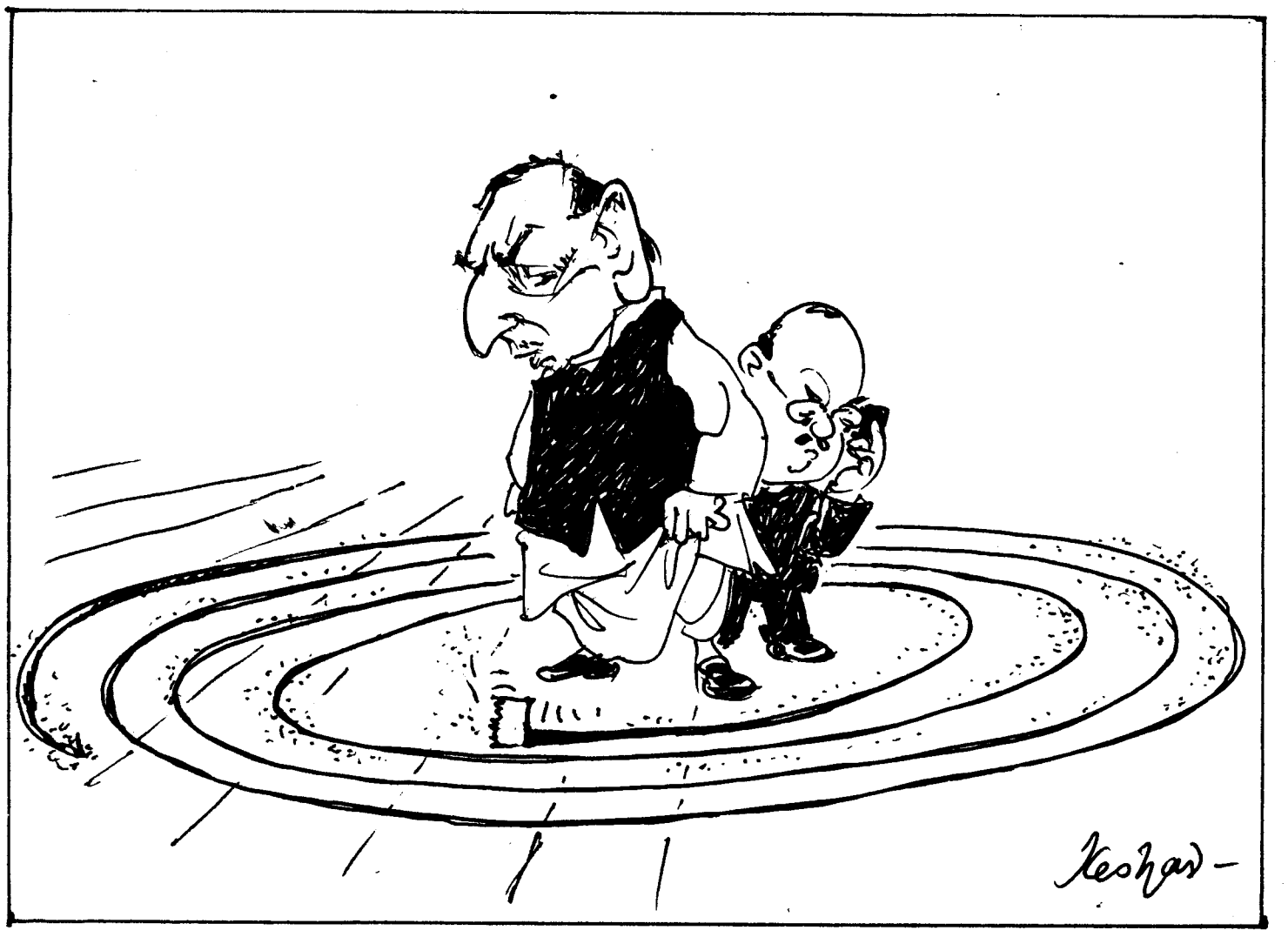
Fourthly and the last but not the least responsible player has been the Supreme Court itself. How could the Court allow the beneficiaries of an unconstitutional act to get away? The primary duty of the Court is to adjudicate disputes and to provide relief and remedy to victims of injustice and unconstitutional acts. In this case, "in view of the ground realities," "pragmatic" considerations, etc., elections based on the unconstitutional dissolution were allowed to be held and the petitioner or public interest got no relief from the apex court. That election results brought a stable Government is another matter. It is worth considering whether the courts are not putting too much emphasis on laying down high principles for future generations making immediate adjudication of a dispute and relief to petitioners and public interest a casualty.

The judgment concentrated on the Governor's role and reiterated earlier recommendations about the type of persons who should or should not be appointed as Governors. It appeared to be too soft on the role of other players particularly the Union Cabinet when it merely said: "the Governor may be the main player, but Council of Ministers should have verified facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what Governor stated. Clearly, the Governor has misled the Council of Ministers..." And we might add, the Council of Ministers misled the President. It would be a moot question whether more responsibility attached to those who misled or who got misled.

Notwithstanding all that can be said in criticism of the Government, it is impossible to agree with those who demanded its resignation. The Government has every right to continue so long as it does not lose the confidence of the Lok Sabha. However, the Court would have done well to flag the responsibility of the Union Cabinet squarely and to have laid down some guidelines for future correctives.

(The writer is a former Secretary-General of the Lok Sabha.)

CARTOONSCAPE



Conviction can be based on evidence of close relatives: Supreme Court

"There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished"

Legal Correspondent

- **'Close relative cannot be termed an interested witness'**
- **'Public reluctant to depose fearing harassment'**
- **'Testimony of the relative witness should be examined cautiously'**

NEW DELHI: The Supreme Court has held that conviction in criminal cases can be based on testimony of a close relative and trial courts cannot discard such evidence on the ground that he being a relation of the deceased is an "interested witness."

A Bench comprising Justice H.K. Sema and Justice A.R. Lakshmanan in a recent ruling said, "a close relative who is a very natural witness cannot be termed as an interested witness. The term 'interested' postulates that the person concerned must have some direct interest in seeing the accused being convicted somehow or the other either because of animosity or some other reasons."

'Witnesses a harassed lot'

The bench noted, "it has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal cases because of varied reasons. Criminal cases are kept dragging for years and the witnesses are a harassed lot.

They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness."

High Court ruling

In this case 23 accused were put on trial on a charge of murder and one of them died during trial.

The trial court awarded life imprisonment to five of the accused and acquitted the others. On appeal, the Andhra Pradesh High Court acquitted the five accused on the ground that the two main witnesses who gave testimony were close relatives of the deceased and that no other independent witnesses were examined by the prosecution.

Govt. files appeal

The Andhra Pradesh Government filed an appeal in the apex court against this judgment.

Rejecting the High Court's reasoning, the apex court Bench said, "the relative witness is not necessarily an interest witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witness should be examined cautiously."

Conviction restored

The Bench set aside the High Court order and restored the conviction awarded by the trial court on the five accused, who was directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Allowing the State's appeal, the Bench directed that compliance report should be sent within one month.

Delhi police move HC in Jessica murder case

New Delhi: The Delhi police on Monday challenged the acquittal of all nine accused in the Jessica Lal murder case in the Delhi high court. The acquittal of the nine accused, by additional sessions judge S L Bhayana, was a grave error on the part of the trial court which had failed to take into consideration the circumstantial evidence gathered by the prosecution, the appeal said.

The appeal comes three weeks after the Patiala House court acquitted Haryana minister's son Manu Sharma, former RS MP D P Yadav's son Vikas Yadav and seven others of all charges in the 1999 murder of the ramp model.

Others acquitted were Amardeep Singh Gill alias Tony, Aloke Khanna (both senior officials in a leading soft drink company), Shyam Sunder Sharma (relative of ex-President Shankar Dayal Sharma), Harvinder Chopra, Vikas Gill, Raja Chopra, and former Indian cricketer Yograj Singh. Two others, Ravinder Krishan Sudan alias Titu and Dhanraj, were declared proclaimed offenders.

According to the prosecution, Lal was shot dead by Sharma at the Tamarind Court, a restaurant owned by socialite Bina Ramani at the Qutub Colonnade in south Delhi on the night of April 29-30, 1999. The others were accused of criminal conspiracy, harbouring a suspect and destruction of evidence.

However, during the course of the seven-year long trial, three key eyewitnesses—model-turned actor Shayan Munshi, Karan Rajput and Shiv Das—had turned hostile, which dented the prosecution's case considerably.

In his 179-page judgement, ASJ Bhayana had hauled up Delhi Police for its shoddy investigation in the case, and said the prosecution had "miserably failed to prove its case beyond reasonable doubt against any of the accused". Agencies

Sabharwal for revamping judicial system

"Witnesses turning hostile is nothing new"

J. Venkatesan

NEW DELHI: Chief Justice of India Y.K. Sabharwal on Saturday expressed concern over the slow pace of the criminal justice delivery system and said, "the system appears to be on the verge of collapse due to diverse reasons."

In his keynote address at the Chief Ministers and Chief Justices conference, he said "some of the responsibility will have to be shared by the executive branch of the state. Not much has been done for improvement of the investigative and prosecution machinery. Significant suggestions for separation of investigative wing from law and order duties and changes in rules of evidence still lie unattended."

High profile cases

In an apparent reference to the Jessica Lal case, the CJI said "the public outrage over the failure of the criminal justice system in some recent high profile cases must shake us all up into the realisation that something needs to be urgently done to revamp the whole process, though steering clear of knee-jerk reactions, remembering that law is a serious business." He said "no economy can succeed if the justice delivery system is not speedy and efficient."

Later addressing a press conference, the CJI said witnesses turning hostile was nothing new. This problem could be overcome only by completing the trial within a specific period. He said "it is the investigation that is to be made stronger as courts can decide only on the basis of evidence on record."

Referring to the Government's move to bring in a bill on judicial accountability, the Chief Justice said, "Legislation is the domain of Parliament." Asked whether he had given his comments on the proposed Bill suggested by the Law Commission, he said, "I am yet to receive the report. As and when I receive it I will respond. If they (government) don't want my response, it is up to them not to send it to me for my comments."

Justice Y.K. Sabharwal

Asked whether he accepted such legislation, the CJI said, "some other countries have provided for such a mechanism. It may be better to provide some such mechanism to give confidence to the people on the judiciary."

He did not agree with the Prime Minister's perception that PILs had become a tool in the hands of the judiciary for harassment. While agreeing that PILs should not become publicity interest litigations, the CJI said "PILs have done a great service in protection of human rights, protection of environment, forest wealth, illegal mining, etc." He said PILs should be handled with great care and caution keeping in view the parameters laid down by the Supreme Court in various cases.

On the two-day conference of Chief Justices held on Thursday and Friday, he said, "we discussed wide-ranging issues in relation to legal and judicial reforms."

He said the main area of concern was the disposal of arrears. It had been resolved to set up special benches in each High Court for disposal of old cases, particularly criminal cases. It had been suggested that there must be a time limit of say six months for staying a criminal trial and a mechanism for vacating the stay and the trial expedited.

THE HIND...

All are guilty of justice system collapse: CJI

HT Correspondent
New Delhi, March 11

CHIEF JUSTICE of India Y.K. Sabharwal on Saturday said that part of the blame for the near-collapse of the country's criminal justice system lies with the executive. He said the executive was not doing much to improve the investigative machinery and was sitting on suggestions to change the rules of evidence to revamp the process.


Y.K. Sabharwal

Even as Prime Minister Manmohan Singh and law minister H.R. Bharadwaj looked on, Justice Sabharwal said, "The justice delivery mechanism appears to be on the verge of collapse because of diverse reasons. Some of the responsibility will have to be shared by the executive branch of the state". He was speaking at the inauguration of the Joint Conference of Chief Justices and Chief Ministers.

On his part, the PM, while calling for "reflection" on whether the existing procedures were adequate to deal with the situation, expressed his full support for judicial reforms. He did, however, caution against the misuse of PILs. "We need to reflect whether... PILs have become a tool for obstruction, delay and, sometimes, harassment", Singh said.

"Judicial activism, too, must be used in a restrained manner to fill up any institutional vacuum or failure and to clarify legal positions, retaining its character as a powerful — but sparingly used — instrument for correction. Judicial activism must also take adequately into account the administrative viability of the reform process", he said.

Justice Sabharwal said PILs had done a great service to the nation and the judiciary was aware of the need to use it sparingly so that its jurisdiction itself was not questioned.

Acknowledging public outrage over the failure of the system in some recent "high-profile" cases, Justice Sabharwal said judges cannot "create" evidence in the absence of a proper probe. He did admit, however, that faster disposal of cases could go a long way in addressing problems posed by hostile witnesses.

"Significant suggestions for separation of the investigative wing from the law and order duties and changes in the rules of evidence still lie unattended. The public outrage over the failure of the criminal justice system in some recent high-profile cases must shake us all into the realisation that something needs to be urgently done to revamp the whole process", he said.

Continued on Page 2

It rained aliens over Kerala

London, March 11

THERE IS a small bottle containing a red fluid on a shelf in Sheffield University's microbiology laboratory. The liquid looks cloudy and uninteresting. Yet, if a group of scientists is correct, it contains the first samples of extra-terrestrial life isolated by researchers.

Inside the bottle are samples left over from one of the strangest incidents in recent meteorological history. On July 25, 2001, blood-red rain fell over Kerala. And these rain bursts continued for two months. All along the coast, it rained crimson, turning clothes pink, burning leaves and falling as scarlet sheets at some points.

Investigations suggested the rain was red because winds had swept up dust from Arabia and dumped it on Kerala. But Godfrey Louis, a physicist at Mahatma Gandhi University in Kottayam, concluded this was nonsense. Louis said the rain was made up of bacteria-like material that had been swept to Earth from a passing comet. In short, it rained aliens over Kerala during the summer of 2001.

Most researchers doubt it. But a few believe Louis may be onto something and are following up his work. Milton Wainwright, a microbiologist at Sheffield, says, "It is too early to say what's in the phial. But it's certainly not dust. Nor is any DNA there — but then, alien bacteria wouldn't necessarily contain DNA".

Critical to Louis's theory is the length of time the rain fell. Two months is too long for it to have been wind-borne dust, he said. In addition, one analysis showed the particles were 50 per cent carbon and 45 per cent oxygen with traces of sodium and iron: consistent with biological material. Louis also discovered that hours before the first red rain fell there had been a loud sonic boom that shook houses. Only an incoming meteorite could have triggered it, he claimed. **The Guardian**

সাক্ষ্য ও মিথ্যা সাক্ষ্য

গুজরাত দাঙ্গায় বেস্ট বেকারি মামলায় ৯ জনের আগেই যাবজ্জীবন কারাদণ্ড হইয়াছে। বাকি ছিল মামলার মূল সাক্ষী জাহিরা শেখ বিষয়ে রায় দান। সুপ্রিম কোর্ট মিথ্যা সাক্ষ্য দিয়া ন্যায়বিচারের প্রক্রিয়াকে বিভ্রান্ত ও বিপথগামী করার দায়ে জাহিরাকে এক বছরের কারাদণ্ড ও ৫০ হাজার টাকা জরিমানা, অনাদায়ে আরও এক বছর কারাদণ্ডের বিধান দিয়াছে। এই রায় প্রত্যাশিতই ছিল। জাহিরা শেখই ছিলেন মামলার মূল অভিযোগকারী ও প্রধান সাক্ষী। বেস্ট বেকারি তাঁহারই পরিবারের একটি সংস্থা যেখানে দাঙ্গাবাজরা তাঁহারই পরিজনদের জীবন্ত অগ্নিদগ্ধ করিয়া হত্যা করে। অথচ মামলা কিছু দূর অগ্রসর হওয়ার পরই জাহিরা তাঁহার অভিযোগ প্রত্যাহার করেন, ইতিপূর্বে শনাক্ত করা অভিযুক্তদের আর 'চিনিতে পারেন না' এবং বলেন যে তাঁহাকে ভয় দেখাইয়া মিথ্যা অভিযোগে প্ররোচিত করা হইয়াছিল। জাহিরা যে শাসক দলের বিধায়ক ও পুলিশ কমিশনারের কাছ হইতে লব্ধ বিপুল উৎকোচের বিনিময়েই এ ভাবে আদালতকে বিভ্রান্ত করিতে থাকেন, এমন সংশয় প্রবল হইতে থাকে। সুপ্রিম কোর্ট এ জন্য যে তদন্ত কমিটি তৈয়ার করে, তাহার রিপোর্টেও জাহিরাকে অর্থের বিনিময়ে আত্মবিক্রয় ও মিথ্যাচরণের দায়ে অভিযুক্ত করা হয়। জাহিরার অন্যান্য আত্মীয়রা সাহসের সহিত সত্যের পথ আঁকড়াইয়া থাকায় শেষ পর্যন্ত দোষীরা অব্যাহতি পায় নাই। জাহিরার শাস্তি যে অনিবার্য ছিল, তাহাতে সংশয় নাই।

অর্থ ও পেশিবলের দ্বারা সাক্ষীকে মিথ্যাচারে প্ররোচিত করা কিংবা নিজের সাক্ষ্যের বিরুদ্ধাচরণ করাইবার প্রশ্নটি শীর্ষ আদালতকে যে ভাবে ভাবিত করিয়াছে, তাহা আরও একটি কারণে প্রাসঙ্গিক। দিল্লির নিশিনিলয়ে জেসিকা লাল হত্যা মামলাতেও মূল সাক্ষীর বাঁকিয়া বসার কারণে সব অভিযুক্তই বেকসুর খালাস পাইয়াছে, কাহারও শাস্তি হয় নাই। এই মামলাটিতেও গুজরাত দাঙ্গার মতোই ক্ষমতাবানদের দ্বারা, এমনকী আইনশৃঙ্খলা কর্তৃপক্ষের দ্বারাও সাক্ষ্যপ্রমাণ লোপাট বা বিকৃত করার প্রশ্ন রহিয়াছে। অভিযুক্তরা মন্ত্রিপুত্র বা কোটালপুত্র কিংবা প্রভাবশালী ব্যবসায়ীর ভাইপো-ভাগ্নে। পাঁচ শতাধিক লোকের সামনে হত্যাকাণ্ডটি ঘটা সত্ত্বেও অভিযুক্তদের বিরুদ্ধে কোনও সাক্ষী পাওয়া যায় নাই, পুলিশও তদন্তের কাজে অন্তর্ঘাত করিয়াছে। শেষ পর্যন্ত জনসাধারণের তীব্র ক্ষোভ এবং পুলিশি তদন্ত ও বিচারব্যবস্থার প্রতি আস্থাহীনতার প্রবল অভিব্যক্তি মামলাটি নূতন করিয়া শুরু করিতে বাধ্য করিয়াছে। কিন্তু বেস্ট বেকারি এবং জেসিকা হত্যা মামলা দুই-ই দেখাইয়া দেয়, ন্যায়বিচারের প্রক্রিয়াকে বিকৃত করার কত ক্ষমতা অর্থবান ও ক্ষমতাশালীরা রাখেন। আর এখানেই গুজরাত সরকারের প্রতি শীর্ষ আদালতের তিরস্কারেরও প্রাসঙ্গিকতা।

ইতিপূর্বে শীর্ষ আদালত গুজরাত দাঙ্গা মোকাবিলায় রাজ্য সরকারের ভূমিকাকে রোম সম্রাট নিরোর নির্মমতার সহিত তুলনা করিয়াছিল। এ বার জাহিরাকে ঘুষ দিয়া মিথ্যা সাক্ষ্যে প্ররোচিত করার দায়ে বড়োদরা জেলার কালেক্টর ও পুলিশ সুপার সহ শাসক দলের এক বিধায়কের নিন্দা করা ছাড়াও আদালত এক তির্যক ভর্ৎসনায় রাজ্য সরকারকে জাত, ধর্ম, সম্প্রদায় বা রাজনৈতিক মতাদর্শের ভিত্তিতে প্রজাপালনের অনুশীলন না করিতে বলিয়াছে। এ ধরনের সদুপদেশ অবশ্য নরেন্দ্র মোদীকে তাঁহার দলপতি এবং তদানীন্তন প্রধানমন্ত্রী অটলবিহারী বাজপেয়ীও দিয়াছিলেন। যথার্থ 'রাজধর্ম' পালনের সেই পরামর্শ সে দিনও মোদী কানে তোলেন নাই, আজও তুলিবেন এমন ভরসা কম। সুপ্রিম কোর্ট হিন্দুত্ববাদীদের জঙ্গি হামলায় সংখ্যালঘুদের নিহত, নির্যাতিত, ভস্মীভূত, ধর্ষিত ও লুণ্ঠিত হওয়ার মামলাগুলির সাক্ষীদের সুরক্ষার দায়িত্বের কথা সরকারকে স্মরণ করাইয়া দিয়াছে। বিশেষত যে সব ক্ষেত্রে অভিযুক্তরা অর্থবান, রাজনৈতিক ক্ষমতাধর, সামাজিক প্রতিপত্তিশালী, সেখানে অভিযোগকারী ও সাক্ষীদের জন্য বাড়তি নিরাপত্তা সুনিশ্চিত করা দরকার। অন্যথায় ক্ষমতাধররা চিরকাল জঘন্যতম অপরাধ করিয়াও অব্যাহতি পাইয়া যাইবে, আইন তাহাদের কেশাগ্রও স্পর্শ করিতে পারিবে না।

CLOSED ROUTE

It is not too difficult to make an ass of the law. The accused in the Jessica Lal murder case seemed to have managed to do that quite efficiently. Witnesses can be intimidated or paid off, they can always be made to un-see what they have seen. The only condition is that the perpetrators should be richer than the witnesses. The ugliness of the Lal murder trial and the consequent public outrage prompted the Congress president, Ms Sonia Gandhi, to suggest an amendment to Section 164 of the criminal procedure code that would contain witnesses from turning hostile. Witnesses' statements will be taken and recorded under oath as soon as possible after the crime. They would also have to sign their police statement, a copy of which would be forwarded to the magistrate. Recently, two crucial witnesses, Mr Shayan Munshi in the Lal case and Ms Zahira Sheikh in the Best Bakery case, claimed that they had problems with the language in which the first information reports were written. Ms Sheikh is facing perjury charges, but this or similar penalties will become inevitable when the recorded statement becomes part of law. There would be no need for the prolonged grilling of a hostile witness in order to establish perjury, as happened in Ms Sheikh's case.

The other feature of the proposed amendment is a corollary of the first, but less easy to implement. This is about witness protection: a witness can be threatened with not only his own life but that of his nearest kin, or, at an extreme, eliminated. The world being targeted through the amendment — of politics, wealth and glamour — pays well for the best thugs. In hostile witnesses, greed can be punished, but should fear be punished too? Protection is of urgent concern if the amendment is to be fair. Besides, the amendment should not obscure the fact that it is not witnesses alone who are corrupted by money or fear. It is a long route to the court, and the police seldom shine in investigating and evidence-gathering. Can any law change that? If the section is amended along the lines suggested by the Congress president, it has to be seen if it can be implemented successfully when crimes occur in less visible circles. When the victim is poor, and the police somehow forced or persuaded to register a complaint, witnesses tend to vanish from sight even before the police begin the routine inquiries. It would be good if the amendment could change this.

Fresh FIR filed in Jessica case

New Delhi: Against the backdrop of public outrage over the handling of the Jessica Lal murder probe, Delhi police on Monday filed a new case of criminal conspiracy in the destruction and fabrication of evidence and will challenge "in a day or so" the lower court order acquitting all the accused.

A special crack team was on Monday named under Special Commissioner (Intelligence) U K Katna to investigate the case but "nobody has been named in the FIR," Delhi police Commissioner K K Paul told reporters here.

Admitting that a "lot of material" has come up in the aftermath of the judgement and the media, which have created "lots of doubt" about the original probe, he said a new FIR was filed in the Mehrauli Police Station on Monday under various sections of Indian Penal Code. Other officers of the team would be appointed so that there was no delay in the investigation of the case.

Replying to questions, he said the present Station House Officer of Mehrauli would be the investigating officer and that nobody has been named in the FIR.

Jessica was shot dead in a posh restaurant Tamarind Court around midnight seven years ago allegedly by Manu Sharma when she refused to serve him liquor. Delhi Police has been facing flak from various quarters for its shoddy investigation of the case in which all the nine accused, including Manu, son of Haryana Minister Venod Sharma were acquitted.

Terming the registration of FIR as a "major step", Paul said the move was taken to ensure that justice is done in the Jessica Lall murder case.

As Joint Commissioner (Crime), Paul in 2001 had suggested to the then Commissioner Ajai Raj Sharma that a probe be ordered against officials investigating the case. Agencies

Delhi demands justice for Jessica Lal

"What has happened to Jessica can happen to anyone, till public decides that enough is enough people will keep getting killed...."

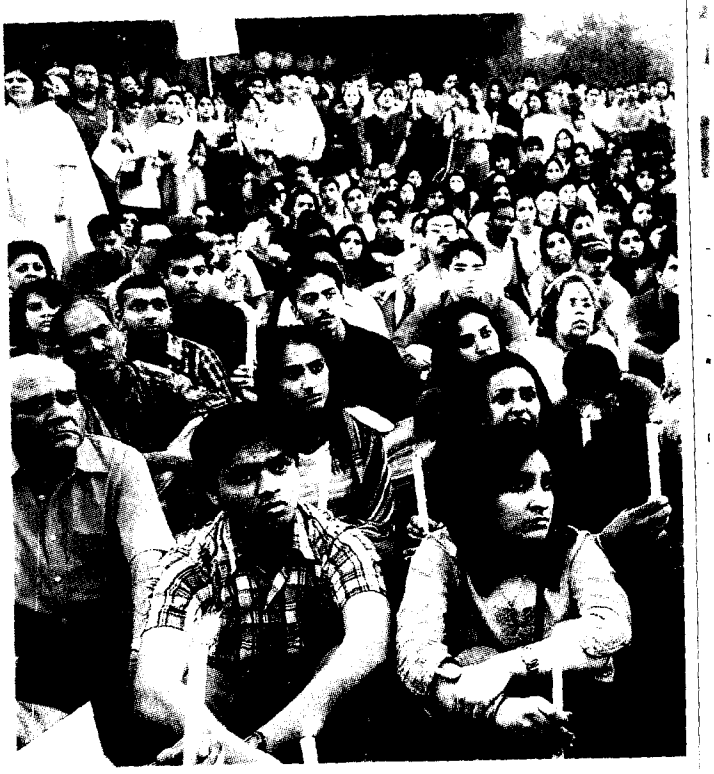
Staff Reporter

NEW DELHI: Demanding justice for Jessica Lal, human rights activists, people from the Capital's fashion fraternity, artists, students and concerned citizens got together on Saturday evening for a candlelight vigil and protest demonstration here at India Gate. Among those participating in the vigil were Jessica's sister Sabrina, social activist Swami Agnivesh, Neelam Krishnamurthy of the Association of Victims of Uphaar Tragedy, young murder victim Nitish Katara's mother Neelam Katara, fashion designer Ravi Bajaj, model Joey Mathew and a large number of students and teachers from Delhi University and Jawaharlal Nehru University.

Speaking out at the first public demonstration demanding justice for Jessica, Sabrina said: "It is overwhelming to see that so many people care enough to have taken time out to come here and be a part of this demonstration. For me the battle is personal, but I feel stronger today when I see that the battle now is not just mine. I want justice for my sister. I had given up hope but now I feel that something will come out of fighting this battle together. The Government, the police and the judiciary cannot ignore a voice that is so loud and clear."

While the gathering engaged in slogan shouting, lighting candles and singing extempore songs, family members, friends and concerned citizens seemed eager to ensure that their voices were heard. "We are standing here for justice and we have understood that we need to be together to make things happen in our country. What has happened to Jessica can happen to anyone, and sadly till the public decides that enough is enough innocent people will keep getting killed and we are going to suffer. We want to tell the Government that delay is not acceptable and that we want a time-bound system where justices is done," said Ms. Krishnamurthy.

Underlining the need for a fast and transparent judicial system, a Delhi University student said, "This here now is a protest not just for Jessica; it is also for the common man who is vulnerable in a corrupt system. We don't blame Shayan Munshi for not standing up for Jessica as an eyewitness in the case, we need a better witness protection system where the common man doesn't feel threatened to speak out the truth."



EXPRESSING SOLIDARITY: *Protestors holding candles to demand justice for Jessica Lal at India Gate in New Delhi on Saturday.* -- PHOTO: R. V. MOORTHY

05 MAY 2006 THE HINDU

THURSDAY, MARCH 2, 2006

Beating the anti-defection law

The hurriedly sought and easily won vote of confidence in Uttar Pradesh can do very little to ease the difficulties of the Mulayam Singh Government. These arise from the Allahabad High Court judgment derecognising the 'merger' of 40 Bahujan Samaj Party members of the Legislative Assembly with the ruling Samajwadi Party. As the rebel BSP MLAs voted in favour of the confidence motion in violation of the party whip, the onus is now on Speaker Mataprasad Pandey to decide on their status in accordance with the provisions of the anti-defection law. Contrary to what opposition parties claim, there was nothing illegal or unconstitutional about the confidence vote Mr. Yadav sought from the Assembly for his S.P.-led coalition Government. But it served no real purpose. The score in the vote, 207-0 in a 402-member House (with the opposition boycotting the motion), merely affirmed what was well-known earlier – the support of the BSP defectors, who moved to the S.P. camp in 2003, was crucial for the survival of the Government. If anything, the vote has brought matters to a head. The High Court, after nullifying the merger, quite properly left it to the Speaker to decide on the disqualification. Now, following the confidence vote, the threat of disqualification hangs over all the BSP rebels who defied their party whip. Following the 91st Constitution Amendment Act, the anti-defection law does not recognise 'splits' in a party. Instead, the amendment provides for the disqualification of any member, even if he or she is part of a group constituting one-third or more of the legislature party. Only 'mergers' in which at least two-thirds of the members of the relevant party are in favour of the merger have validity in the eyes of the law. The BSP won 97 seats in the 2002 Assembly election, so the 40 rebels do not come anywhere close to qualifying for protection under this escape clause.

The developments in U.P. draw attention to the discretionary powers vested in the office of the Speaker in matters of defection and disqualification. Defections are rarely an open-and-shut case. Speakers are not always non-partisan and are usually elected from the largest party in the House. Although the BSP rebels switched sides before the amendments to the anti-defection law took effect, they had not satisfied the one-third requirement as the law then stood for a 'split' to be recognised. The defection happened in two batches, but this did not prevent the Speaker from recognising the 'split' and the subsequent merger with the S.P. The High Court's inordinate delay in deciding on the petition seeking disqualification of the BSP rebels points to an unsatisfactory situation in settling disputes under the anti-defection law. The risk is that, under such circumstances, political instability might even appear to be court-induced.

Delhi police set to appeal against Jessica murder case acquittals

"Issue of re-investigation of the case to come later...."

Staff Reporter

NEW DELHI: Delhi's Police Commissioner K. K. Paul on Monday apprised senior Union Home Ministry officials of the developments in the Jessica Lal murder case in the wake of the acquittal of all nine accused by the trial court last week.

It is learnt that Dr. Paul informed the Home Ministry officials that the police in consultation with the Director of Prosecution are going through the trial court order to ascertain possible grounds for an appeal against the acquittal.

At a press conference here, Joint Commissioner of Police (Crime Branch) Ranjit Narain reiterated that the judgment was being examined. Stating that no vigilance inquiry had been initiated into the case, he said: "Our first step would be to look for possibilities to appeal against the acquittal. The issue of re-investigation in the case would come much later."

According to sources, the police have almost made up their mind to move the Delhi High Court challenging the acquittal order.

For his part, Director of Prosecution M. K. Sharma on Monday said he was going through the trial court order to find out why the circumstantial evidence in the case was not considered during the trial. "Earlier the police had not consulted us as the Government had appointed the Special Public Prosecutor for court proceedings," he added.

While the police are under tremendous public pressure to take corrective steps so that justice is done, they are now in the process of preparing a report comprising all documents pertaining to the investigation to submit it before the High Court by March 19.

They are apprehensive that the High Court might pull them up for not taking appropriate action when it came to light that crucial evidence had been tampered with, perennially damaging the prosecution's case.

This past Saturday the investigation officer of the case, Surender Sharma, was removed from his post as Station House Officer of the Hauz Khas police station and transferred to the security wing after the court judgment was made public.

The move came as a big surprise to many as no action was taken against anyone in 2001 when senior police officers learnt that crucial evidence had been tampered with.

THE HINDU

Judge's elevation triggers controversy

Political parties demand re-trial in Jessica Lal murder case; CPI to raise it in Parliament

- CPI for effective mechanism of investigation
- Witnesses were overcome by money power: V.P.Singh
- BJP for re-look at witness protection programme
- Supreme Court lawyer seeks President's intervention

J. Venkatesan

NEW DELHI: A Supreme Court lawyer has sought the intervention of President A. P. J. Abdul Kalam in the promotion of Delhi Additional Sessions Judge S. L. Bhayana, who acquitted all nine accused in the Jessica Lal murder case, to a Judge of the Delhi High Court. Mr. Bhayana will assume charge on Tuesday.

Mr. Bhayana's promotion comes a few days after his verdict in the Jessica Lal murder case. This has generated controversy in the legal fraternity, with human rights activists voicing their protest.

In a letter to the President, advocate Ashok Arora, former Secretary of the Supreme Court Bar Association, said: "It's shocking that none in the government informed the President that it was Mr. Bhayana who shook people's faith in the judicial system."

He said since the High Court has taken suo motu cognisance of the verdict by seeking files from the Delhi Police, Mr. Bhayana's promotion could be kept on hold until the High Court "adjudicates his verdict."

Similar letters have been sent to Chief Justice of India Y.K. Sabharwal and Prime Minister Manmohan Singh, Mr. Arora said.

PTI adds:

Mr. Bhayana's name figured in the list of five judges of the Delhi Higher Judicial Service (DHJS) cleared by President for appointment as Additional Judges of the Delhi High Court. The other four judges elevated to the High Court are District and Sessions Judge S. N. Dhingra, Additional Districts and Session Judges, J. M. Malik and Rewa Khetrapal, and High Court Registrar General S. N. Agarwal.

Delhi police attacked

Meanwhile, political parties on Sunday joined the chorus for a retrial in the Jessica Lal case suggesting witnesses to the incident were bought over by money power, attacking Delhi Police's "failure" to provide correct evidence and seeking law to protect to witnesses.

"Who killed Jessica Lal, who fired the bullet...the verdict has raised questions on effective functioning of our judicial system," CPI General Secretary A. B. Bardhan told reporters after its two-day National Executive meeting here.

He said the issue would certainly be raised in Parliament as it shows that "those who have the money and connections can get away with even murder."

'Total failure'

The National Executive also expressed deep concern at the "total failure of the Delhi Police" to present properly the evidence in the case and demanded setting up of an effective mechanism of investigation to bring the culprit to books.

"We are alarmed that in the Capital of the country the perpetrators of the ghastly murder who carried out the crime in the presence of so many had been let off by the court due to lack of evidence," the resolution said.

Former Prime Minister V. P. Singh said witnesses in the case could have been "bought over" to change their statements in court.

"They were overcome by money power (paisa un par haavi ho gaya)," he told reporters when asked to comment on witnesses turning hostile in the case.

'Amend CrPC'

BJP said the Centre should have a re-look at the witness protection programme it had suggested in the proposal to amend the Criminal Procedure Code during the last days of the NDA Government at the Centre.

"To deal with hostile witnesses, in the last days of the NDA Government we had introduced a Criminal Law amendment in Parliament. After the change of Government, the amendment was accepted but that part of amendment was not accepted," BJP General Secretary Arun jaitley told a TV channel.

"I think the suggestions we had kept in Parliament should be given a re-look and this may be an important case to highlight that," he said referring to the case.

৮৪ বর্ষ ৩৩৫ সংখ্যা সোমবার ১৪ ফাল্গুন ১৪১২ কলকাতা

বিচারের বাণী

পাঁচশো মানুষের চোখের সামনে জেসিকা লালকে হত্যা করা হইয়াছিল। তিনি একটি নিশিনিলয়ে কয়েকটি মদ্যপকে মদ পরিবেশন করিতে অস্বীকার করিয়াছিলেন, এই অপরাধে। সাত বছর পরে সেই নৃশংস, প্ররোচনাহীন হত্যাকাণ্ডে অভিযুক্ত সকলেই আদালতের বিচারে বেকসুর খালাশ হইয়া গিয়াছেন। জামিন তাঁহারা আগেই পাইয়াছিলেন। এ বার নির্দোষতার শংসাপত্রও জুটিল। কারণ সাক্ষী হিসাবে পুলিশ যাঁহাদের উপস্থিত করিয়াছিল, তাঁহারা সকলেই নিজেদের প্রাথমিক বয়ান অস্বীকার করিয়া বসেন। কারণ যে আগ্নেয়াস্ত্রের দ্বারা জেসিকাকে হত্যা করা হয়, পুলিশ তাহা উদ্ধার করিতে পারে নাই। কারণ, যে-গুলির খোল আদালতে পেশ করা হয়, তাহার সহিত নিহত জেসিকার দেহে বিদ্ধ গুলির কোনও সামঞ্জস্য নাই। এক কথায় মামলা দাঁড় করাইতে তথা প্রমাণ পেশ করিতে যাহা প্রয়োজন ছিল, পুলিশ সে-সবের কিছুই 'করিতে পারে নাই'। স্বভাবতই প্রশ্ন উঠিয়াছে, জেসিকাকে তবে কে বা কাহারা খুন করিল? তাঁহাকে খুনের সময় উপস্থিত শ'পাঁচেক লোক কি চোখ বুজিয়া ছিল? নাকি অভিযুক্তরা প্রভাবশালী বিশিষ্টজন (কেহ মন্ত্রীর তনয়, কেহ বিত্তবান ব্যবসায়ীর) হওয়ায় আইনি শাসনের সমগ্র প্রক্রিয়াটিই শিকারিদের অনুকূলে প্রভাবিত হইয়াছে?

শাসনতন্ত্রের প্রশ্নটি অস্বস্তিকর। কেননা জনসাধারণের মনে যদি এই সংশয় দানা বাঁধিয়া ওঠে যে এ দেশে রাজনৈতিক ক্ষমতা বা বিত্তের অধিকারীরা আইনকে নিজেদের অনুকূলে সঞ্চালিত করিয়া যে কোনও অপরাধ সংঘটিত করিয়াও অব্যাহতি পাইতে পারেন, তবে সেটা আইনের শাসনের কার্যকারিতা সম্পর্কেই প্রশ্ন তুলিয়া দেয়। বাস্তবে কিন্তু সাধারণ্যে এই সংশয়টিই জাগ্রত হইয়াছে। হয়তো সে জন্যই দেশময় জেসিকা হত্যা মামলার রায় লইয়া অসন্তোষ ও ক্ষোভ দেখা দিয়াছে। গণমাধ্যমে সেই অসন্তোষ ও সংশয়ের কথা ফলাও করিয়া প্রচারিতও হইয়াছে। এই পরিপ্রেক্ষিতে দিল্লি হাইকোর্টের দুই বিচারপতির ডিভিশন বেঞ্চ স্বতঃপ্রণোদিত হইয়া তদন্ত ও তাহাতে লব্ধ সাক্ষ্যপ্রমাণের অপর্যাপ্ততা বিষয়ে পুলিশ কমিশনারের ব্যাখ্যা চাহিয়া তাঁহাকে নিজেদের এজলাসে তলব করিয়াছেন। হাইকোর্টের এই উদ্যোগ প্রশংসনীয়। তাহার ফলে ন্যায়বিচার বুঝাইয়া দিবার ক্ষেত্রে বিচারবিভাগের ব্যগ্রতা প্রতিপন্ন হয়। শুধু তাহাই নহে, বিচারব্যবস্থার অন্দরেই যে সম্ভাব্য অবিচারের প্রতিবিধানের বন্দোবস্তও থাকিতে পারে, এই আশ্বাসজনক তথ্যটিও এতদ্দ্বারা প্রতিষ্ঠিত হয়। বলা হইতেছে, দিল্লি হাইকোর্ট কেবল পুলিশি তদন্তের অংশটি খতাইয়া দেখিতে আগ্রহী, পুনর্বিচারের প্রতিশ্রুতি তাহাতে নাই। কিন্তু যদি পুলিশি তদন্তের পক্ষপাতিত্ব সম্পর্কে সংশয় ও অনুমান সত্য প্রতিপন্ন হয়, তবে তাহার ভিত্তিতে সমগ্র হত্যা-মামলাটির পুনর্বিচারের সম্ভাবনাও উজ্জ্বল হইয়া উঠিবে।

পুলিশি তদন্ত যে ঠিক মতো হয় নাই, তাহা মনে করিবার বিলক্ষণ কারণ আছে। তদন্ত কেবল দায়সারা ও শৈথিল্যপূর্ণ হয় নাই, পুলিশের তরফেই উপরমহলের চাপে সাক্ষ্যপ্রমাণ বিকৃত বা লুপ্ত করার অভিযোগও উঠিয়াছে। পুলিশ প্রশাসন তথা সরকার সম্পর্কে ইহা কোনও শ্লাঘনীয় ভাষ্য নয়। গুজরাতের বেস্ট বেকারি মামলায় একই ধরনের অভিসন্ধিমূলক পুলিশি তদন্ত ও তাহার ভিত্তিতে নিম্ন আদালতের দ্বারা অভিযুক্তদের সকলকে বেকসুর অব্যাহতি দিবার ঘটনাটি প্রসঙ্গত উল্লেখ্য। সুপ্রিম কোর্টের হস্তক্ষেপে ওই মামলার কেবল পুনর্বিচারই হয় নাই, নির্ভয় সাক্ষ্যদান ও নিরপেক্ষ তদন্ত সুনিশ্চিত করিতে মামলাটি গুজরাতের বাহিরে মহারাষ্ট্রে স্থানান্তরিত করা হয়। পুনর্বিচারে বেস্ট বেকারির গণহত্যায় লিপ্ত নয় জন অভিযুক্তের যাবজ্জীবন কারাদণ্ড হইয়াছে। অতঃপর অনুরূপ অন্যান্য মামলায় গুজরাত সরকার ও পুলিশ প্রশাসন যাহাদের ছাড়িয়া দিয়াছিল, তাহাদের পুনরায় গ্রেফতার করার হিড়িক পড়িয়া গিয়াছে। বিচারবিভাগের সক্রিয়তা লইয়া রাজনীতিকদের যতই আপত্তি থাক, রাজনীতিকদের হস্তক্ষেপ এবং তাঁহাদের নিয়ন্ত্রিত প্রশাসনের পক্ষপাতিত্বে যদি অন্যায়-অত্যাচারের শিকাররা ন্যায়বিচার হইতে বঞ্চিত হন এবং দুর্বৃত্তরা বুক ফুলাইয়া ঘুরিতে থাকেন, তবে এই অবস্থার প্রতিকারে দুষ্টের দমন এবং অপরাধের নিরপেক্ষ তদন্তের জন্য পুলিশকে যেমন পক্ষপাতমুক্ত হইতে চাপ দিতে হইবে, বিচারবিভাগকেও তেমনই জনচক্ষে নাগরিকদের সমানাধিকার সুনিশ্চিত করার নিশ্ছিদ্র বন্দোবস্ত হইয়া উঠিতে হইবে। অন্যথায় জেসিকা লাল কিংবা বেস্ট বেকারিতে জীবন্ত দগ্ধ মানুষদের ঘাতকরা অ-শনাক্তই থাকিয়া যাইবে, শাস্তি দূরস্থান।

Delhi HC steps in, to review Jessica case

Court Asks Police To Furnish All Details In Four Weeks, Schedules Hearing On April 19

TIMES NEWS NETWORK

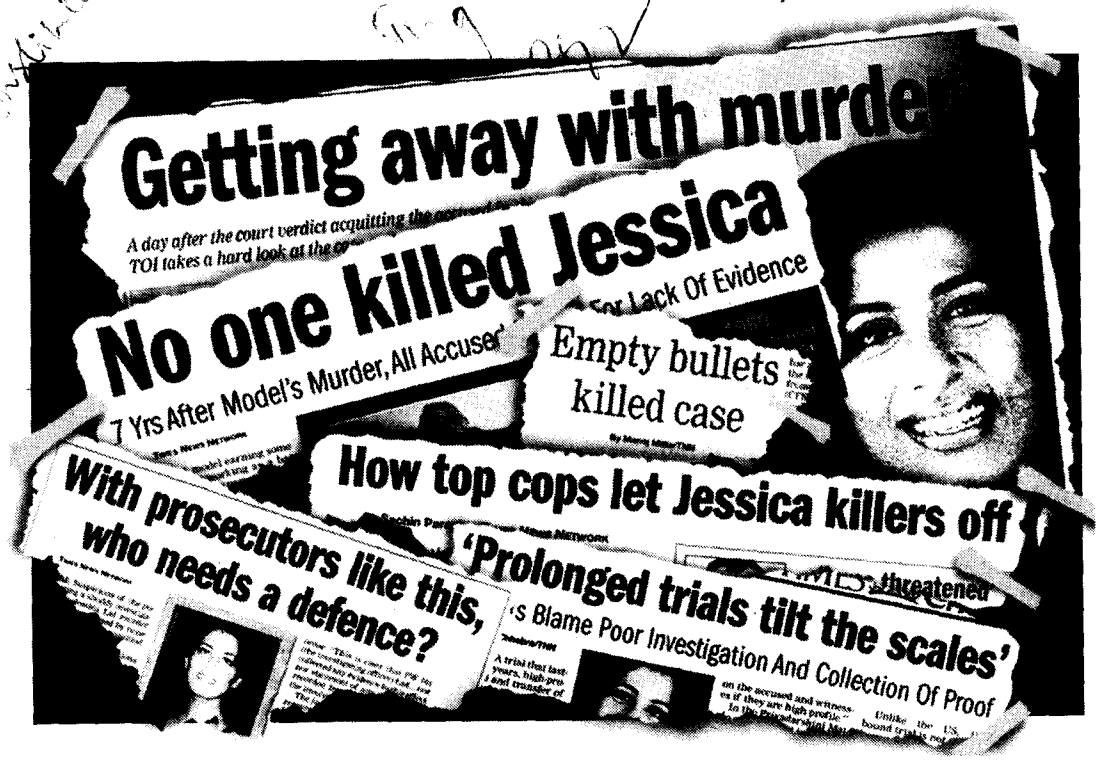
New Delhi: There might be justice for Jessica, after all. In a dramatic turn of events, the Delhi high court on Friday intervened in the Jessica Lal case on its own, taking note of press reports questioning the investigation and prosecution in the sensational murder case.

A division bench, comprising Justices Vijender Jain and Rekha Sharma, ordered the Delhi Police to furnish all details of the case within four weeks and posted the matter for hearing on April 19. All nine accused, including Manu Sharma, son of Haryana minister Vinod Sharma, and Vikas Yadav, son of don-turned-politician D P Yadav, were let off on Tuesday by sesions judge S L Bhayana.

The belated convictions in the Best Bakery case on the same day as this high court intervention raised hopes of a similar retrial that would undo the miscarriage of justice in the Jessica Lal case.

The media have highlighted how material evidence in this case was tampered with or distorted. In fact, virtually every top cop—including police commissioner K K Paul, the then joint commissioner who supervised the investigation Amod Kanth, the then police commissioner Ajay Raj Sharma—have admitted as much.

The reports have also indicated the possibility of collusion between the accused and the investigators, raising serious doubts on the integrity of the probe and prosecution. Judge Bhayana, however, relied on this material evidence to acquit the accused, overlooking a whole lot of circumstantial evidence.



HEADLINES FROM THE TIMES OF INDIA'S NEW DELHI EDITION

The high court will re-look into all this, even while the prosecution is ambivalent on appealing against the verdict. This throws up a range of options, including retrial. But the extreme option of retrial is not the only route available for a case in which the existing "circumstantial evidence", according to legal experts, is sufficient for the Delhi high court to overturn the acquittals ordered by the trial court.

If the high court feels the need for further evidence, it is empowered to get such evidence without resorting to a retrial of the whole case. A rarely invoked provision of Criminal Procedural Code, Section 391, says that if any additional evidence is found "necessary" on an appeal against a trial court judgment, the high court "shall record its reasons" and direct a subordinate court to "take such evidence".

The subordinate court is then required by Section 391 CrPC to "certify such evidence" to the high court, which "shall thereupon proceed to dispose of the appeal".

As a matter of fact, a related provision, section 390 CrPC, also clarifies that while hearing an appeal against acquittals, the high court may order re-arrest of the accused and keep them in prison till the matter is disposed of.

But if the high court feels that circumstantial evidence related to the conduct of the accused immediately after the crime is not sufficient to overturn the acquittals, it has the option of ordering a complete retrial after giving a finding of mala fide against the police and prosecution. That is exactly what the Supreme Court did in 2004 while ordering the retrial in the Best Bakery case. It said: "That the conduct of the investigating agency and the prosecutor was not bona fide, is apparent and patent."

The Times of India, Mumbai

How top cops let Jessica killers off

By Sachin Parashar/TNN

New Delhi: Investigating officer Surendra Sharma was merely a cog in the wheel. Now it can be told with authority that senior Delhi Police officers and the special prosecutor had a role to play in the distortion of crucial evidence which on Tuesday led to the acquittal of the accused in the Jessica Lal murder case.

Judge S L Bhayana relied heavily on the two-gun theory to let Manu Sharma, Vikas Yadav and seven others off the hook. In doing so, he cited a specific query that Sharma had sent to the Central Forensic Science Laboratory (CFSL) on whether the two empty shells seized from the murder spot were fired from the same gun.

By putting this question, when the weapon itself hadn't been found, Sharma had punched a hole in the prosecution case. He has also taken the flak for this. But it now transpires that he was merely carrying out the brief given by his seniors.

Jessica Lal

This was the assessment of no less a person than the city police chief K K Paul himself. Paul, then joint commissioner (crime), had been asked to probe the investigators amid growing doubts of their collusion with the accused. He wrote in his report: "Enquiries have ascertained that the questionnaire for the CFSL was prepared in a particular manner under the advice of senior officers and in consultation with the special prosecutor."

Investigating officer Surendra Sharma perhaps played a very minor role in the acquittal of the nine accused in the Jessica Lal murder case. In short, the suspicion of collusion between the cops and the accused went much further up than the investigating officer and this was common knowledge in the higher echelons of Delhi Police.

The report reads like a damning indictment of the probe into the cold-blooded murder of Jessica. While concluding that sending the report to CFSL showed that the investigators were not sure of their case themselves and proved to be counter-productive, the report said that there was "a need to probe the collusion between the accused and the investigating officers and that it was imperative that a case be registered under Section 201 IPC, causing disappearance of evidence and giving false information to shield offenders."

Nothing of the sort happened — Surendra Sharma continued to lead the investigation, while the report itself gathered dust. Why this wilful negligence? Was it because the accused were the progeny of influential politicians?

Paul had sought action against the investigators under section 201 because he suspected that evidence had been deliberate ly mucked up.

The report justified registration of a case by arguing that one of the cartridges was replaced either at the Mehrauli police station godown (malkhana) or at the forensic lab, and that registering a case would ensure cooperation from the lab officials.

Paul also raised doubts about the way the cartridges were submitted to CFSL by sub-inspector Vijay Kumar.

His report highlighted that the officer collected the samples on Friday from Mehrauli police station at 4.45 pm on July 19, 1999. By the time he reached CFSL at Lodi Road, the lab had already been shut for the day. He returned to the police station only around 7.40 PM, almost three hours later, much longer than the normal commuting time. There was no explanation for the delay.

Again on Monday, the officer did not head for CFSL directly, but first went to the office of the additional DCP, South Delhi. He justified the detour by saying that he needed a letter from the senior.

A doubtful alibi again, since the additional DCP had already sent the letter three weeks earlier on June 25. The question that the report seems to ask, but keeps hanging, is what really happened between Mehruali police station and Lodhi Road.

In the last four years, the report has often been cited, by senior police officers as well as the media, to prove that those investigating the case played right into the hands of the accused.

Delhi High Court takes up Jessica Lal murder case

Suo motu action after public outcry over acquittal of all nine accused in trial court

Staff Reporter

NEW DELHI: Without waiting for the Delhi police to file an appeal against the acquittal of all nine accused in the much talked about Jessica Lal murder case, including prime accused Siddharth Vashisht alias Manu Sharma, the Delhi High Court on Friday directed the city police to submit to it all the investigation details as well as the reasons which caused the fall of the case in the trial court here earlier this week.

Taking suo motu note of news reports blaming shoddy investigation for the failure of the prosecution case, a Division Bench of the High Court comprising Justice Vijender Jain and Justice Rekha Sharma directed Delhi's Police Commissioner to respond to the Court's queries within four weeks.

Earlier, the Bench directed the High Court Registry to club clippings of newspaper reports on the acquittal of the nine accused in the case and list the matter for the Court as public interest litigation.

The acquittal had led to a widespread hue and cry with a great many organisations and NGOs demanding a re-trial of the case and action against officials responsible for bungling up the case.

Directing the Delhi police to file the case details within four weeks, the Bench said it would take up the matter for further hearing on April 9.

THE VICTIM: *Jessica Lal.*

- **Delhi police ordered to file investigation details within four weeks**
- **Matter to be treated by the Court now as public interest litigation**

Delhi Police Commissioner K. K. Paul on Thursday had told The Hindu that the investigating agency was yet to take a decision on going in for appeal against the acquittals by the trial court. "The decision would be taken after going through the judgment and consulting lawyers," the Police Commissioner had added.

Additional Sessions Judge S. L. Bhayana this past Tuesday had acquitted all the accused in the case saying the prosecution had failed "miserably" to sustain the grounds on which the trial was built up.

Quoting the statement of Surender Sharma, investigating officer in the case, that he had booked Manu Sharma as prime accused after he got a call from senior officers to that effect, Mr. Bhayana observed that the probe officer had tried to frame Manu Sharma in the case.

The trial judge had also pulled up the police for not being able to recover the weapon of offence and for their failure to establish an unbreakable chain of circumstances leading to the murder of the young ramp model in the presence of hundreds of guests at a restaurant.

Jessica Lal, the ramp model and part-time bartender, had been shot from point blank range at socialite Bina Ramani's crowded Tamarind Court restaurant here in the presence of a who's who of the Capital's fashion world, senior Delhi Police officers and socialites gathered to celebrate the birthday of Ms. Ramani's husband George Mehlot in the wee hours of April 30, 1999.

All the three key eyewitnesses in the case, including actor Shyan Munshi on whose complaint the case had been registered, had turned hostile after their initial testimony.

THE HINDU

The problem of hostile witnesses

It seemed at first sight an open and shut case. A model who worked as a celebrity barmaid is shot dead at point-blank range after refusing to serve a drink to two young men in a crowded South Delhi watering hole. The man accused of killing her — Manu Sharma, the son of a former Union Minister — flees the scene and absconds for an entire week before surrendering to the Delhi police. The Jessica Lal murder case, in which a sessions court acquitted all nine accused on the ground of insufficient evidence, is an instance of gross miscarriage of justice and raises serious questions about the criminal justice system. The collapse of the case is the result of two main causes. First, there were a couple of glaring holes in the prosecution's case. Two bullets were fired, one in the air, on that fateful night and the Delhi police maintained that they both came from the same gun; however, a forensic report showed they were fired from different weapons. Moreover, the gun used to shoot Jessica Lal was not recovered, a failure that suggests a lack of diligence with which the case was investigated. However, what really sunk the case was a phenomenon that has become disturbingly familiar in high-profile cases — that of key witnesses turning hostile. This trend, which was recently spotlighted in the Best Bakery and the BMW hit-and-run cases, has undermined public confidence in the criminal justice system and contributed to the abysmal rate of convictions in India.

The successful working of the criminal justice system depends critically on the willingness of individuals to furnish information and tender evidence without being intimidated or bought. As symbolised by Zahira Sheikh's flip-flops in the Best Bakery case, the threat of retaliation, which could include physical violence, is a major reason why witnesses (some of them victims) do not cooperate. That case sparked off a nationwide debate on the need for witnesses to be protected by the state. But it is not intimidation alone that makes witnesses turns hostile. As studies have shown, what witnesses perceive as harassment alienates them as well. The length of the trial and the way they are treated in court have a bearing on shifting testimonies. As the Supreme Court has observed, "A witness is not treated with respect in the Court... He waits for the whole day and then finds the matter adjourned... And when he does appear, he is subjected to unchecked examination and cross-examination and finds himself in a hapless situation. For these reasons and others, a person abhors becoming a witness" (*Swaran Singh v State of Punjab,* AIR 2000). The three witnesses who turned hostile in the Jessica Lal case were her friends. There is no evidence to suggest they were intimidated into altering their testimonies. But it is possible they felt beleaguered by a trial that dragged on for seven years. Preventing witnesses from turning hostile does not mean merely making them feel more secure. The Jessica Lal case suggests it is also about making it less troublesome and inconvenient for them.

How the cops scuppered Jessica Lall murder case

Family loses spirit to fight the rich and mighty

PANKAJ Vohra
New Delhi, February 22

IF THE nine accused in the Jessica Lall murder case have walked away free, it is abundantly clear that the investigation conducted by the Delhi Police left much to be desired.

Some persons who should have figured among the accused in the case were cited as witnesses. Certain leads which may have led to the killers were not followed. Information regarding some seizures was suppressed. During the course of the trial, some serious legal lacuna were detected even in the registration of the FIR.

Also, many responsible public figures and citizens who were present at the party at the Qutab Colonade on the fateful night of April 29, 1999, chose to look the other way and did not depose before the court. From day one itself, it appeared that a cover-up of sorts had started. And if Manu Sharma was not the actual killer, then who was the police trying to shield?

Jessica's sister, Sabrina, told newspersons on Tuesday that the family had lost hope the day the main accused, Manu Sharma, was granted bail some years ago and had no spirit left to fight the rich and powerful people against whom it had been pitted.

But the point remains that there was no clinching evidence left against Manu Sharma, since even the main complainant, actor and model Shyan Munshi, refused to recognise him in the court and said that Manu Sharma did not shoot at Jessica. In May 2001, *HT* had written that the prosecution case had turned very weak and it would be very difficult to convict anyone.

In fact, the prosecution case was stumped the moment Munshi substantiated the two-weapons theory introduced in the wake of the reports received from two forensic laboratories which said the shells recovered from the spot were from two different weapons. And since no weapon of offence was recovered by the police, Munshi's statement that the shots were fired by two persons — one in white T-shirt and off-white trousers who fired in the air and the other in light-coloured clothes who fired at Jessica — ensured that Manu got the much-needed reprieve.

Strangely, the first call received at the police control room on telephone number 100 had indicated that the killers had come on a motorcycle and one of them could have been a Sikh. This angle was never pursued subsequently.

One baffling aspect of the case was that a weapon recovered by the police from Manu's Delhi residence was never produced in the court, since it did not match the calibre of the slugs which were seized from the spot. Also, the clothes that Jessica was wearing when she was shot have not been recovered. The hospital has no record of the clothes and neither do those who took her to the hospital.

Even before the police could conduct proper investigations and do the *nishan delhi*, the crime spot had been disturbed. While there is a general perception that the Ramanis were the only ones who testified, several legal experts are of the opinion that their testimony helped the defence more than the prosecution. From the discrepancies that came to light during the trial it seems the police were trying to shield someone by attempting to establish a case against Manu Sharma.

For instance, the court took a serious view about the discrepancies in the statements and sworn affidavit by Mehrauli SHO Surinder Sharma and initial IO of the case Sunil Kumar.

A three-page handwritten paper with the heading 'directions/ instructions' was found in the file wherein directions to the initial IO had been given on how to go ahead with the case. For example, there was a chronology of whose statements to record and who should say what. There were instructions even for Sabrina Lall who was to be persuaded to testify that she knew Manu and Gill, another accused, so that a motive could be established.

Sunil Kumar had admitted that it was in his handwriting and at one stage the SHO said he was aware of the paper but later gave an affidavit in the HC denying such a paper existed. He was pulled up by the trial court later. Similarly, the prosecution case was made on the basis of three eyewitnesses. In his complaint Shayan Munshi had described the accused as 32 years old while Manu was only 23 at that time.

Strangely, the other two witnesses — Shiv Dass, an electrician, and Karan Rajput, a relative of the restaurant manager — were added a month after the murder. Their social strata did not suggest they should have been present at the party but Dass deposed in the court he was on the roof taking off bulbs when the incident took place while Rajput said he was in Punjab on that day.

The riddle with all the accused having gone scot-free: who were Jessica's killers? Whatever be the case, today all the accused stand legally acquitted.

FALLING FLAT

MAIN COMPLAINANT actor-model Shyan Munshi refused to recognise Manu Sharma in court

CRIME SPOT disturbed even before police could conduct proper probe

PROMINENT PEOPLE present at the party either kept silent or were not asked questions

TWO WITNESSES were added a month after the murder

WAS case cooked up against Manu Sharma to shield someone else?

WHO'S DONE IT?

Justice on Trial

Jessica Lal case raises serious legal questions

THE acquittal of all the nine accused in the Jessica Lal murder case is an extraordinary miscarriage of justice. If the police can't nail a killer who shot his victim at point-blank range before several eyewitnesses, there is a serious need for a rethink on our investigative and judicial apparatus. The case against the prime accused — Manu Sharma, son of a Haryana minister — for shooting Jessica on April 29, 1999 collapsed on three grounds. First, three key eyewitnesses turned hostile; second, while the prosecution maintained that two bullets found at the murder site were fired from a single weapon, the state's forensic agency said the bullets were fired from different weapons; and finally, the murder weapon was never recovered. Witnesses retracting their statements are nothing unusual, especially in cases involving the high and mighty. The prime accused in Jessica's murder and many of his alleged accomplices had enough political connections to browbeat any witness. The case is a telling comment on investigating skills of the police. By depending heavily on eyewitness accounts, the police failed to marshal other forensic evidence to back their case. The mismatch between police claims and forensic evidence point to sheer inefficiency or tampering of evidence, both of which are serious lapses.

This case is only one in a long line of high-profile crimes where the guilty have been left off the hook. The outcome of the BMW case, where seven people were mowed down on a Delhi street, has predictable similarities with Jessica's murder. In that case, too, the main accused had plenty of political clout and money to back him. Not surprisingly, he went scot-free. Unfortunately, protection of witnesses, comparable to western countries, is not feasible in India. What is viable is a thorough cross-examination of key witnesses who are seen to have turned hostile either because they have been paid off or out of fear. Former chief justice V N Khare in the Best Bakery case, arising out of the Gujarat riots, applied this standard. Another reason for failure to prosecute is the inordinate delay between the crime and delivery of justice. The verdict in Jessica Lal's case took nearly seven years. The long gap means there is that much more scope to mess around with evidence and to exert pressure on eyewitnesses. The Jessica Lal case is an abortion of justice. If steps are not taken to remedy this situation, the nation's police and courts will have little credibility.

Justice after Jessica Lall

Delink prosecution, investigation from the state. Change the 171-yr-old CrPC

V. N. KHARE

AFTER the Gujarat riot cases, especially the Best Bakery case in which I ordered a re-trial as the victim Zaheera Sheikh changed her statements and witnesses turned hostile, the Jessica Lall murder case has thrown up a challenge for the country's criminal justice system. Our criminal jurisprudence requires drastic changes. The Indian Penal Code (IPC), Criminal Procedure Code (CrPC) and the Indian Evidence Act are over 150 years old. Law, like society, is not static: new contexts demand new solutions.

The rapid advances we have witnessed in technology and communication, for instance, are indeed revolutions of sorts. The law cannot be a mute spectator, limping to catch up with these large transformations. Today, criminals are in power from the taluka to the national levels. In such a situation, it becomes extremely difficult to procure evidence and produce witnesses before the court. Even witnesses collected and produced before the court are vulnerable. They are easily preyed upon by the powerful accused who may use money or fear.

The very first change I would suggest is that the prosecution should be an autonomous agency away from the control of the government like, say, the Election Commission (EC). Since the prosecution is under the state at present, it follows the lines directed by the state. I have seen it in Gujarat riot cases: the prosecution and the accused were hand-in-glove. The time has come for the prosecution to be made an independent and autonomous agency.

Two, the present system of investigation by the police must change. We know the police is vulnerable. I have seen cases of the police distorting evidence. In the present set-up, under the CrPC, to be precise, it is the duty of the police to collect evidence and produce the same before the court. If the police officer is aligned with the accused, it becomes difficult to secure a conviction in a court of law. Hence, the investigation should be conducted by an independent agency. Alternatively, the independent autonomous body to be set up along the lines of the EC can perform the twin jobs of investigation and prosecution.

Three, the statement under section 161 of the CrPC to be given to the police should be recorded before a judicial magistrate so that the 'examination in chief' of a witness need not be done again and the cross-examination by the accused can begin straightaway. As the statement recorded by the police is not admissible in evidence, it is again recorded in the examination in chief of the witness before a magistrate. There is every likelihood of the witness, who could have been influenced in the interregnum, changing his statement before the magistrate. Once the statement under Section 161 is recorded before the judicial magistrate, the court's time will not be wasted by having to undergo the examination in chief again before the cross-examination begins. Further, both the recording of the statement under Section 161 and the cross-examination must be done through video conferencing. This will ensure video evidence of a witness who will not be able to change the statement later. Then, the psychological pressure on a witness constrained to stand in the witness box in court and record his statement would be done away with.

Four, like in the developed countries, say in the US, in at least some sensitive cases, witnesses should be provided protection. This is particularly desirable in India because of long pending trials in the courts. Under protection, the witness will not be fearful. It will be difficult to lure him or her by money and other allurements.

The law cannot be a mute spectator, limping to catch up with socio-political transformations. Today, criminals are in power from the taluka to the national levels

Five, the victim must be given the right to appeal. At present, the right of appeal resides only with the state, which is the prosecution. A victim can only go for a revision of the order of the trial court where the victim or the family members cannot argue on facts and law but only on jurisdiction. Both on the counts of law and fact, the victim too should be given this right. Finally, the victim or family members should have the right to have a say along with the prosecution in the trial court itself.

I would suggest these remedial measures towards the ultimate goal of revamping the entire gamut of criminal jurisprudence and criminal justice administration in our country. If these changes are implemented, a beginning would have been made, there will be some hope for the future.

Consider a small statistic. In 1967, the conviction rate was 80 per cent. In 2005, the same conviction rate dipped to 22 per cent, and most successful cases concerned petty crimes. Obviously these petty offences are committed by the poor who are not in a position to engage an expensive lawyer. The big fish, on the other hand, can tear their way out of the net of law.

Lord Macaulay drafted the IPC in 1835 sitting in Tamil Nadu's summer vacation resort, the famed Nilgiri Hills. It is now 2006. One hundred and seventy-one years have passed by and the IPC, CrPC etc. remain virtually the same. The time has come to drastically change penal laws, the criminal justice administration system and criminal jurisprudence itself given the vast societal changes in these 171 years.

Today, we live in the E-Age. We are in the middle of an electronic revolution. Psychological, emotional and sociological approaches to crime have changed. The law must catch up and keep pace with the changing times. Till then, disturbing occurrences such as the acquittal of the accused in the Jessica Lall murder case will keep repeating themselves.

• *The writer is a former chief justice of India*

SEPARATION OF POWERS-II

Maulana Maududi's 'Viceregency Of Man' vs. Sheikh Abdullah's 'Sovereignty Of The People'

By SUBROTO ROY

America's Legislative Branch has, on paper, strong powers of advice and consent to control errors, excesses or abuse of power by the Executive President. But (with rare and courageous exceptions like Sen. Robert C. Byrd of West Virginia) the Legislature cravenly collapsed before the father-son Bush presidencies in regard to the Middle East wars of recent years. America's once-revered federal judiciary has also tended to lose its independence of mind with overt politicisation of judicial appointments in recent decades.

Bush the First went to war against Saddam Hussein (a former American ally against Islamic Iran) at least partly with an eye to winning re-election in 1992 (which he would have done as a result but for a random shock known as Ross Perot; Bill Clinton became the beneficiary). Bush the Second obsessively wished to follow up on the same, to the point of misjudging the real threat to America from Bin Laden and fabricating a false threat from an emasculated Saddam.

Collapse before Executive Power

America's Legislature palpably failed to control her Presidents. Now, late in the day, after all the horses have bolted, the Senate Judiciary Committee began tepid hearings on February 5 2006 into whether the President authorized laws to be broken with impunity in regard to wiretapping some 5,000 citizens (doubtless mostly non-white and Muslim) without judicial warrants. Republican Senator Arlen Specter, the Committee's Chairman, has said he believes the Foreign Intelligence Surveillance Act has been "flatly" violated, and "strained and unrealistic" justifications are now being offered. Bush's men, from his Vice President and Attorney General to political intelligence operatives, have brazenly placed in the dustbin the traditional principle *fiat justitia pereat mundus* — let justice be done even if the world perishes — saying that the Sovereign can do just as he pleases to save the realm from external enemies as he might perceive and define them to be.

What this kind of collapse in current American practice reveals is a new aspect unknown at the time of Montesquieu's *Spirit of the Laws*. In the modern world, Separation of Powers involves not merely constitutional institutions like Executive, Legislature and Judiciary but also the normal civil institutions of a free and open society, especially academic institutions and the press. In America, it has been not merely the Legislature and Judiciary which have tended to collapse before Executive Power in regard to the recent Middle East wars, but the media and academia as well. "Embedded reporters" and Fox TV set the tone for America's official thought processes about Iraq and the Muslim world — until it has become too late for America's mainstream media or academics to recover their own credibility on the subject. On the other hand, unofficial public opinion has, in America's best traditions, demonstrated using vast numbers of Internet websites and weblogs, a spirited Yankee Doodle individuality against the jingoism and war-mongering of the official polity. Neither the press nor academia had collapsed the same way during America's last major foreign wars in Vietnam and Cambodia forty years ago, and it may be fairly said that America's self-knowledge was rather better then than it is now, except of course there were no Internet websites and weblogs.

Sheikh Mohammad Abdullah

Our Pakistani Cousins

Across the border from us, our Pakistani cousins are, from a political and constitutional point of view, cut from the same cloth as ourselves, namely the 1935 Government of India Act, and the Montague-Chelmsford and Morley-Minto reforms earlier. However, ever since Jinnah's death, they have refused to admit this and instead embarked haplessly on what can only be called an injudicious path of trying to write a Constitution for a new Caliphate.

The primary demand of the main scholars influencing this process was "That the sovereignty in Pakistan belongs to God Almighty alone and that the Government of Pakistan shall administer the country as His agent". By such a view, in the words of Rashid Rida and Maulana Maududi, Islam becomes "the very antithesis of secular Western democracy. The philosophical foundation of Western democracy is the sovereignty of the people. Lawmaking is their prerogative and legislation must correspond to the mood and temper of their opinion... Islam... altogether repudiates the philosophy of popular sovereignty and rears its polity on the foundations of the sovereignty of God and the viceregency (Khilafat) of man." (Rosenthal, *Islam & the Modern National State*, Cambridge 1965.)

Pakistan's few modern constitutionalists have been ever since battling impossibly to overcome the ontological error made here of assuming that any mundane government can be in communication with God Almighty. In the meantime, all normal branches of Pakistan's polity, like the electorate, press, political parties, Legislature and Judiciary, have remained at best in ill-formed inchoate states of being — while the Pakistan Armed Forces stepped in with their own large economic and political interests and agendas to effectively take over the country and the society as a whole, on pretext of protecting Pakistan from India or of gaining J&K for it. Pakistan's political problems have the ontological error at their root. Pakistan's political parties, academics and press, have with rare exceptions remained timid in face of the militaristic State — directing their anger and frustration at an easier target instead, namely ourselves in India. The Pakistan Government's way of silencing its few political, academic or press dissidents has been to send them into comfortable exile abroad.

Sheikh Abdullah Contrasted

Pakistan's perpetual constitutional confusion deserves to be contrasted with the clarity of Sheikh Mohammad Abdullah's thinking, e.g. his 5 November 1951 speech to the Constituent Assembly of J&K: "You are the sovereign authority in this State of Jammu & Kashmir; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791: 'The source of all sovereignty resides fundamentally in the nation. Sovereignty is one and indivisible, inalienable and imprescriptable. It belongs to the nation.' We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come."

Contrasting the Pakistani views of constitution-making with those of Sheikh Abdullah may help to explain a great deal about where we are today on the delicate and profound subject of J&K. (See "Solving Kashmir", *The Statesman*, December 1—, 2005)

India's current debate about Separation of Powers needs to keep at a distance the clear negative examples of our American friends, who have brought upon themselves in recent times a craven collapse of Legislature, Judiciary, press and academia to the Executive President (as Churchill had seemed to predict), as well as of our Pakistani cousins who have continued with general political and civil collapse for half a century. Because our universities are all owned by the State, India's academic from Communist to Fascist, have tended to be servile towards it. In respect of the press, the power of independent newspapers has been dwindling, while the new TV anchors have created their own models of obsequiousness and chummery towards New Delhi's ruling cliques of the day. It thus becomes India's Supreme Court which remains the ultimate guardian of our Constitution and the safe haven of our very fragile freedoms — besides of course our own minds and hearts.

(Concluded

SEPARATION OF POWERS-I

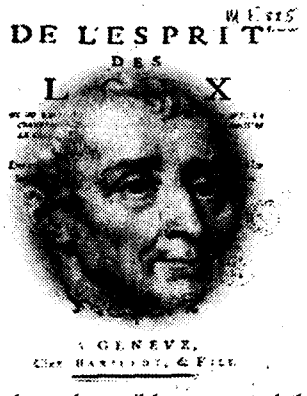
Montesquieu's *Spirit of the Laws* outlined a doctrine that applies to India, the USA and all constitutional democracies: there is no monopoly of political wisdom.

By SUBROTO ROY

The Speaker's noble office is that of the single member of the House, traditionally chosen by unanimity, whose task it is to self-effacingly maintain order in Parliamentary debate and proceedings, so that the House's work gets done. *C'est tout.* Once chosen Speaker, he *ipso facto* retires from partisan politics for life. The Speaker neither contributes to the substance of Parliamentary debate (except in the rare case of a tie) nor has to feel personally responsible for Parliament's conduct. Our Parliament has tended to become so dysfunctional since Indira Gandhi and her sycophants destroyed its traditions 30 years ago, that supervising its normal work is an onerous enough task for even the finest of Speakers to handle.

The Lok Sabha's incumbent Speaker has tended to see himself as the champion of Parliament. He need not. He does not command a majority in the Lok Sabha; the Government Party does. We have had the oddest peculiarity unfolding in India at present where the person who does command the Lok Sabha's majority, and therefore who would be normally defined as Prime Minister of India, has chosen to nominate someone who is not a member of the Lok Sabha to act as Prime Minister, i.e. to command the Lok Sabha's majority. (The Rajya Sabha was and remains irrelevant to most things important to Indian democracy, regardless of its narcissism and vanity). Someone with access to 10 Janpath should have told Sonia Gandhi in May 2004 that if she did not wish to be PM and wanted to gift the job to someone else, she should do so to someone who, like herself, had been elected to the Lok Sabha, like Pranab Mukherjee (elected for the first time) or Kamal Nath or Priya Ranjan (both veterans). Manmohan Singh, a former Lok Sabha candidate, may as Finance Minister have been able to progress much further with economic reforms. But sycophancy has ruled the roost in the Congress's higher echelons, and nobody had the guts to tell her that. Indeed as early as December 2001, Congress leaders knew that in the unlikely event they won the polls, Manmohan Singh would likely be PM by Sonia Gandhi's choice (though he was not expected to last long at the top), and yet he did not contest the Lok Sabha polls in 2004.

The Government of the day, not the Speaker, is Parliament's champion in any discussion with the Supreme Court over constitutional rights and Separation of Powers. And the Government has in fact



quietly and sensibly requested the Supreme Court to set up a Constitutional Bench for this purpose. Such a Constitutional Bench shall have cause to ask itself how far *Kesavananda Bharati* needs to be tweaked if at all to accommodate the contention that Parliament has a right to judge its own members. The Court may well likely say that of course Parliament has a right to judge its own members but even that right is not an absolute right, (nothing is). Even Parliament's right to judge its own members must be in accordance with natural law, with principles of justice, with due and clearly defined processes. E.g. the established Privileges Committee and not the *ad hoc* Bansal Committee had to do the needful.

Imagine a hypothetical case of fantastic fiction where half a dozen independent MPs are elected to a future Lok Sabha, and then take it upon themselves to expose corruption and shenanigans of all major political parties. Our fantastic super-heroes become whistleblowers within Parliament itself while remaining totally incorruptible as individuals — like Eliot Ness's team who jailed Al Capone and other gangsters, and came to be depicted in Hollywood's *The Untouchables*. These Untouchables would come to be feared and despised by everyone from Communists on one side of the political spectrum to Fascists on the other. They would upset everybody precisely because they were so clean and were not purchasable. The Government and Opposition of the day might well gang up to expel such troublemakers and even fabricate charges to do so. (Now there's a script for a Bollywood movie!)

The Government of the day, not the Speaker, is Parliament's champion in any discussion with the Supreme Court over constitutional rights and Separation of Powers

What our Supreme Court's Constitutional Bench decides now in the matter at hand will determine the fate of our super-heroes in such a future fantasia. The present case is a polar opposite — where MPs have been caught on camera with their sordid fingers in the cookie-jar, and then made to walk the plank immediately by their peers. Yet natural law applies here as it will to our fantastic future fighters, and this is what the Bench would have to speak on.

Why the present situation continues to be disconcerting is because the whole country heard all the holier-than-thou protestations, yet everyone continues to take a very dim view of what they see of politicians' behaviour. There remain strong suspicions that only a few very tiny tips of very large icebergs were or can be caught on camera. Large-scale deals and contracts involve payments into invisible bank accounts, not petty cash into pockets or even suitcases filled with cash sloshing around Delhi.

What we have desperately needed in the situation is modern prime ministerial leadership which could intelligently and boldly guide national debate in the right direction on the whole matter of probity in public life. Why a distinguished parliamentarian like the Speaker has found himself in the limelight is because neither the *de jure* nor *de facto* Prime Ministers of India are anywhere to be seen thinking on their feet on these central issues of constitutional procedure and practice. They tend to use prepared scripts and may be temperamentally disinclined to do what has been called for by these unscripted circumstances. (Indeed the much-maligned H. D. Deve Gowda could be alone among the bevy of recent PMs who has been able to think on his feet at all.)

In the meantime, the United States is going through its own Separation of Powers' crisis. As explained in these columns previously, the American system is distinctly different from the British, and our own system is midway between them. Yet similar principles may be discerned to apply or fail to be applied in all.

Winston Churchill once perspicaciously observed: "The rigid Constitution of the United States, the gigantic scale and strength of its party machinery, the fixed terms for which public officers and representatives are chosen, invest the President with a greater measure of autocratic power than was possessed before (the First World War) by the Head of any great State. The vast size of the country, the diverse types, interests and environments of its enormous population, the safety-valve function of the legislatures of fifty Sovereign States, make the focussing of national public opinion difficult, and confer upon the Federal Government exceptional independence of it except at fixed election times. Few modern Governments need to concern themselves so little with the opinion of the party they have beaten at the polls; none secures to its supreme executive officer, at once the Sovereign and the Party Leader, such direct personal authority."

(To be concluded)

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THE STATESMAN

অভিন্ন দেওয়ানি বিধি: সমস্যার শুরু তো সংবিধানেই

অল ইন্ডিয়া মুসলিম পার্সোনাল ল বোর্ড এই প্রথম আনুষ্ঠানিক ভাবে দাবি জানাল, অভিন্ন দেওয়ানি বিধির ধারাটি ভারতীয় সংবিধান থেকে বাদ দিতে হবে। এই দাবি কি অযৌক্তিক? এত সহজে রায় দেওয়া কিন্তু শক্ত। লিখছেন সেমন্তী ঘোষ ,

জওহরলাল নেহরু আধুনিক ভারতের রূপকার। আধুনিকতার প্রবক্তা এবং তাত্ত্বিকরা তাঁকে সাধারণত কুর্নিশ করেই চলেন। তবু দু'চারটি এমন ক্ষেত্র আছে যেখানে নেহরু সব আধুনিকমনস্কদের মনখোলা সমর্থন পান না। সেই ক্ষেত্রগুলোর মধ্যে একটি হল 'ইউনিফর্ম সিভিল কোড' বা অভিন্ন দেওয়ানি বিধি প্রসঙ্গে সংসদে তাঁর বিখ্যাত উক্তি: I do not think that at the present moment the time is ripe in India for me to try to push it through. (১৯৫৪) ভারতীয় সংবিধানে জাতি-ধর্ম-বর্ণনির্বিশেষে দেশের সমস্ত নাগরিককে যে এক এবং সমান আইনের আওতায় আনার প্রতিশ্রুতি (কিংবা স্বপ্ন) ছিল, নেহরুজি শেষ পর্যন্ত সেই অভিন্ন দেওয়ানি বিধি প্রচলন করে উঠতে পারেননি। বদলে, তাঁর আমলে প্রবর্তিত হয়েছিল 'হিন্দু কোড বিল'।

মহাজনো যেন গতঃ... ভারতীয় প্রধানমন্ত্রীরা মোটের ওপর সকলেই সতর্ক থেকেছেন এ ব্যাপারে। তাই আজও চলছে একই বিতর্ক। অভিন্ন দেওয়ানি বিধি এখনও এমন এক বিষয় যা নিয়ে ভারতীয় রাষ্ট্র নিয়মিত বিতর্কজালে জড়িত এবং নিয়মিত নানা দিকের আক্রমণে পর্যুদস্ত। উদারপন্থী মানবতাবাদীরা, যাঁরা সব মানুষের সমান অধিকারে বিশ্বাস করেন, তাঁদের অভিযোগ: অভিন্ন দেওয়ানি বিধির প্রচলন রাষ্ট্রকে দেশের কত অনাচার অবিচার সমূলে উৎপাটন করতে সাহায্য করতে পারত, অথচ ভারতীয় রাষ্ট্র অকারণে এত গুরুত্বপূর্ণ একটা বিষয়কে এখনও ঠাণ্ডা ঘরে ফেলে রেখেছে। হিন্দু জাতীয়তাবাদীরা যখনতখন রাষ্ট্রের ওপর এক হাত নেন: সব ধর্মের মানুষকে যদি এক আইনের ছাতার তলায় না-ই আনা যায়, তবে কেমন করে জাতীয় সংহতি সাধিত হবে? কেমন করে রাষ্ট্র তার নাগরিকদের শাসন করবে? এ কী রকম লোক-দেখানো সেকুলারিজম? আর ইসলামি কট্টরপন্থীরা ঠিক উল্টো দিক থেকে আক্রমণ শানান যে, মুসলিম সমাজের নিজস্ব শরিয়তি আইনকানুনের মধ্যে নাক গলানোর কোনও অধিকারই ভারতীয় রাষ্ট্রের নেই।

ঠিক এই শেষের কথাটাই সে দিন আবার উচ্চারিত হল মুসলিম পার্সোনাল ল বোর্ডের তরফে। আরও এক ধাপ এগিয়ে এ-ও ঘোষিত হল যে, অভিন্ন দেওয়ানি বিধি তথা সংবিধানের ৪৪ নম্বর ধারাটির সম্পূর্ণ উৎপাটন প্রয়োজন, না হলে ভারতীয় মুসলমানদের সব সময় একটা আতঙ্কের মধ্যে থাকতে হয়। কথাটা নতুন নয়। বহু দিন ধরেই সর্বভারতীয় মুসলিম নেতৃত্বের মুখে এ দাবি উচ্চারিত হচ্ছে। এত দিনে কেবল পার্সোনাল ল বোর্ডের তরফে প্রকাশ্য ঘোষণাটি শোনা গেল।

বিষয়টি রীতিমত দুশ্চিন্তাজনক। দুশ্চিন্তা কেবল এই জন্য নয় যে শাহবানু থেকে ইমরানা পর্যন্ত মুসলিম পার্সোনাল ল-এর একটা ভয়াবহ ছবি আমরা দেখেছি। দুশ্চিন্তা একটা অন্য ব্যাপারেও। সত্যিই কিন্তু পার্সোনাল ল বোর্ডের এই নেতারা একটা গুরুতর বিষয়ের দিকে আঙুলনির্দেশ করছেন, এবং আমরা সম্ভবত তার উত্তর দেওয়ার জন্য যথেষ্ট প্রস্তুত নই।

২৫ বনাম ৪৪

ঘটনা হল, ভারতীয় সংবিধানের ২৫ নম্বর ধারাতে স্পষ্ট ভাবে লিপিবদ্ধ যে, ভারতীয় রাষ্ট্র প্রতিটি নাগরিকের নিজ নিজ ধর্ম এবং ধর্ম-সম্পর্কিত অনুশাসন পালনের অধিকার নিশ্চিত করবে। কিন্তু তা হলে তো শরিয়তি আইনও ধর্ম-সম্পর্কিত অনুশাসনের মধ্যে পড়ে? সে ক্ষেত্রে কি ২৫ নম্বর ধারার সঙ্গে অভিন্ন দেওয়ানি বিধির প্রতিশ্রুতি-সম্বলিত ৪৪ নম্বর ধারার একটা বিরোধিতা দেখতে পাচ্ছি না আমরা? এই প্রশ্নটাই কিন্তু পার্সোনাল ল বোর্ডের নেতারা তুলে আসছেন। এবং ফুঁ-য়ে উড়িয়ে দেওয়ার আগে আমাদের এক বার ভাল করে ভেবে দেখা উচিত, সংবিধানের অন্তঃস্থ এই স্ববিরোধিতা সম্পর্কে আমরা যথেষ্ট সচেতন কি না। ২৫ নম্বর ধারা বলছে, সব নাগরিককে সমান ভাবে দেখবে রাষ্ট্র। ৪৪ নম্বর ধারা বলছে, প্রতিটি নাগরিকের নিজস্ব ধর্ম ও সংস্কৃতির অধিকারকে রাষ্ট্র মান্য করে চলবে। নাগরিকের নিজস্ব পরিসর ('স্পেস'), না রাষ্ট্রের পরিসর, কোনটির তা হলে অগ্রাধিকার? মীমাংসার একটা সূত্র পাওয়া যেতে পারে ২৫ নম্বর ধারাটির ভেতরের অনুপুঙ্খের মধ্যেই। কেননা বলা হয়েছে, ধর্মের বিচারে যেগুলো 'এসেনশিয়াল প্র্যাকটিস' অর্থাৎ যেগুলো ওই ধর্মের মৌলিক বৈশিষ্ট্যের মধ্যে পড়ে, সেগুলি মান্য হবে, এবং যেগুলো মৌলিক বা 'এসেনশিয়াল' নয়, প্রয়োজনমত রাষ্ট্র সেগুলোতে হস্তক্ষেপ করতে পারবে। যেমন, বকর-ইদের সময়ে গো-হত্যাকে ইসলাম ধর্মের মৌলিক বা 'এসেনশিয়াল' অঙ্গ হিসাবে না দেখে তা বন্ধ করা হয়েছিল: এই বিচারবিভাগীয় সিদ্ধান্ত (১৯৫৮) ছিল— উপরের যুক্তিতে— সংবিধানসম্মত। কিন্তু ধর্মের ক্ষেত্রে কোনটা 'এসেনশিয়াল', কোনটা নয়, সেটা নির্ধারণ করাও কি খুব সহজ? শরিয়ত সম্বন্ধে কী বলা যাবে? কেউ বলতেই পারেন, গাঠনিক দিক থেকে শরিয়তি আইন ইসলামের 'এসেনশিয়াল' বৈশিষ্ট্যের মধ্যেই পড়ে?

ধারাবাহিক। শাহবানু থেকে ইমরানা।

পার্সোনাল ল বোর্ডের কর্তারা প্রশ্নটা তুলেছেন, এবং উত্তরও দিয়েছেন। উত্তর দিয়েছেন যে— হ্যাঁ, শরিয়তি আইন একেবারেই ইসলামের প্রাথমিক ভিত্তি বলে গণ্য। এবং/সুতরাং ভারতের সংবিধানের ২৫ নম্বর ধারাটি (ধর্মপালনের স্বাধীনতা) যেহেতু নাগরিকের মৌলিক অধিকারের তালিকার মধ্যে পড়ে, সেটির অগ্রাধিকার বেশি। ৪৪ নম্বর ধারা কিন্তু 'ডিরেক্টিভ প্রিন্সিপল' বা নির্দেশমূলক নীতি ছাড়া কিছু নয়। দুটির মধ্যে যদি বিরোধিতা থাকেই, তবে ধর্ম-অনুশাসন তথা শরিয়ত পালনের অগ্রাধিকার (মৌলিক অধিকারের স্বীকৃতিতে) অভিন্ন দেওয়ানি বিধি প্রবর্তনের (নির্দেশমূলক নীতির স্বীকৃতিতে) থেকে অনেক বেশি জরুরি— এই হবে তাঁদের অভিমত।

মুসলিম পার্সোনাল ল-গুলিকে নিয়ে কেন আধুনিকমনা ভারতীয়ের এত তীব্র অশান্তি, সেটা বোঝা কঠিন নয়। শাহবানু থেকে ইমরানা, বারংবার দেখা গেছে সমাজের দুর্বলতর মানুষরা শরিয়তি আইনে কত প্রবল ভাবে নির্যাতিত। কিন্তু প্রশ্নটা তো কেবল মুসলিম পার্সোনাল ল বিষয়ে নয়। প্রতিটি সমাজের নিজস্ব পার্সোনাল ল রয়েছে, কেবল মুসলিম-হিন্দু নয়, আছে তফসিলি জনজাতিগুলিরও। মুসলিম পার্সোনাল ল-কে স্বীকৃতি দিতে হলে অন্যান্য সমাজকেও সেই অধিকার দিতে হয়। ফলে বিতর্কটা মুসলিম বনাম হিন্দু বা বিজেপি বনাম কংগ্রেসের চেয়ে অনেকটা বড়। বিতর্কটা আসলে জাতিরাষ্ট্রের অধিকার বনাম রাষ্ট্রের ভেতরকার সমাজগুলোর অধিকারের মধ্যে।

রাষ্ট্রের দেখা, সমাজের দেখা

প্রথমেই জানা দরকার ভারতীয় রাষ্ট্র ঠিক কী ভাবনা দিয়ে আরম্ভ হয়েছিল। ভারতীয় সংবিধানের ভূমিকা থেকে উপসংহার পর্যন্ত সর্বত্র তার মূল সুরটি ছড়িয়েও আছে: রাষ্ট্রের চোখে প্রতিটি নাগরিকই সমান, রাষ্ট্র প্রত্যেকটি ব্যক্তিনাগরিকের প্রতি সমব্যবহার ও সম-চরিত্রের ব্যবহার করতে অঙ্গীকারবদ্ধ। সত্যি কথা বলতে কী, কোনও উদারমনা ভারতীয়ের পক্ষেই এই মৌলিক সাংবিধানিক অবস্থান বিষয়ে শ্রদ্ধাশীল না হওয়া বেশ কঠিন।

তার মানে, এক এক মানুষ এক এক ধর্মে আত্মসমর্পণ করবেন, এটাও যেমন স্বাভাবিক, রাষ্ট্র তার প্রতিটি নাগরিককে সমান ভাবে দেখভাল করবে, এটাও তেমনই স্বাভাবিক। অর্থাৎ নাগরিক যে ধর্মে বা সমাজে বা গোষ্ঠীতেই বিরাজ করুন না কেন, রাষ্ট্রের মৌলিক ও প্রাথমিক সীমার বাইরে তাঁর অবস্থান হতে পারে না। যে কোনও নাগরিককে তাঁর নিজস্ব গোষ্ঠীচেতনা বহন করার আগে রাষ্ট্রীয় নাগরিকত্বের মূল্য চুকিয়ে দিতে হবে।

অর্থাৎ, আধুনিক ভারতীয় রাষ্ট্র আসলে 'আইডেন্টিটি' বা ব্যক্তিসত্তাগুলির এক রকমের উচ্চ-নীচ (হায়ারার্কিক্যাল, ভার্টিক্যাল) বিস্তারে বিশ্বাসী। আগে এটা, তার নীচে ওটা, তারও নীচে সেটা, এমনি আর কী। আসলে এই জায়গাটাতেই থেকে গেছে একটা গুরুতর গোলমাল, কেননা ভারতের আধুনিক রাষ্ট্র যেখানে সত্তার উচ্চনীচ-বিভাজনে বিশ্বাস করে, সমাজ বা ব্যক্তিমানুষ কিন্তু তা করে না। এ দেশে সমাজ বা ব্যক্তির কাছে বিভিন্ন সত্তা পাশাপাশি, সমান্তরাল, প্রেক্ষিত-নির্ভর, কখনও এই পরিচয় বড়, কখনও ওই পরিচয় বড়। পরিচয়ের ক্ষেত্রে ধর্ম রাষ্ট্রকে এতটুকুও জায়গা ছাড়তে রাজি না-ই হতে পারে। আর সেই কারণেই রাষ্ট্রের সঙ্গে সমাজের বড় রকমের সংঘাতের জায়গা থেকে গেছে এ দেশে। সেই জন্যই ভারতের পক্ষে সত্যি সত্যিই একটি 'আধুনিক' রাষ্ট্র হয়ে ওঠা সম্ভব কি না, প্রশ্ন উঠেছে গত শতাব্দী জুড়ে। ভারত অন্যান্য জাতিরাষ্ট্রের থেকে তাই এত আলাদা, অত্যন্ত বিশেষ রকমের, তাই ভারতের ক্ষেত্রে অভিন্ন দেওয়ানি বিধির সোজাসাপটা প্রচলন বিপজ্জনক হতেই পারে। সংবিধান-প্রণেতা ভীমরাও আম্বেডকর বা প্রথম প্রধানমন্ত্রী জওহরলাল নেহরু, দুজনেই এতটা সাবধানী থেকেছেন এ জন্যই: দেশীয় সমাজগুলির বৈচিত্র্য বা অস্তিত্ব শেষমেশ বিপন্ন হোক, এ তাঁরা চাননি। অথচ এ-ও তো ঠিক, ধর্ম বা অন্যান্য গোষ্ঠী-সমাজও অনেক ক্ষেত্রেই অসম্ভব অসহিষ্ণু, পুরুষতান্ত্রিক, ব্যক্তিস্বাতন্ত্র্যবিরোধী! রাষ্ট্রের হাত থেকে তাদের হাতে বিচারের ক্ষমতা/অধিকার চলে গেলে কি একই ভাবে বিপন্ন হয়ে পড়বে না স্বাধীনচেতা ব্যক্তিনাগরিক, কিংবা মহিলাসমাজ?

কোথায় এর সমাধান?

সমাধান খোঁজার আগে সম্ভবত প্রশ্নটা ঠিক ভাবে বোঝা দরকার। বোঝা দরকার যে, মুসলিম-তোষণের দ্বারা জাতীয় সংহতির ক্ষতি হচ্ছে, এই সহজিয়া বিজেপি-মার্কা যুক্তি, কিংবা ভারতীয় রাষ্ট্রের হিন্দু-ভাবাপন্নতায় অন্যান্য ধর্মসম্প্রদায় নিষ্পেষিত হচ্ছে, এই গোঁড়া-মুসলিম-মার্কা 'যুক্তিগুলির থেকে অনেক দূরে এই মূলগত সাংবিধানিক দর্শনের আত্মবিরোধিতার সত্যটি। এই বিতর্ককে শেষ পর্যন্ত উত্তর খুঁজতে যেতে হবে সেখানেই।

Speaker takes on judiciary

Statesman News Service

NEW DELHI, Feb. 4. – Presiding officers of India's legislative bodies today supported the Lok Sabha Speaker, Mr Somnath Chatterjee, in his struggle to protect the legislature's rights, unanimously deciding not to respond to the judiciary's notices to examine Parliament's right to expel its members. They said as much about a notice to Mr Chatterjee. The officers adopted a resolution marking the conclusion of an emergency meeting the Speaker had called. Mr Chatterjee later said neither Parliament nor the state legislatures' presiding officers wanted a confrontation with the Supreme Court. The officers and the Speaker were only discharging their constitutional duties. Mr Chatterjee described as "uncalled for" the Supreme Court's notice to the Lok Sabha on the expulsion of seam-tainted members. Mr Chatterjee wondered if the court had any right to issue a notice to the Lok Sabha on a matter which the Constitution described as the legislature's "exclusive domain." Until that is decided, "determination of the existence of the right of expulsion and, for that purpose, a notice to the Speaker are not called for," he said. "I feel that it would have been proper if the court had first decided whether it had the constitutional authority to look into the question," Mr Chatterjee was said to have told the conference.

I'm not for confrontation... (but) the decision to expel MPs is the exclusive domain of the legislature... it would have been proper if the judiciary had first decided whether it had the constitutional authority to go into the issue... the decision (to issue notice to the Speaker on the expulsion issue) is uncalled for

BJP targets PM, Cong defensive

Statesman News Service

NEW DELHI, Jan. 24. — Mounting an offensive on the government in the wake of the Supreme Court judgment on Bihar, the leader of the Opposition Mr LK Advani today charged Prime Minister Dr Manmohan Singh with misleading the President on the state Assembly dissolution and demanded his resignation along with that of Governor Mr Buta Singh.

Holding UPA chairperson Mrs Sonia Gandhi also "accountable" for the government's decision, he announced that an NDA delegation would meet President Dr APJ Abdul Kalam and submit a memorandum to him.

Mr Advani said the BJP was open to discussing the idea of appointing apolitical persons as Governors. "The judgment in its totality suggests that if the government had misled the council of ministers, the Prime Minister as head of the government had misled the President into committing an unconstitutional act." Mr Advani told an impromptu press conference at his residence here.

The Congress, however, today claimed that the Supreme Court while indicting Mr Singh for dissolution of the state Assembly has not found any fault with the council of ministers. There is no indictment of the Union council of ministers by the Supreme Court in the verdict, Congress spokesperson Mr Abhishek Singhvi said, adding that the majority decision had "many nuances". He said the government would accept the verdict with all "humility", and as far as "consequences of the judgment" were concerned, "let's wait, it is for the Cabinet to decide."

Maintaining that the Supreme Court has been understandably polite in respect of the council of ministers, Mr Advani stated: "whatever has been said, it has found the council of ministers guilty of non-application of mind.

For the council of ministers to accept the Governor's report without verification as a gospel of truth is a very strong comment."

The BJP leader said nobody who has read the judgment would agree with the Congress' contention that the verdict does not hold the government guilty, though the comments are "polite and courteous." "Democratic accountability demands that both the Prime Minister and the Governor should quit their offices", he said.

Describing Dr Manmohan Singh as a "moral history sheeter", Mr Arun Jaitley said in Jaipur that the Prime Minister was directly responsible for the "constitutional impropriety" and had no moral right to stay in power. He said Mr Buta Singh should be sacked rather than be allowed to resign.

When asked about his comments, Union railway minister and RJD supremo Mr Laiu Prasad refused to be drawn into any controversy but said the judgment must be acceptable to all.

Bihar chief minister Mr Nitish Kumar said his party's stand on Mr Buta Singh had been vindicated. Mr Kumar's party, the JD-U, demanded Mr Singh's immediate resignation. Mr Prasad, who was accused by the NDA of having pressured the Union Cabinet into recommending the dissolution of the state Assembly to the President, left the next move of the Governor to his conscience.

Union minister Mr Ram Vilas Paswan defended the Governor and the Centre, stating that there was no other option except recommending the dissolution of the state Assembly.

THE STATESMAN

Buta subverted Constitution: SC

Press Trust of India

NEW DELHI, Jan. 24. — In a scathing indictment of Bihar Governor Mr Buta Singh, the Supreme Court today found him guilty of "subversion" of the Constitution for recommending dissolution of the state Assembly and rapped the Union council of ministers for not verifying the facts in his report before accepting it as the "gospel truth".

Speaking its mind on the reasons why the dissolution was unconstitutional, a five-judge Bench, in a majority (3-2) judgment, said the Governor had misled the Cabinet by sending a report containing "unascertained facts". The Bench said the Governor's report contained "fanciful assumptions" that could be destructive for democracy. Terming his action as "drastic and extreme", the Bench held that the court could not be a silent spectator of such "subversion of the Constitution". Action under Article 356 of the Constitution could not be justified on the "suspicion, whims and fancies" of the Governor whose whole approach was to "stall" the Nitish Kumar-led Janata Dal (United) from forming a government, it was held.

Crucially, the Bench held that while the Governor enjoyed complete immunity and was not answerable in the exercise of constitutional power, Article 361 does not take away from the court the power to deal with the validity of his action. The Bench further clarified that the provisions of the Tenth Schedule of the Constitution were not relevant at that time when

Whatever the Supreme Court says (on the decision to dissolve the Bihar Assembly) the country has to accept. The Supreme Court has got the authority... we have to respect it. I have no comment on the Governor's future

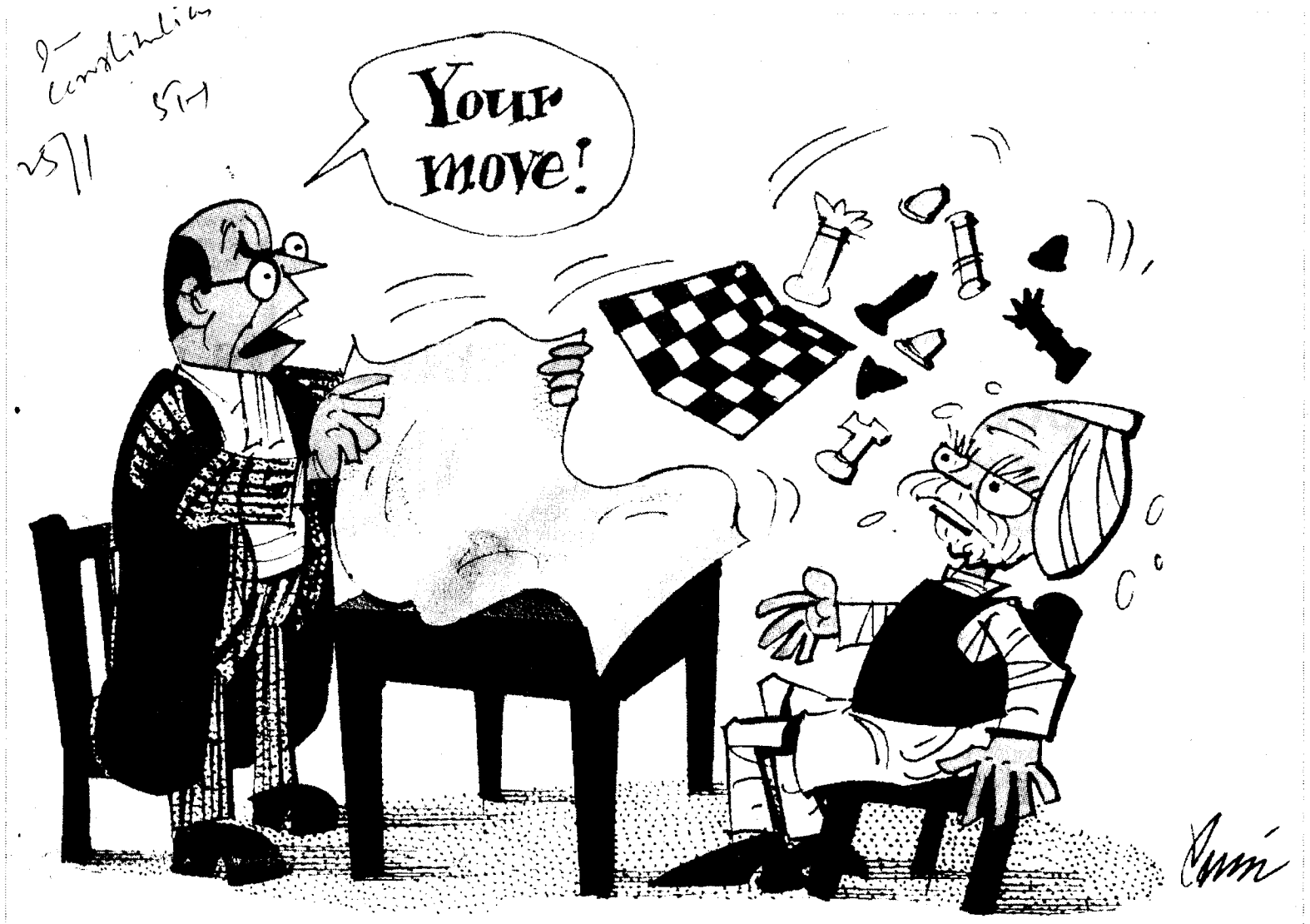
The judgment, in its totality, suggests that if the government misled the council of ministers, the Prime Minister as head of government misled the President into committing an unconstitutional act

the Governor had sent his report to the Centre. "That was fully an unconstitutional act." The issue of defection has to be dealt with in accordance with the law as no such power is given to the Governor. If such a power was given to a Governor it would be horrendous. The power in the Tenth Schedule lies with the Speaker and not with the Governor, the Bench held. The majority judgment was passed by Chief Justice Mr YK Sabharwal, Mr Justice BN Agarwal and Mr Justice Ashok Bhan. The minority view was taken by Mr Justice KG Balakrishnan and Mr Justice Arijit Passayat.

The Supreme Court, which in its 7 October interim order had opined that the dissolution was unconstitutional, had held that a fresh poll was unavoidable due to changed circumstances and had come on a batch of petitions by a group of legislators of the dissolved Assembly. The Governor had recommended dissolution amid allegations that he prevented the National Democratic Alliance, which was on the verge of cobbling up a majority with the breakaway group of the Loktantrik Janata Party of Mr Ram Vilas Paswan and a few Independents, from forming a government.

Today, the Bench held that the time had come to consider a national policy outlining common norms for appointment of Governors that would be acceptable to all political parties. It iterated the recommendations of the Sarkaria Commission report regarding the appointment of Governors according to which only an eminent person without any political affiliation should be appointed to the constitutional post of Governor.

The minority view of the Bench was that there was no malafide exercise of power by the Governor in recommending the dissolution of the Bihar Assembly as no material was placed by the JD(U)-BJP combine to stake its claim to form a government in the state. The minority also did not find any fault with the Centre's decision to dissolve the Assembly as it was "on the basis of Governor's reports that the Council of Ministers acted". There was no change in the circumstances between the imposition of President's rule on Bihar in March 2005 after a fractured Assembly poll verdict and the dissolution of the House on 21 May, 2005, as none of the parties came forward to form a government, the dissenting judges held. Noting that recent years have seen many attacks on the office of Governor, Mr Justice Pasayat, in a separate minority judgment, too held that the time had come to take note of the the Sarkaria Commission recommendations on the appointment of Governors.



Cabinet 'studying' judgment

NEW DELHI, Jan. 24. — The Union Cabinet at a meeting this evening decided it needed more time to study the ramifications and implications of today's Supreme Court judgment on Bihar amidst speculation that Mr Buta Singh's days as Governor of the state were numbered despite his defiant posture. Speaking to reporters after the Cabinet meeting, Union home minister Mr Shivraj Patil said the judgment was a "complicated" one as two judges had dissented.

Earlier, Mr Singh was defiant, declaring in Delhi that he would preside over the Republic Day function in Patna. "I am going to take the salute in Patna on 26 January... the Bihar administration fully implemented the 7 October verdict of the Supreme Court by conducting the Assembly election in a remarkable manner. Such an election has never been held in any state. I'm happy I've fully implemented the court's verdict." As the questions grew uncomfortable, he ended his Press conference stating he needed "time to study the judgment". — SNS

রাজ্যপালের এক্তিয়ার

রাজ্যপালের এক্তিয়ার ও বিচারবোধ যে ক্রমেই গণতন্ত্রের অন্তর্ঘাতের কারণ হইয়া উঠিতেছে, রাজ্যে-রাজ্যে সরকার গঠনের প্রক্রিয়ায় সূচিত বিতর্কই তাহার প্রমাণ। বিহারের রাজ্যপাল বুটা সিংহের বিধানসভা ভাঙার সিদ্ধান্তকে 'অসাংবিধানিক' আখ্যা দিয়া সুপ্রিম কোর্ট সেই অবাঞ্ছিত বিতর্কের স্থায়ী অবসান চাহিয়াছে। অন্তর্বর্তী রায়েই অসাংবিধানিক পদক্ষেপ করার জন্য বুটা সিংহকে ভর্ৎসনা করা হইয়াছিল, কিন্তু নূতন নির্বাচনের প্রক্রিয়া বহুদূর অগ্রসর হইয়া যাওয়ায় সুপ্রিম কোর্ট সে সময় ভোট স্থগিত করে নাই। এখন শীর্ষ আদালত রাজ্যপালের কাজকে গণতন্ত্র ধ্বংসের প্রয়াস আখ্যা দিয়াছে। তিনি যে কাল্পনিক কারণে কেন্দ্রীয় মন্ত্রিসভা ভাঙিয়া দিবার সুপারিশ করিয়াছিলেন, তাহাও বলা হইয়াছে। এই বকুনি বুটা সিংহের প্রাপ্য ছিল। তবে নিজের বিচারবুদ্ধি প্রয়োগের নামে আইনসভায় একক গরিষ্ঠতাপ্রাপ্ত দল বা জোটকে সরকার গড়ার সুযোগ না দিয়া তিনি যে রাজনৈতিক অনাচার করেন, ভবিষ্যতে তাহার পুনরাবৃত্তি ঠেকানো দরকার। একটাই উপায়। সরকার গঠনে রাজ্যপালের নিজস্ব বিচারবুদ্ধি প্রয়োগের অবকাশ থাকিবে না। থাকিলেই এক্তিয়ার অপব্যবহারের সুযোগও তিনি পাইবেন। ঝাড়খণ্ডের রাজ্যপালকে তাহা করিতে দেখা গিয়াছে। কর্নাটকের রাজ্যপালকেও।

একক গরিষ্ঠ দল বা জোটের ক্ষেত্রে এখানে প্রাক-নির্বাচনী আসন-রফাভিত্তিক জোটকেই বুঝানো হইতেছে, ফল প্রকাশের পরবর্তী সুবিধাবাদী জোটকে নয়। একক গরিষ্ঠতাপ্রাপ্ত এ ধরনের জোট বা দলকেই সরকার গড়িতে ডাকিতে হইবে এবং বিধানসভায় সত্বর আস্থাভোট লইয়া তাহাকে গরিষ্ঠতা প্রমাণ করিতে হইবে। যদি ক্ষমতাসীন জোট গরিষ্ঠতা প্রমাণে ব্যর্থ হয়, তাহা হইলে পরবর্তী দলকে সে সুযোগ দেওয়া হইবে। আর যদি কোনও দলই তাহা প্রমাণ করিতে না পারে, সে ক্ষেত্রে সরকার ভাঙা যাইবে না। এই গোটা প্রক্রিয়ায় রাজ্যপালের কোনও কার্যকরী ভূমিকা থাকিবে না। বড় জোর তিনি মন্ত্রিমণ্ডলীকে শপথ পাঠ করাইবেন, প্রাসঙ্গিক কাগজপত্রে স্বাক্ষর করিবেন, ইত্যাদি। যদি কোনও সরকার গরিষ্ঠতা হারায়, অনাস্থা ভোটে বিরোধী পক্ষ তাহাকে পরাস্ত করে, তাহা হইলে অনাস্থা আনা দল বা জোটকেই বিকল্প সরকার গড়ার উপযোগী গরিষ্ঠতা আগাম নিশ্চিত করিতে হইবে। জার্মান গণতন্ত্রে এই মর্মে যে বন্দোবস্ত আছে, তাহা অনুসৃত হইতে পারে। মোট কথা রাজ্যপালদের কলকাঠি নাড়ার কোনও সুযোগ থাকা চলিবে না। রাজভবনকে দলীয় রাজনীতির আখড়ায় পরিণত করা কিংবা রাজ্যপাল পদটিকে কেন্দ্রীয় শাসক গোষ্ঠীর 'এজেন্ট'-এর পদে পরিণত করা চলিবে না। সুপ্রিম কোর্ট তাহার রায়ে এ সব কথা বলে নাই। তবে রাজ্যপাল নিয়োগের ক্ষেত্রে সর্বদলীয় ঐকমত্যের ভিত্তিতে একটি জাতীয় নীতি নির্ধারণের উপর জোর দিয়াছে। সেই নীতির অঙ্গ হিসাবেই রাজ্যপালদের এক্তিয়ার লইয়া কোনও অনিশ্চয়তা বা ধোঁয়াশা থাকা উচিত নয়, রাজনৈতিক সিদ্ধান্ত লওয়ার কোনও সুযোগও তাঁহার থাকা উচিত নয়। কোন পরিস্থিতিতে তিনি কী সিদ্ধান্ত লইতে পারেন, তাহা স্পষ্ট ও দ্ব্যর্থহীনভাবে নির্দিষ্ট হওয়া উচিত।

ইহা সম্ভব তখনই, যখন কে রাজ্যপাল হইতে পারিবেন, তাহাও আগাম নির্ণয় করা থাকিবে। কোনও রাজনীতিককে রাজ্যপাল নিযুক্ত করা চলিবে না। বর্তমানে রাজনীতিক নন, অদূর ভবিষ্যতেও রাজনৈতিক উচ্চাকাঙ্ক্ষা পোষণ করেন না, এমন বিশিষ্ট, গুণী ব্যক্তিকেই কেবল রাজ্যপাল পদের জন্য বিবেচনা করা উচিত। সরকারিয়া কমিশনও এমনই সুপারিশ করিয়াছিল। রাজভবনগুলি অবসরপ্রাপ্ত রাজনীতিকদের বাসস্থান হইয়া উঠুক, ইহা কমিশন চাহে নাই। কিন্তু কমিশনের সুপারিশ আজও কার্যকর হয় নাই। এই অনাচার যে সংবিধানসম্মত নয়, সুপ্রিম কোর্ট যেমন তাহা জানাইয়া দিয়াছে, রাজ্যপালের অপকর্ম যে জনসাধারণও সুনজরে দেখেন নাই, বিহারের জনাদেশেও তাহা সম্যক প্রতিফলিত। একক গরিষ্ঠতাপ্রাপ্ত যে জোটকে বুটা সিংহ সরকার গড়িতে দিবেন না বলিয়া বিধানসভাই ভাঙিয়া দেন, সেই জোটকেই নিরঙ্কুশ গরিষ্ঠতা দিয়া নূতন বিধানসভায় পাঠাইয়া নির্বাচকমণ্ডলী রাজ্যপালকে মুখের মতো জবাব দেন। কিন্তু জনাদেশের উপর নির্ভর করিয়া রাজ্যপালদের রাজনৈতিক স্বেচ্ছাচারের সুযোগ রাখিয়া দেওয়া ঝুঁকির কাজ। অবিলম্বে সেই ঝুঁকি রদ করা উচিত।

Supreme Court indicts Buta Singh

Holds dissolution of Bihar Assembly illegal

J. Venkatesan

NEW DELHI: The Supreme Court came down heavily on Tuesday on Bihar Governor Buta Singh for recommending dissolution of the State Assembly last year. Holding unconstitutional and illegal the dissolution, the court said that it was done only to prevent the Janata Dal (U) leader Nitish Kumar from staking his claim to form the Government.

A Constitution Bench by a majority of 3:2 held that "in the absence of the relevant material much less due verification, the report of the Governor has to be treated as the personal *ipse dixit* (perception or opinion) of the Governor. The drastic and extreme action under Article 356 of the Constitution cannot be justified on mere *ipse dixit*, suspicion, whims and fancies of the Governor."

The majority Bench comprising Chief Justice Y.K. Sabharwal, Justice B.N. Agrawal and Justice Ashok Bhan observed "this court cannot remain a silent spectator watching the subversion of the Constitution. It is to be remembered that this court is the sentinel on the *qui vive*."

The minority Bench comprising Justice K.G. Balakrishnan and Justice Arijit Pasayat, however, held that the court could not go into the question as to what manner of advice was tendered by the Council of Ministers to the President. It held that there was no malafide exercise of power by the Governor in sending the two reports to the Centre.

- **Majority Bench: "This court cannot remain a silent spectator watching the subversion of the Constitution"**
- **Minority Bench: "No mala fide exercise of power by the Governor in sending the two reports to the Centre"**

Centre criticised

The majority Bench criticising the Centre for recommending the dissolution said "the Governor may be the main player, but the Council of Ministers (Union Cabinet) should have verified the facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what the Governor stated. Clearly the Governor has misled the Council of Ministers which led to the aid and advice being given by the Council of Ministers to the President leading to the issue of the impugned proclamation."

On the two reports sent by Mr. Buta Singh on April 27, 2005 and May 21, 2005, the Bench said that "without highly cogent material, it would be wholly irrational for constitutional authority to deny the claim made by a majority to form the government only on the ground that the majority has been obtained by offering allurements and bribe..."

It said that "the extraordinary emergency power of recommending dissolution of a Legislative Assembly is not a matter of course to be resorted to for good governance or cleansing of the politics for the stated reasons without any authentic material."

Referring to the Centre's argument that given a choice between going back to the electorate and accepting a majority obtained improperly, only the former was the real alternative, the Bench said "the proposition is too broad and wide to merit acceptance."

DELINQUENT GOVERNOR: *Bihar Governor Buta Singh coming out of the Bihar Niwas in New Delhi on Tuesday after the Supreme Court indicted him for mala fide exercise of power and subversion of the Constitution.* – PTI

We'll respect verdict: Manmohan

I am going to take the salute in Patna on January 26, says Buta Singh

NEW DELHI: Prime Minister Manmohan Singh said on Tuesday that the Supreme Court's indictment of Bihar Governor Buta Singh would be "accepted and respected."

"The Supreme Court has got great authority and we have to respect the judgment," Dr. Singh said, adding that he had not yet seen the judgment.

However, he declined to comment on the fate of Mr. Buta Singh.

Buta Singh defiant

A defiant Buta Singh on Monday ruled out his resignation.

Asked at a press conference whether he would quit his post, he shot back: "Who told you that."

"I have not said anything on it. I am going to take the salute in Patna on January 26," he asserted.

He claimed that the Bihar administration had "fully implemented" the October 7 verdict by conducting Bihar elections in a "remarkable" manner.

"Such elections were never held in any State. I am happy I have fully implemented the Supreme Court verdict."

On the charge that his recommendation to dissolve the Bihar Assembly was aimed at favouring a particular political party, he declined to comment.

Mr. Buta Singh abruptly ended his press conference, saying he would study the full judgment. — UNI, PTI

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THE HINDU

WEDNESDAY, JANUARY 25, 2006

No more brazening it out

The public perception of partisanship and unfairness of Bihar Governor Buta Singh in recommending the dissolution of the Bihar Assembly has only been confirmed by the Supreme Court's elaboration of the reasons why it earlier held the act unconstitutional. According to the majority decision of Chief Justice Y.K. Sabharwal and two of his colleagues, Mr. Singh's action "to forestall the formation of a new government by another political party" was a *mala fide* exercise of power. His reasoning that some legislators were being induced with offers of money and other allurements would seem to be just his own opinion and perception without any material to substantiate them. Such matters under Article 356 of the Constitution could not be decided on a mere perception. The way the Governor misled the Union Council of Ministers was "destructive of the democratic system." His action was "drastic and extreme" and the "Court could not remain a silent spectator to such subversion of the Constitution." The Union Council of Ministers gets off relatively lightly, with the majority decision noting it should have exercised caution and not acted without verifying the contents of the two reports sent by the Governor. The decision without any material was clearly unconstitutional but as the election process had been set in motion before the arguments in the case could be concluded, the Court did not order the *status quo ante* and revive the dissolved Assembly.

Rarely has there been a stronger indictment of a constitutional functionary and it will be impossible for either Governor Singh or the Union Government to brazen it out any longer. He should never have been Governor in the first place but after the Supreme Court's order holding the dissolution of the Assembly unconstitutional, his position became wholly untenable. The United Progressive Alliance Government must do the proper thing on its own and without delay, rather than react after being forced into a corner. Not just the Bharatiya Janata Party but supporting parties, including the CPI(M) and the CPI, have demanded Mr. Singh's resignation. If as initial indications suggest he is not in a mood to resign, dismissal will be entirely in order. Quite apart from the severe indictment of Mr. Singh, the decision limits the scope for arbitrary action by the Governor and the Union Government in the matter of dissolving legislatures. It thus opens up new space for political and democratic functioning. An apex court empowered by the landmark Bommai judgment has been able to examine the material on which the Governor's decision was based and found that there was no material at all to support his perception that money was being offered to legislators. When political parties are realigning, there are invariably allegations of horse-trading. Still, without specific material to support the allegations, the Governor or the Union Government cannot anymore go by perceptions and dissolve the Assembly in what is usually proclaimed to be a cleansing mission. At a different level, Bihar is an object lesson on the dangers of appointing political hatchet men to high offices that call for fairness and adherence to constitutional values.

THE HINDU

Our constitutional

Buta must go. The Union cabinet that rubberstamped his decision must at least think

A GOVERNOR'S "fanciful assumptions" cannot, and should not, be basis for executive action. The Supreme Court's condemnation of the role the Bihar governor played in the dissolution of the Bihar Assembly last May was as categorical as it was unambiguous. It found that Buta Singh's actions, which had led to the dissolution of an assembly even before it had met, amounted to a subversion of the Constitution. After such a stinging rebuke, Buta Singh's continuance as governor is plainly untenable, even if the man himself has brazenly indicated that he would take the salute on Republic Day.

Buta Singh should go, and go before he casts a shadow on the ceremonies of Republic Day. But if the UPA government thinks it can absolve itself of all responsibility for that unconstitutional dissolution, it had better think again. There was a reprimand — mild though it may appear — inherent in the court's observation that the Union council of ministers should have verified the contents of the governor's report before pushing for dissolution. In fact, the decision of the Union cabinet to rubber stamp the governor's report and hustle President A.P.J. Abdul Kalam in Moscow into signing the proclamation of dissolution — all in the course of one night — will go down as one of the more cynical moments in Indian democracy. It came in a year which saw at least two other governors — both of them appointed by the Manmohan Singh government — acting in ways that blatantly favoured the ruling party, and in complete disregard of constitutional norms. There is then in the court's observations more than sufficient reason for introspection and course correction. Prime Minister Manmohan Singh — responding to the October apex court ruling in this case, terming the Bihar assembly dissolution as "unconstitutional" — had stated that he did not "disown" his "responsibility as prime minister". We now want to know what his government plans to do in response to this judgment.

The country should be grateful to the *S.R. Bommai versus the Union of India* verdict, which had held that the dissolution of state assemblies can be subjected to judicial review. Otherwise the clear light of day may never have pierced the opaqueness of executive decision-making in instances like this. The judgment has also brought the gubernatorial institution once again under the scanner. The Supreme Court has suggested that a consensus cutting across party lines be evolved on the norms that should underlie the appointment of governors. We wholeheartedly endorse the suggestion.

JAN 2006 INDIAN EXPRESS

MONDAY, JANUARY 23, 2006

Avoiding a constitutional standoff

In an era where courts are asserting their jurisdiction and powers as never before, the decision of the all-party conference that the Speaker of the Lok Sabha need not respond to the Supreme Court notice in the case filed by expelled MPs challenging the action of the House might appear defiant. Yet Parliament and Speakers have all along been jealous in protecting their rights and not submitting to the jurisdiction of courts on issues within their domain, and the latest move is in accord with this longstanding tradition. And as Somnath Chatterjee took pains to emphasise, this stand need not lead to any confrontation with the Supreme Court. The Constitution vests in Parliament and its members the same powers, privileges, and immunities that the British House of Commons holds, and it specifically makes them immune from court proceedings in respect of anything said or any vote in Parliament. Article 122(2) further declares: "No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers." No doubt in India, unlike Britain, the Constitution rather than Parliament is supreme, and where the fundamental rights of citizens have been pitted against the claims of parliamentary privilege, the courts have been hearing the challenges. Yet, at issue here are not the rights of non-members but the powers of Parliament to discipline its own members and to regulate its own procedure that have been specifically conferred by the Constitution to the exclusion of the courts.

Ironically, Parliament's responsibility to discipline its members has been underlined by the Supreme Court's decision in the Jharkhand Mukti Morcha MPs' bribery case. Strange as it may seem, the Court ruled that MPs who take bribes for any speech or vote in Parliament will be immune from prosecution in the courts. The only remedy available against such corruption lies with Parliament itself, and it is the exercise of this power that has now come under challenge. The Supreme Court may have to decide on several issues, among them the ambit of the powers of Parliament – whether they extend to the power to expel members. It may also have to decide on the question whether courts can at all go into Parliament's actions against its members. Even if in its opinion courts are not barred totally, it might have to specify under what conditions they can step in, and what questions can be enquired into. For a decision on these issues, the Speaker's participation in the court proceedings would not be necessary. The Attorney General can assist the Court and the Government of India could argue the case of Parliament. Indeed on an issue such as this, there would be no dearth of parties seeking to appear and put forth their views. The Supreme Court can be expected to display judicial statesmanship in sidestepping the issue of the Speaker's non-response and proceeding to decide on the substantive questions involved. It is important that a constitutional standoff is not allowed to develop and overwhelm Parliament's salutary decision to expel corrupt members.

JAN 2006 THE HINDU

Fears over misuse of quota Bill

All-round support in Lok Sabha

Special Correspondent

NEW DELHI: The Constitution Amendment (104th) Bill to reserve seats for socially and educationally backward classes, besides the Scheduled Castes and the Scheduled Tribes, in private unaided educational institutions drew all-round support in the Lok Sabha despite apprehension over the exclusion of minority institutions.

Opening the marathon discussion, Bharatiya Janata Party leader Ananth Kumar said the Bill would give "unbridled" freedom to minority institutions to mint money in the name of education. The Government's idea of social justice was "lop-sided." He wanted to know what would happen to the reservation currently provided in minority institutions.

Praise for Sonia

Heaping praise on Congress president Sonia Gandhi for the amendment, Chinta Mohan (Congress) urged the Government to go in for a massive recruitment drive to ensure that the SCs/STs and the backward classes got jobs. He also advocated reservation in the judiciary and the private sector.

Reservation in the private sector was also demanded by A. Krishnaswamy (Dravida Munnetra Kazhagam).

Suresh Kurup (Communist Party of India-Marxist) said national policies should be applicable to minority institutions too. He pointed out that Article 30 (1) was incorporated as a guarantee to minorities that their rights would be protected. When the BJP members applauded him for echoing their sentiment, he said, "There is nothing for you to clap; our position is different from yours."

"Raises many questions"

Welcoming the Bill, despite being of the view that it raised more questions than providing answers, he said the Government should show the political will to rein in minority educational institutions that were indulging in the commercialisation of education.

Mohan Singh (Samajwadi Party) and Rajesh Verma (Bahujan Samaj Party) were one in stating that reservation alone would not uplift the downtrodden. According to them, reservation in unaided educational institutions would not be effective unless scholarships were provided. Devendra Prasad Yadav (Rashtriya Janata Dal) stuck to his demand for including "other backward classes" in the main body of the amendment as the term "socially and educationally backward classes" would be subject to interpretation.

Though he supported the amendment, Shiv Sena's Anandthrao Gudhe questioned the rationale in excluding minority-run institutions from it. He said fee subsidies should be made available to the socially disadvantaged sections to make the reservation effective.

Politically motivated: BJD

Terming the Bill "political motivated," Prasanna Acharia (Biju Janata Dal) opposed it. He charged that it was being brought to circumvent the decision of the Supreme Court. "Why are you discriminating minorities? It is a conspiracy to divide society," he said.

C.K. Chandappan (CPI) extended support to the Bill but said certain apprehensions remained with regard to institutions run by the minorities, especially in Kerala. Legislation was required to decide on the admission and the fee structure.

Dharmendra Pradhan (BJP) said he disagreed with the provision to exclude minority institutions. Everyone should have equal access to education, he said.

Quota for minorities

Ramadas Athawale (RPI) said there was a need for a quota for minorities while Asadduddin Owaisi (AIMIM) defended the move of the Government to keep minority-run institutions out of the purview of the Bill. He said Article 30 (1) was agreed to by Sardar Patel but those who professed to follow his legacy were trying to turn it around.

Deputy Speaker Charanjit Singh Atwal sought to know how the Government would address the problem in some States where a majority of institutions were run by minorities.

THE HINDU

Ignore SC notice, parties tell Somnath

Speaker's Refusal to Budge On Mr. Cluster Puts Govt, Opposition Course

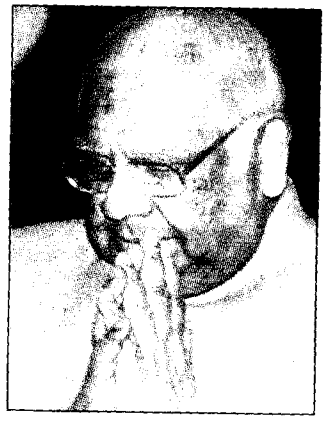
New Delhi: Holding that the supreme court notice to Speaker Somnath Chatterjee on the expulsion of ten MPs in the cash-for-query scam was "not called for", an all-party meeting on Friday decided that he should neither accept the notice nor appear before the court. However, the BJP had a different view.

Noting that the matter was in the "exclusive domain" of the legislature, the two-and-a-half-hour meeting, convened by Chatterjee, observed that the notice to the speaker was "not called for".

Briefing newspersons after the meeting, the speaker said the leaders of all the political parties had "in one voice" opined that he should not accept the notice or appear before the court. He said even V K Malhotra of the BJP, which had staged a walkout in the Lok Sabha against the expulsion, was of the view that the decision of the House was supreme. But at the same time, Malhotra reportedly suggested that while the speaker need not appear in person, a government lawyer should present his views before the court.

Asked about the fate of the notice when it reaches him, Chatterjee said, "It will be very respectfully returned. Taking all views into consideration, I have decided not to accept any notice, far less respond to the same," he asserted. Maintaining that it should not be construed as a "confrontationist move", he said he was of the opinion that no court of law had jurisdiction in the matter and that parliament was supreme to decide the question of punishment to its members for wrongful conduct.

Observing that the constitution was "clear" on the jurisdiction of the pillars of democracy, the speaker said, "Let us keep within our Lakshman rekha." The lawyer-turned-speaker argued that challenging the decision on the expulsion of MPs in a court of law tantamounted to challenging the validity of the exercise of vote by MPs inside the House.



'It's not a confrontationist move. The notice will be very respectfully returned. Taking all views into consideration, I have decided not to accept any notice, far less respond to the same. Let us keep the issue within our Lakshman rekha'

"Even the constitution prohibits the courts from doing so," he said, adding that the members voted in favour of the motion moved by the leader of the Lok Sabha. "I decided that this is a matter which really concerned the members of the House more than the speaker."

In his opening remarks at the meeting, Chatterjee said, "I have been expressing my humble views that our constitution does not contemplate the existence of a super organ or any other organ having overriding authority over the others. Therefore, it is essential to have a harmonious relationship between the different organs and respect for each other."

He said the government, which also had been sent notice by the court, would explain its position on the matter independent of those of parliament. "I am not authorising the government to give views (to the apex court) either on my behalf or on behalf of parliament," Chatterjee said. Agencies

নোটিস দিল সুপ্রিম কোর্ট, সোমনাথ তবু অনড়ই

নিজস্ব সংবাদদাতা, নয়াদিল্লি, ১৬ জানুয়ারি: সংসদ না আদালত?

সাংসদদের ব্যাপারে চূড়ান্ত সিদ্ধান্ত নেওয়ার মালিক কে, এই বিতর্ক আজ নতুন মাত্রা পেল। দিল্লি হাইকোর্টের নোটিসের কোনও জবাব না-দেওয়ার সিদ্ধান্ত লোকসভার স্পিকার সোমনাথ চট্টোপাধ্যায় জানিয়ে দেওয়ার পরেও আজ তাঁকে নোটিস পাঠাল সুপ্রিম কোর্ট। সোমনাথবাবু অবশ্য আজ জানিয়েছেন, "সুপ্রিম কোর্টের কোনও নোটিস এখনও পাইনি। ফলে জবাব দেওয়ার কোনও প্রশ্ন নেই।"

প্রশ্ন-ঘুষ কাণ্ডে বহিষ্কৃত বহুজন সমাজ পার্টির প্রাক্তন সাংসদের আবেদনের ভিত্তিতেই সুপ্রিম কোর্ট আজ লোকসভার স্পিকার-সহ অন্যদের নোটিস জারি করেছে বলে জানা গিয়েছে। শুধু নোটিস পাঠানোই নয়, সাংসদ বহিষ্কারের বিষয়ে স্পিকারের সাংবিধানিক এক্তিয়ার আছে কি না, তা স্থির করতে গোটা ব্যাপারটি সংবিধান বেঞ্চের কাছেও পাঠিয়েছে সুপ্রিম কোর্ট। শীর্ষ আদালতের মতে, সাংসদ বহিষ্কারের বিষয়টি যে হেতু সংবিধানের এক্তিয়ারভুক্ত, তাই সাংবিধানিক বেঞ্চ বিষয়টি স্থির করবে।

আর এই টানাপোড়েনের মধ্যেই স্টার নিউজের 'অপারেশন চক্রব্যূহ' নিয়ে সোমনাথবাবুর নির্দেশে আজ তদন্ত শুরু করেছে পবন বনসলের নেতৃত্বাধীন সংসদীয় কমিটি। এই অপারেশনে ছ'জন সাংসদের বিরুদ্ধে সাংসদ তহবিল নিয়ে দুর্নীতির অভিযোগ উঠেছিল। তার মধ্যে এক জন রাজ্যসভার সদস্য। ৩১ জানুয়ারির মধ্যে কমিটিকে রিপোর্ট জমা দিতে বলা হয়েছে। এর আগে বনসল কমিটির সুপারিশের ভিত্তিতেই প্রশ্ন-ঘুষ কাণ্ডে অভিযুক্ত লোকসভার সাংসদদের বহিষ্কার করেছিলেন স্পিকার।

বহুজন সমাজ পার্টির বহিষ্কৃত সাংসদ রাজা রাম পাল স্পিকারের এক্তিয়ারকেই চ্যালেঞ্জ জানিয়েছিলেন সুপ্রিম কোর্টে। পাশাপাশি তাঁর কেন্দ্রে উপনির্বাচন আটকাতে স্থগিতাদেশ জারি করারও আবেদন জানান তিনি। শীর্ষ আদালত অবশ্য কোনও অন্তর্বর্তী স্থগিতাদেশ দিতে চায়নি। রাজা রাম পাল আজ জানান, "বহিষ্কৃত সব সাংসদই আদালতের শরণাপন্ন হয়েছেন। এর মধ্যে আমার মামলাই সুপ্রিম কোর্টে চলছে। এ বার হাইকোর্টের বাকি মামলাগুলিও সুপ্রিম কোর্টে চলে আসবে।" রাজা রাম পালের আইনজীবীর মতে, সাংসদদের নির্বাচনের ব্যাপারে লোকসভার কোনও ভূমিকা নেই। সে কারণে

এর পর ছয়ের পাতায়

সোমনাথ

প্রথম পাতার পর

তাঁদের বহিষ্কার করার ব্যাপারে সংসদেরও এক্তিয়ার থাকতে পারে না। একমাত্র রাষ্ট্রপতিই নির্বাচন কমিশনের সঙ্গে আলোচনা করে এ ব্যাপারে সিদ্ধান্ত নিতে পারেন।

স্পিকার সোমনাথ চট্টোপাধ্যায় অবশ্য সাফ জানিয়েছেন, সাংসদদের ব্যাপারে সিদ্ধান্ত নেওয়ার অধিকার আদালতের থাকতে পারে না। আজ ঘাটালে এক অনুষ্ঠানে তিনি বলেন, সংসদের ভিতরে সাংসদদের শৃঙ্খলাভঙ্গের ব্যাপারে বিচারবিভাগ হস্তক্ষেপ করতে পারে না। তবে সংসদে আইন পাশ হলে বিচারবিভাগ তা নাকচ করতে পারে। এ বিষয়ে পরবর্তী পদক্ষেপ স্থির করতে শুক্রবার সকাল ১১টায় দিল্লিতে সর্বদলীয় বৈঠক ডেকেছেন তিনি। বিজেপি আগে এই বৈঠক বয়কটের সিদ্ধান্ত নিলেও পরে বিরোধী দলনেতা লালকৃষ্ণ আডবাণীর হস্তক্ষেপে পিছিয়ে আসে। আডবাণী জানিয়েছেন, ভারতের রাজনীতিতে সংসদ বনাম বিচারব্যবস্থার সংঘাত যাতে কোনওমতেই মাথাচাড়া না দিতে পারে তার জন্য দলমত নির্বিশেষে উদ্যোগী হওয়া প্রয়োজন।

কিন্তু বহিষ্কৃত সাংসদরা যে কোনও মূল্যে এই লড়াই জিততে চান। ১৯৯৩-এ কিহোটা হলোহান বনাম জাচিলহু মামলায় স্পিকারের ক্ষমতা নিয়ে প্রশ্ন উঠেছিল। নাগাল্যাণ্ডের স্পিকার দল বদলের 'অপরাধে' বিধানসভার তিন সদস্যকে বহিষ্কার করেছিলেন। বিষয়টি সে সময় সুপ্রিম কোর্ট পর্যন্ত গড়ায়। সেই মামলায় শীর্ষ আদালত জানায়, যে হেতু স্পিকারের কার্যকালের মেয়াদ নির্দিষ্ট ও সংখ্যাগরিষ্ঠ সদস্যের সম্মতিতে তিনি নির্বাচিত হন, তাই তাঁর ভূমিকা নিয়ে সন্দেহ থাকতেই পারে। স্পিকারের রায় সব কিছুর উর্ধ্বে নয়। তিনিও বিচারবিভাগের পর্যালোচনার আওতায় পড়েন। পরিস্থিতি এমন পর্যায়ে পৌঁছেছিল যে, নাগাল্যাণ্ডের স্পিকারের বিরুদ্ধে গ্রেফতারি পরোয়ানা জারি করে আদালত। ঘুষ কেলেঙ্কারি কাণ্ডে অভিযুক্ত নরসিংহ রাওকে বহিষ্কার করার মতো পরিস্থিতি এলেও স্পিকারের এক্তিয়ার নিয়ে প্রশ্ন ওঠে। বলা হয়, লোকসভার স্পিকার কিংবা রাজ্যসভার চেয়ারম্যান তো নয়ই, কোনও সাংসদের সদস্য পদ খারিজ করার ক্ষমতা রাষ্ট্রপতিরও নেই।

সোমনাথের পাশে আডবাণী, এককাট্টা সংসদ

জয়ন্ত ঘোষাল ● নয়াদিল্লি

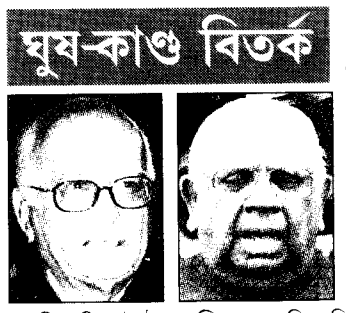
১৪ জানুয়ারি: প্রশ্ন-ঘুষ কাণ্ডে যখন আদালত বনাম সংসদ বিতর্ক ফের মাথা চাড়া দিয়েছে, তখন লোকসভার স্পিকার সোমনাথ চট্টোপাধ্যায়ের সমর্থনে এগিয়ে এলেন বিরোধী দলনেতা লালকৃষ্ণ আডবাণী।

বহুজন সমাজ পার্টির এক অভিযুক্ত সাংসদের মামলার প্রেক্ষিতে দিল্লি হাইকোর্ট কাল স্পিকারকে নোটিস পাঠিয়ে জানতে চেয়েছে, কেন সাংসদদের বহিষ্কার করা হচ্ছে। স্পিকার সোমনাথ চট্টোপাধ্যায় বলেছেন, এই নোটিসের কোনও জবাব তিনি দেবেন না।

কারণ?

সোমনাথবাবু মনে করেন, সাংসদদের ব্যাপারে চূড়ান্ত সিদ্ধান্ত নেওয়ার মালিক সংসদই। আদালতের এ ব্যাপারে সিদ্ধান্ত নেওয়ার কোনও এক্তিয়ারই থাকতে পারে না। ২০ জানুয়ারি স্পিকার এ ব্যাপারে সর্বদলীয় বৈঠক ডেকেছেন। বিজেপি প্রথমে স্থির করেছিল, তারা এই বৈঠক বয়কট করবে। আদালতের সঙ্গে স্পিকারের সংঘাতে তারা অংশ নেবে না। কিন্তু আডবাণী আজ বলেন, বিষয়টি অত্যন্ত সংবেদনশীল। ভারতীয় রাজনীতিতে সংসদ বনাম বিচারব্যবস্থার সংঘাত যাতে কোনও ভাবেই মাথাচাড়া না দেয়, সেটা দলমত নির্বিশেষে আমাদের সকলের দেখা দরকার। তাই আমরা সিদ্ধান্ত নিয়েছি, সর্বদলীয় বৈঠক বয়কট করা হবে না এবং এ ব্যাপারে স্পিকার যা সিদ্ধান্ত নেবেন, আমরা তা সমর্থন করব। কেন না, স্পিকার কোনও অবৈধ কাজ করেননি।

ঘুষ-কাণ্ডে অভিযুক্ত সাংসদদের বহিষ্কারের বিষয়টি যে আদালত পর্যন্ত যেতে পারে, সেটা ভাবেননি স্পিকার। বহুজন সমাজ পার্টির এক বহিষ্কৃত সাংসদ এই ব্যাপারে মামলা করায় বিজেপি-র একাংশ দাবি তোলেন যে, এই ব্যাপারে আদালতের নির্দেশের প্রাসঙ্গিকতাকে স্বীকার করে নেওয়া হোক। এই অবস্থান নিলে দলীয় সাংসদদের বহিষ্কারের হাত থেকে বাঁচানো যেতে পারে বলেও জানিয়েছিলেন এই সব নেতারা। আডবাণীর বাড়িতেই এর আগে এই বিষয়ে বিজেপি-র বৈঠক হয়েছিল। সেখানে বিজেপি-র কিছু নেতা শিবু সোরেন প্রসঙ্গ তোলেন। ঝাড়খণ্ডের নির্বাচনের পর সরকার গঠন নিয়ে যখন জলঘোলা হয়, তখন আদালত শিবু সোরেনের বিরুদ্ধে রায় দেয়। সেই সময়েও স্পিকার বলেছিলেন, আইনসভার ব্যাপারে আদালতের নাক গলানোর অধিকার নেই। সেই সময় স্পিকারের কথা মেনে নিলে শিবু এত দিনে মুখ্যমন্ত্রী হয়ে যেতেন। কেন্দ্র কিন্তু তখন স্পিকার এবং রাজ্যপালের মতামতকে প্রাধান্য না দিয়ে বিজেপি-কে সরকার গঠনের সুযোগ করে দিয়েছিল। সেই কারণেই এখন আদালতের পক্ষে থাকা উচিত বলে মনে করেন বিজেপি-র একাংশ। তাঁরা স্থির করেন, স্পিকারের সর্বদলীয় বৈঠক বয়কট করবে দল। কিন্তু আডবাণী আজ এই সিদ্ধান্তকে পুরো উল্টে দিলেন।



বিজেপি-র শীর্ষ নেতৃত্ব কেন এই সিদ্ধান্ত নিলেন? প্রথম কারণ হল, বিজেপি যাই বলুক, জে ডি (ইউ)-সহ এনডিএ-র অন্য শরিকেরা জানিয়ে দেয়, তারা সর্বদলীয় বৈঠকে যাবে এবং স্পিকার যে বক্তব্য রেখেছেন, তারা সেটিকে সমর্থন করছে। দ্বিতীয়ত, আডবাণী বুঝতে পারেন, এই বিষয়ে তাঁরা স্পিকারের বিরোধিতা করলে মনে হবে দুর্নীতির প্রশ্নে বিজেপি আসলে আপোস করছে। এমনিতেই ঘুষ-কাণ্ড নিয়ে অধিবেশনের সময় লোকসভায় বিজেপি-র ওয়াকআউট এবং বিরোধী দলনেতার মন্তব্য নিয়ে যথেষ্ট সমালোচনা হয়েছে। তার উপর, বহুজন সমাজ পার্টির সঙ্গে হাত মিলিয়ে ঘুষ কেলেঙ্কারিতে অভিযুক্ত সাংসদদের বাঁচাতে আদালতের দ্বারস্থ হলে দলের বদনাম আরও বাড়তে পারে। এই কারণেই আডবাণী বিজেপি-র সংসদীয় দলের উপনেতা বিজয় কুমার মলহোত্রকে নির্দেশ দেন, সোমনাথ চট্টোপাধ্যায়ের সঙ্গে কথা বলার জন্য। মলহোত্র কাল ফোন করেন সোমনাথবাবুকে। তিনি জানান, বিজেপি-র জাতীয় পরিষদের বৈঠক ২০ তারিখ। সর্বদলীয় বৈঠকও ওই একই দিনে হওয়ায় আডবাণীর পক্ষে সর্বদলীয় বৈঠকে আসা সম্ভব নয়। কিন্তু সোমনাথবাবু জানিয়ে দেন, বিষয়টি নিয়ে সবাইকে বলা হয়ে গিয়েছে। এখন দিন বদলানো কঠিন। এই পরিস্থিতিতে স্থির হয়, আডবাণীর পরিবর্তে বিজয় কুমার মলহোত্র বৈঠকে হাজির হবেন।

প্রায় দু'দশক আগে উত্তরপ্রদেশে বিধানসভা এবং বিচারব্যবস্থার মধ্যে তীব্র সংঘাতের সৃষ্টি হয়েছিল। বিধানসভা কয়েক জন বিধায়ককে বহিষ্কার করেছিল। কিন্তু আদালত তাদের বেকসুর খালাস করে দেয়। এ নিয়ে দু'পক্ষে বিবাদ বাধলে উত্তরপ্রদেশ সরকার বিষয়টি কেন্দ্রকে জানাতে বাধ্য হয়। কেন্দ্রীয় মন্ত্রিসভা প্রেসিডেন্সিয়াল রেফারেন্স-এর সিদ্ধান্ত নেয়। রাষ্ট্রপতি সুপ্রিম কোর্টের মতামত জানতে চান। তখন সুপ্রিম কোর্ট বিচারব্যবস্থা এবং আইনব্যবস্থার বিবাদ মেটাতে একটা নির্দেশিকা দেয়। সেই অনুসারে, আইনসভার যদি কোনও পদ্ধতিগত ত্রুটিও থাকে, তবুও আদালত তাতে নাক গলাতে পারে না। একমাত্র আইনসভা যদি কোনও 'অবৈধ' কাজ

এর পর ছয়ের পাতায়

ORDINANCE ▮ Panel on minority educational institutions will be empowered to decide on status

Minority status: Centre to amend Act

VARGHESE K GEORGE
NEW DELHI, JANUARY 6

THE Union Cabinet today decided to bring in an ordinance empowering the National Commission for Minority Educational Institutions (NCMEI) to decide on the status of minority educational institutions.

The ordinance will amend the original act that constituted the commission, give it more power including "to decide on all questions relating to the status of any institution as a minority educational institution".

However, the status of universities does not come under the NCMEI's purview.

For the purposes of the NCMEI Act, only five communities are notified as minorities — Muslims, Christians, Buddhists, Parsis and Sikhs.

MHRD officials were unwilling to clarify how the status of linguistic minorities will be decided or if the proposed ordinance will expand the NCMEI's scope in this regard.

Amendments to the commission act have been necessitated by the exemption granted to minority institutions from reserving seats for Scheduled Castes, Scheduled Tribes and socially and educationally backward classes as a per a constitutional amendment in December.

Since many private educational institutions are likely to claim minority status to insulate itself from quota provisions, a mechanism to identify genuine institutes has been urged.

The ordinance will give NCMEI power to give and take away minority status from any institution. It will also enable the commission to probe complaints regarding violations of the rights of minority institutions. The panel will also have the powers to outline the criteria for minority status.

Defence Minister Pranab Mukherjee said the ordinance will be replaced by an Act in the Budget session.

Parliament passed the Constitution (93rd Amendment) Bill 2005 during the recently-concluded winter session. The bill exempted minority institutions from the purview of reservation.

The ordinance will also empower the NCMEI to proceed against institutions which are misusing minority status.

During last month's debate on the quota legislation in Parliament, Left parties had raised questions about many commercially-run institutes claiming minority status.

More names in OBC list

NEW DELHI: The Union Cabinet today approved the inclusion and modification of certain castes and communities in the central list of Other Backward Classes (OBCs). The new communities that have been included are from Andhra Pradesh, Bihar, Delhi, Goa, Gujarat, Karnataka, Madhya Pradesh, Orissa, Pondicherry and Uttar Pradesh, Defence Minister Pranab Mukherjee said after the Cabinet meeting chaired by PM Manmohan Singh.

The new additions, who are not privileged, would benefit from reservation in direct recruitment in civil services and posts under the central government, he said. The eligible persons can also secure financial assistance from the National Backward Classes Finance and Development Corporation for skill development and setting up of self-employment ventures, Mukherjee said.

The new castes and communities included are: Sikligar and Siddula in AP, Bakho (Muslim) and Thakurai (Muslim) in Bihar, Rai-Sikh (Mahtam) in Delhi, Bhandari-Naik' in Goa, Dhangar as synonym of Bharwad and Jagri, Khavas and Sagar castes/communities of Gujarat. They also include Aryakshatriya and Sarige as synonyms of Somavamsha Arya Kshatriya and Hindu Sadaru castes/communities of Karnataka. *— PTI*

7 JAN 2006

Court strips AMU of minority tag

RAJESH Kumar Pandey
Allahabad, January 5

A DIVISION Bench of the Allahabad High Court has affirmed last October's judgment by a single judge that Aligarh Muslim University is not a minority institution. The single judge had also quashed an HRD ministry notification (dated February 25, 2005) permitting AMU to reserve 50 per cent seats for Muslim students in admissions.

The division Bench on Thursday said the students who had been given admissions earlier under the quota system and who were studying at AMU would continue to do so. But the court made it clear that from 2006-07, admissions at AMU will be "free to all".

The Bench — comprising Chief Justice A.N. Ray and Justice Ashok Bhushan — struck down sections 2(L) and 5(2)(C) of the Aligarh Muslim University (Amendment) Act 1981, which granted minority institution status to the university. The court said the sections were ultra vires to the Constitution.The Bench was of the view that the Supreme Court had already — in the Azeez Basha case (1968) — taken the view that AMU was not a minority institution and enactment of a law by Parliament could not overrule the judgment.

In the Azeez Basha case, the Supreme Court had said AMU was not a minority institution as it had been created by an act of Central legislature. Parliament had later passed the AMU Amendment Act 1981.

The high court passed the judgment on special appeals filed by the HRD ministry and AMU. In these, the ministry and AMU had challenged the verdict given by the single judge in October, declaring that AMU was not a minority institution.

In Aligarh, there were mixed reactions to the judgment. Shireen Moosvi former dean, faculty of social science, said she was opposed to religion-based reservations from the very beginning. Even if the law allowed AMU to do so, university authorities should not impose the new reservation policy, she said.

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