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Founder Editor:

M.N.Roy

Advisors:

Dr. Narisetty Innaiah

Editor:

Mahi Pal Singh

Editorial Board:

Ramesh Awasthi, Dr. Deepavali Sen, Vidya Bhushan Rawat, Qurban Ali, N.D. Pancholi (Ex-officio Member)

Publisher and Printer:

N.D. Pancholi

Send articles and reports to:

Mahi Pal Singh at G-3/617, Shalimar Garden Extension I, Rose Park, Sahibabad, Ghaziabad-201005. (U.P.) Ph. 09312206414

or E-mail them to:

theradicalhumanist@gmail.com or mahipalsinghrh@gmail.com

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THE RADICAL HUMANIST:

N.D. Pancholi, G-3/617, Shalimar Garden Extn. I Rose Park, Sahibabad, Ghaziabad-201005 (U.P.) Ph. 0120-2648691, (M) 9811099532 E-mail : ndpancholi44@gmail.com

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A test of freedom: ‘To be anti-Indian is not a criminal offence, and it is definitely not sedition’

Fali S. Nariman

Sedition in India is not unconstitutional, it remains an offence only if the words, spoken or written, are accompanied by disorder and violence and/ or incitement to disorder and violence

“Sedition” is in the air. And a lot of hot air has been generated after the JNU incident.

It needs to be cleared. Under Macaulay’s penal code, “sedition” was declared, way back in the year 1898, as meaning: The bringing or attempting to bring into hatred or contempt (by words spoken or written, or by signs or by visible representation, or otherwise) “disaffection towards the government established by law.”

In British India, the Federal Court had wisely said (way back in 1942) that it was not any want of affection for government that constituted the offence of sedition but “only such disaffection as was accompanied by an appeal to violence and a disruption of the public order”. The essence of the offence, the Federal Court said, was “the disturbance of the peace and tranquillity of the state”.

But the wisdom of this decision of British India’s Federal Court was questioned and the decision was overruled five years later by the Privy Council, then the last court of appeal.

Lord Thankerton spoke for the Privy Council when he said: “The word ‘sedition’ does not occur in Section 124A, it is only found as a marginal note to Section 124A, and is not an operative part of the section, but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note. In England, there is no statutory definition of sedition; its meaning and content have been laid down in many

decisions, some of which are referred to by the chief justice of Bombay, but these decisions are not relevant when you have a statutory definition of that which is termed sedition, as we have in the present case. Their lordships are unable to find anything in the language of Section 124A which could suggest that ‘the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency’. Explanation 1 to Section 124A provides, ‘The expression “disaffection” includes disloyalty and all feelings of enmity.’ This is quite inconsistent with any suggestion that ‘excites or attempts to excite disaffection’ involves not only excitation of feelings of disaffection, but also exciting disorder. Their lordships are therefore of opinion that the decision of the Federal Court in AIR 1942 FC 22 proceeded on a wrong construction of Section 124A, penal code.”

Fortunately for the people of India, India’s Supreme Court, when required to revisit previously decided cases — in 1962, when a challenge was made to the constitutional validity of the offence of sedition as incorporated in Section 124A of the Indian Penal Code — held that it preferred to follow the more liberal interpretation of the term “sedition” as given by the Federal Court in 1942 rather than the pedantic and strictly “colonial” interpretation of “sedition” rendered in the Privy Council opinion of 1947.

As a consequence, “sedition” in India is not unconstitutional, it remains an offence only if

the words, spoken or written, are accompanied by disorder and violence and/ or incitement to disorder and violence. Mere hooliganism, disorder and other forms of violence, though punishable under other provisions of the penal code and under other laws, are not punishable under Section 124A of the penal code. Likewise, mere expressions of hate, and even contempt for one's government, are not sedition. When a person is dubbed "anti-Indian", it is distasteful to India's citizenry, but then to be "anti-Indian" is not a criminal offence, and it is definitely not "sedition". (It only means that you are a freak, and that it is high time to have your head examined!)

Citizens in India are free to criticise their governments at the Centre or in the states — which they do quite frequently, and boldly and fearlessly as well; as they must, because that is what a participatory democracy is all about. It behoves the men and women of the law who advise government to impress upon their client that freedom of speech and expression is a fundamental right guaranteed under Article 19(1)(a) of the Constitution — and to remind all governments (present and future) that "sedition" had been deliberately and designedly excluded by the framers of the Constitution from Article 19(2), the exception clause to free

speech, only because, as the founding fathers had said, "Sedition is not made an offence in order to minister to the wounded vanity of governments!"

The law in Singapore and Malaysia is different — they have followed the strict interpretation given by the Privy Council, and governments there have welcomed the interpretation, but alas, not their citizens. At a conference held some years ago in Kuala Lumpur, a prominent retired judge of the Court of Appeal of Malaysia said to a crowded hall of 500 delegates (at the International Bar Association conference held there): "Our written constitution guarantees freedom of speech" (loud applause). He then paused, and went on to frankly say: "but it does not guarantee freedom after speech."

In India, we cannot possibly countenance — we simply cannot live under — a regime that expresses like sentiments. As one of the judges in the Constitutional Court of South Africa recently said: "Speech is really free only when it hurts."

The writer is an eminent jurist and senior advocate to the Supreme Court.

Courtesy **Indian Express**

Mahatma Gandhi on Dissent

I have repeatedly observed that no school of thought can claim a monopoly of right judgement. We are all liable to err and are often obliged to revise our judgements. In a vast country like this, there must be

room for all schools of honest thought. And the least, therefore, that we owe to ourselves as to others is to try to understand the opponent's view-point and, if we cannot accept it, respect it as fully as we expect him to respect ours.

:- Mahatma Gandhi

‘Something Extraordinary is Going on in this Country’

Prem Shankar Jha

The hyper-nationalism being fuelled by the government’s aggressive stand on the JNU issue is proof that the RSS senses waning support for the BJP across the country.

‘Something extraordinary is going on in this country’, so said two respected Supreme Court judges on the Kanhaiya Kumar bail issue. Supreme Court judges are not given to expostulation. So when these judges brushed aside legal objections and decided to hear a simple bail petition in the highest court of the land, their decision to intervene expresses their mounting disquiet even more loudly than their words.

The ‘something extraordinary’ that has so distressed them is the re-emergence of a totalitarian threat just when most Indians have assumed that their democracy is finally secure.

These are some of the recent events that have made this threat apparent:

A small fringe group of students met to protest against “the judicial killing of Afzal Guru

and Maqbool Bhat” and express solidarity with “the struggle of Kashmiri people for their democratic right to self-determination”. The meeting was cancelled by the vice chancellor at the last moment, but the students insisted upon their freedom of speech and went ahead with it nonetheless. Some inflammatory anti-India remarks were made by a small group of Kashmiris. A fracas ensued, at the conclusion of which the president of the main JNU students’ union Kanhaiya Kumar gave a fiery speech defending freedom of speech and thought but explicitly condemning “any act of violence, terrorism, any terrorist act, or any anti-national activity.”

Despite this, the Delhi police came to the campus four days later and arrested Kanhaiya on charges of sedition and criminal conspiracy. It did so because Union home minister Rajnath Singh received a phone call from BJP MP Mahesh Giri, and tweeted to the world that “anyone who shouts anti-India slogans & challenges nation’s sovereignty & integrity while



living in India, will not be tolerated or spared”.

Abuse of the law

Singh did this without bothering to find out what the demonstrators said and whether it qualified as sedition. Had he been more circumspect he would have found that even the most extreme slogans raised on February 9 did not qualify as sedition. In five separate past judgments the Supreme Court had drawn a sharp distinction between the advocacy (of) and incitement (to) violence, and defined sedition as an “incitement to imminent lawless action”. Based on this

definition it had rejected as sedition the slogans raised by some Sikhs on the day Indira Gandhi was assassinated — “Khalistan zindabad, the time has come for us to expel Hindus from Punjab and seize the reins of power” — because it was an expression of desire and did not suggest when or how it should be carried out.

But Singh did not have the patience to educate himself on the finer points of the law, and instead issued the order to arrest Kanhaiya and other demonstrators, leaving it to the police to find sufficient grounds for doing so. In doing so he broke the boundary that separates legal process from witch hunt and mob rule. What followed shows how far we have fallen.

While Kanhaiya was in police custody three lawyers – Vikram Chauhan, Yashpal and Om Sharma – beat him mercilessly for three hours. The police watched the beating without raising a hand to stop it. In secretly filmed interviews with reporters from India Today, the trio boasted that they had planned the beating administered to journalists, students and professors who attended Kanhaiya Kumar’s bail hearing inside the Patiala house court on February 15.

Via Facebook, Chauhan had issued nine

appeals to ‘boys’ from all over Delhi to come to Patiala house and teach the traitors a lesson. The three had initially toyed with a plan to throw a bomb, but settled for administering a sound beating. The beating was watched by the police and CRPF on duty, several of whom expressed their regret at not being able to join in because they were wearing their uniforms.

Yashpal boasted that he was looking forward to being arrested and would not ask for bail because he wanted to be in the same jail as Kanhaiya so that he could beat him up some more. Journalists present at the court and lawyers who watched the many clips that went viral that same night identified several of the lawyers who beat Kanhaiya as members of the BJP’s legal cell, the Adhivakta Sangh.

That evening, on Rajdeep Sardesai’s prime time news channel, Sharma aggressively justified his actions on the grounds that everything he had done was in service of ‘Bharat Mata’, and asserted five times that he would kill anyone who dared to speak against ‘Mother India’.

Silence on the part of the Modi government

What is most disturbing is the Modi government’s lack of reaction to the fracas at the courthouse. Police commissioner B.S. Bassi described it as a minor scuffle caused by students and professors who refused to vacate seats in the courthouse reserved for lawyers. When Finance Minister Arun Jaitley, who had been in another courtroom emerged, the journalists who were being pummelled on the ground in front of him appealed to him for help, but he ignored them and walked away.

The judge could not spare 23.05 minutes to watch the video of Kanhaiya’s speech to decide whether or not to grant him bail, instead remanding him to Tihar jail for another 15 days. But the same court, if not judge, gave bail to

Sharma, Yashpal and Chauhan within hours.

As for Prime Minister Modi, he has responded to the rise of mob rule on February 15 in much the same way as Hitler responded to Kristallnacht – the Nazi storm troopers’ attack on German Jews in 1938 — by completely ignoring it and everything that led up to it.

More than anything else, it is this calculated silence that makes it necessary to face the possibility that the Delhi incident is not an accidental confrontation that went out of control but a first testing of the waters of Hindu chauvinism to see if it can be harnessed to realising the RSS’s long-cherished dream of creating a ‘*Hindu Rashtra*’. For, with the BJP at last in unfettered power, and two devoted *pracharaks* at the helm of party and government, it cannot but believe that its time has finally come.

The RSS’s hyper-nationalism

The RSS stoutly claims that it is nothing but a social organization that leaves politics to the BJP. Over the 68 years that have passed since the assassination of Mahatma Gandhi – culminating in the benign tenure of Atal Bihari Vajpayee as prime minister from 1998 to 2004 – we have lulled ourselves into believing this.

But the RSS has learnt nothing and forgotten nothing. By an extraordinary feat of intellectual gymnastics, it remains convinced that snatching independence from the British was not a triumph for Hindu India. Not even the partition, which removed two-thirds of the Muslims and gave the Hindus an 83% majority was sufficient to create a **Hindu Rashtra**. For the RSS, the Hindu Rashtra must be a country purged of all ‘impure’ elements.

With non-Hindus still making up almost a fifth of the country’s 1.3 billion population, this purging cannot be physical. So, it must be cultural. But

as the European nation states have found to their immense cost, cultural homogenisation cannot be achieved without the sustained use of force. The RSS is therefore not only a totalitarian organisation, but also one that cannot afford not to be one.

One has only to read Jawaharlal Nehru’s letters to chief ministers in 1947 and 1948 to see how little the RSS has changed. On December 7, 1947 he wrote: “We have a great deal of evidence to show the RSS is an organisation which is in the nature of a private army and which is

definitely proceeding along the strictest Nazi lines, even following the techniques of organisation. It is not our desire to interfere with civil liberties. But training in arms of a large number of persons with the obvious intention of using them is not something that can be encouraged.”

Similarly, on January 5, 1948 he wrote: “The RSS has played an important part in recent developments and evidence has been collected to implicate it in certain very horrible happenings. It is openly stated by their leaders that the RSS is not a political body but there can be no doubt that policy and programme are political, intensely communal, and based on violent activities. They have to be kept in check”. That was 25 days before Mahatma Gandhi was assassinated.

On December 5, 1948, looking back on that tragic year, he wrote: “The RSS has been essentially a secret organisation with a public façade, having no membership, no registers, no accounts... they do not believe in peaceful methods or Satyagraha. What they say in public is entirely opposed to what they do in private.”

Reading these excerpts 68 years later, one is overwhelmed by a sense of *déjà vu*. For the RSS

is still a ‘social’ organisation that operates through more than two dozen shadowy, unregistered organisations. Of these the Vishwa Hindu Parishad, the Bajrang Dal, the Dharma Jagaran Samanwaya Samiti, the Hindu Dharma Sena, the Hindu Janjagruti Samiti, the Durga Vahini, the Adhivakta (lawyers’) Sangh, and of course the ABVP, are the most aggressive.

It is we who constitute the rest of the nation who persuaded ourselves that Vajpayee and Advani were not an aberration and that the entire Sangh Parivar had changed. And we were not entirely wrong. For, responding to the inexorable pull of the simple majority voting system, which forces all political parties to moderate their ideologies and woo centrist opinion if they wish to capture power, Vajpayee and Advani had pulled the BJP a long way away from the RSS, and made it entirely acceptable to other parties as a coalition partner. This enabled them to give India one of its best governments since independence. But the RSS had only gone into hibernation and, as his ‘new year musings’ show, no one knew this better than Vajpayee himself.

Step-by-step descent

Had the NDA won the 2004 elections, both the economics and the politics of India would have taken a different turn. But the RSS was able to seize upon its defeat to discredit not only Vajpayee, but also his message. With Modi as prime minister and Amit Shah as BJP president, the four-decade long attempt to distance the BJP from the RSS has been reversed. As of today, the chain of communal provocations and cultural onslaughts that began with ‘love jihad’, ‘ghar wapasi’ and the casual dismissal of the Agenda for Alliance signed with Mufti Sayeed, has shown that it is the RSS that is in the driver’s seat. Throughout this step-by-step descent into mob rule Modi, Shah and Singh

have maintained a studied silence. But the administration and the police have already learned the lesson it is meant to convey. In Ahmedabad on the evening of February 27, 2002, TV channels showed clips of charred corpses being removed from the Sabarmati express at Godhra. The next day, the Vishwa Hindu Parishad called a bandh and Modi announced state sponsorship for it. This handcuffed the police and prevented them from rounding up ‘history sheeters’ in Ahmedabad and other cities, to prevent riots from breaking out the next day. The result was some 2,000 dead in terrible communal riots. Today, state sponsorship of violence is no longer needed. Modi and Shah are achieving the same goal through their silence.

The most puzzling feature of the RSS’s campaign is that it seems utterly unfazed by the inevitable loss of electoral support that will follow the resurgence of ideology within the BJP. In 50 assembly by-elections in 2014, held to fill seats whose incumbents had moved to the Lok Sabha, the BJP was able to hold on to only 19 of the 40 seats it had held before. This was followed by its shattering defeats in the assembly elections in Delhi and Bihar.

To stand a chance of winning the 2019 general elections, the BJP must widen its appeal and actively court the support of coalition partners.

Under Modi and the RSS, it is doing the opposite. Could this mean that the RSS is planning to ‘derail’ democracy once more? The possibility is no longer remote, because hyper-nationalism has been the final card played by governments of other countries that have felt their support waning. Delhi shows that the BJP is beginning to play it too.

Prem Shankar Jha is the *Managing Editor of Financial World* and a senior journalist.

Courtesy **The Wire**, 26.2.2016

A Danger to Democracy

Rajindar Sachar

There is a figurative way of attributing intense stupidity to an individual or a political party in the idiom, 'He is his own worst enemy.' This occurred to me by the idiotic way BJP Central Government has handled the recent student protest at JNU. According to Union, a meeting was held in the campus by some outsiders wherein slogan favoring Afzal Guru were raised by them. Students maintain that they condemned these slogans and they cannot be blamed. In the normal course the protest would have passed off without any problem and forgotten.

But then a curious turn of events which one suspects was a planned conspiracy by the BJP and its student wing the ABVP. Mahesh Giri M.P. (Delhi) and its student wing filed a complaint before the police, which registered a case of sedition against unknown persons. It is impossible to accept that the police will act so unprofessionally except under political pressure.

A further mystery was added by the Home Minister Raj Nath Singh's statement that Hafeez Mohd Saeed, the Head of internationally known terrorist group situated in Pakistan, who is said to be responsible for various terrorists attacks in India including the recent one at Pathankot, was so short of work that he has had to stoop to provoke JNU students in order to boost the morale of his followers - how nitwit can be our NIA (National Investigation Agency).

Since then, it is quite clear that this incident at JNU is being exploited by BJP's dirty campaign cell to malign the opponents of BJP and cause permanent danger to the internationally respected J.N.U. The latest rowdyism and violence by B.J.P. affiliated lawyers in even threatening Lady Journalists and even beating Students and in not allowing

the court proceedings at Patiala House is shameful.

To add further shame, the team of Senior Advocates sent by the Supreme Court are abused and not allowed to carry out its mandate. Hard to believe that this conduct of junior lawyers could have been done excepting at the mandate of BJP's high ups to defile our judicial system. Would Government consider such acts as treason and take action (not according to my view of law) based on the same view as taken by the government in the J.N.U. case.

It is needless to repeat that all earlier allegation of what happened at the JNU on 13th Feb 2016 pales into insignificance at what the BJP controlled elements are doing to spread fear under the cover of fighting sedition - no private persons can take the law in its own hand – it is only the State which can so Act - no bunch of self appointed false patriots can defy the law. As it is even the Police action is vindictive and illegal. It is well settled by Supreme Court decisions that mere speech, howsoever strong against the government, is not sedition, unless accompanied by some violent act, of which there is not even a whisper against students. Let me quote what Gandhiji said when he was prosecuted for sedition in 1922, "Section 124A, i.e., under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen; affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence." (emphasis supplied)

Let B.J.P. not tout its patriotism because this noble sentiment is so cynically exploited by politicians that it made the English writer Samuel Johnson give a warning, “Patriotism is the last refuge of Scoundrels.”

Human Rights can never be violated under any circumstances. Let me quote the warning given by USA media within a couple of days of September 11, 2001 massive tragedy; Washington Post wrote, “The country cannot allow terrorists to alter the fundamental openness of US society or the Government’s respect for civil liberties.”

Philadelphia Inquirer wrote, “We feel rage. We feel fear. We are bewildered. We can’t avoid acting on those feelings. Yet we must calibrate our response against the ideals of liberty and tolerance that have made this nation work so well for so long.”

Thus Laura W. Murphy, Director of the ACLU’s Washington office criticized the U.S. Patriot Act thus: “This law is based on the faulty assumption that safety must come at the expense of civil liberties.”

Mr. Muggeridge, former Editor of Punch (UK) once warned – “The choice for us is between security and freedom. And if we ever ceased to prefer the later, we should soon find that we had nothing of any worth left to secure anyway.”

BJP’s antipathy to freedom of Speech has now international condemnation and also has led to anti BJP rallies throughout India.

In this matter of JNU the top of B.J.P. leadership has acted so stupidly that it has allowed the Congress and Rahul Gandhi to be seen as champions of dignity of Afzal Guru and Kashmir, when in reality the conduct and action in the case of Afzal Guru by the Congress in the past had incurred it massive condemnation

in J&K when it ignored the appeal of large section of abolitionists of death penalty not to hang Guru. But the most shameful part was when the Congress hanged him in utter secrecy, against the well accepted law that convict’s family must be allowed a last opportunity to meet him before execution. Massive protests then demanded an innocuous and justified request to be allowed to take Guru’s body to be cremated according to tradition at the family graveyard in Kashmir. But the Congress/UPA government rejected it cynically because of pending General Elections in India. J&K people never forgave the Congress as the results of latest state J&K elections have shown. Likewise B.J.P.’s false pretence of patriotism when it is having a coalition with Mufti of P.D.P. in J&K, which has always condemned the action taken against Afzal Guru. In that context the BJP Government’s dishonesty in proceedings against the JNU Students in the name of Patriotism is the limit of hypocrisy in politics.

The happenings in Patiala House Courts would have pleased Marx who envisaged the ultimate victory of proletariat when “State will wither away”. This having not even happened in the USSR and Mao’s China, has occurred in India – this is the only excuse which Modi Government can put forward at its shameful spectacle of having to carry Kanhaiya Kumar from the court to prison in a disguise and in a closed police van protected by hundreds of policemen for fear of the police being overwhelmed by a coterie of B.J.P. lawyers and other goons from the custody of mighty Indian State.

New Delhi, 22.02.2016

*(Justice Rajindar Sachar has been
Chief Justice, High Court of Delhi and
President, PUCL, India.
rsachar1@vsnl.net; sachar23@bol.net.in)*

Spare the students

Kuldip Nayar

Should students take part in politics was the question even before independence. The same debate raged when I was studying law at Lahore. We would skip classrooms on the call of Mahatma Gandhi or some other national leaders to show solidarity with the independence struggle. The agitation was against the British rulers and it never struck us that we were missing studies.

Even when Pakistan's founder, Mohammad Ali Jinnah, raised the slogan for a separate homeland for the Muslim community, we, the students, resisted the pulls of religion. True, the Hindus and Muslims had come to have separate kitchens, but we ate together and were getting food from both kitchens. The polarized atmosphere had little effect on us.

Today, the Akhil Bhartiya Vidhyarti Parishad (ABVP) is advocating soft version of Hindutva in universities across the country. The ABVP is the Muslim League of today. The Jawaharlal Nehru University (JNU) may be an island in the midst of a Hindutva sea. Yet, all credits to the university and its students that it has, more or less, preserved the idea of India—democracy, pluralism and egalitarianism. Unfortunately, the struggle to sustain secularism still continues.

A few days ago, some Muslim fundamentalist students, not more than five or six, spoilt the liberal image of the JNU and raised slogans, seeking India's destruction. The JNU's vice-chancellor, Dr. Jagdish Kumar, told me that their number was not more than a handful. But they had tarnished the image of the university.

The electronic media, in their attempts to improve TRP all the time, spread the impression as if the JNU was the epicenter of activities by fundamentalists and separatists. It was

suspected that even the video clip which was run throughout the day by a television channel was doctored.

Take, for instance, Vishwa Deepak's claims of grave lapses in the channel's coverage of the JNU sedition case. The journalist, who resigned from the channel, wrote: "We journalists often question others but ourselves. We fix others' responsibilities but not ours. We are called as the fourth pillar of democracy but are we, our organizations, our thoughts and our actions really democratic? This is not just my question but everybody else's too."

To a large extent, I agree with Deepak. We, journalists, often tend to preach more than practise. In his protest letter to his employers Deepak, while apologizing for the use of such words to describe the situation, asks: "Along with Kanhaiya (Kumar), we made many students appear to be traitors and anti-nationals in the eyes of the people. If anyone is murdered tomorrow, who will take its responsibility? We have not merely created a situation for someone's murder or to destroy some families but we have also created the conditions ripe for spreading riots and brought the country to the brink of a civil war. What sort of patriotism is this? After all, what sort of journalism is this?

Yet, I do not rule out the audacity of separatists to pay homage to Afzal Guru, who had plotted the attack on the Indian parliament. It is deplorable. But the question is should they be allowed to set an agenda for the nation when India's population has overwhelmingly come to cherish democracy and pluralism? The incident at the JNU should not be allowed to dilute the arduous work done to sustain pluralism when the country was divided on the basis of religion.

In fact, the JNU is like the Oxford at London or the Harvard in America. There is a liberal atmosphere and even the odd voices against general thinking are taken in their strides. None questions the motive because the basics are never doubted.

When then Prime Minister Indira Gandhi established the JNU, the purpose was to inspire students by her father's thoughts. A product of independence struggle, Nehru was the nation's icon, not of the Congress Party which, no doubt, led the movement to wrest the country from the exploitative British rulers. The purpose of Indira Gandhi, his daughter, was undoubtedly to perpetuate his name. But he was the real architect of Modern India and deserved to be remembered and followed.

Bangladesh does not have a similar institution. But Pakistan has Lamus at Lahore, similar to the JNU and same reputation. My personal experience testifies this. An engineering girl student asked me at a lecture in the campus why partition took place when people on both the sides were similar, ate the same food and wore the same dress.

The student was unbiased and indicated that the atmosphere remained unpolluted. And that was some 40 years ago. Today, the religious parties have hijacked the society to reap political gains. The most unfortunate part is that religion

has made deep inroads into the universities.

The RSS, which seems to guide the Narendra Modi government from its headquarters at Nagpur, is appointing to key posts such persons who are avowed followers of Hindutva philosophy. Distinguished scholars, known for their secular ideas, have been crowded out because the RSS does not want the students to be inspired by their example of not mixing state with politics. If a democratic polity has to have any meaning, it must stay away from religious identities which are now being refurbished.

Unfortunately, the other fields are getting affected. Take, for example, the incident at Patiala House Courts. A few lawyers, affiliated to the BJP, created rumpus and beat up the student leader and journalists when Kanhaiya Kumar was to be produced in the court. Kanhaiya's statement that he had nothing to do with the students who raised anti-India slogans did not relent the attackers, some of whom were said to be outsiders, wearing lawyers' robes.

It's time that all political parties put their heads together to consider steps which would leave the students only pursuing their studies instead of wasting their time in parochial politics. The nation will suffer if the students, who are idealist at that age, are not allowed to throw up such thoughts which in the long run will help the country to cherish its ethos.

The Radical Humanist on Website

February 2015 onwards 'The Radical Humanist' is available at <http://www.lohiatoday.com/> on Periodicals page, thanks to Manohar Ravela who administers the site on Ram Manohar Lohia, the great socialist leader of India.

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Mahi Pal Singh

Sedition Law And The Patriotism Of Those Who Have Never Been Patriotic

Sukumaran C. V.

Under the British rule, Mahatma Gandhi was charged with section 124-A and sent to prison. Section 124-A in Indian Penal Code is titled as ‘Sedition’ and the British created the Indian Penal Code to retain their undemocratic control over the country, and the ‘Sedition’ clause says:

“Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.- The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.”

When the Father of the Nation, the Mahatma, was being tried under this notorious section of the colonial law in 1922, he said: “Section 124-A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen.

Affection cannot be manufactured or regulated by law. What in law is a deliberate crime appears to me to be the highest duty of a citizen. To preach disaffection towards the existing system of Government has become almost a passion with me.”

The British used this law to crush the patriotism of the people before independence. And after independence the law has been used for the same purpose! And the UPA government used this colonial law to send Dr. Binayak Sen, the renowned human-rights activist, to prison. Dr. Saibaba, another human-rights activist is also charged with this draconian law. Now the ‘patriotic’ government that rules the country uses the same law against the JNU. I am a former JNU student and I know that JNU inspires the students to go beyond the theoretical dogmas that bind us to the political, religious and social oppression in the name of democracy. A university like the JNU is the oxygen of democracy, especially when democracy metamorphoses into fascism as is happening today in India. In a speech delivered at the Special Convocation of Allahabad University on December 13, 1947, Jawaharlal Nehru said: “A university stands for humanism, for tolerance, for reason, for progress, for the adventures of ideas and for the search for truth. It stands for the onward march of the human race towards even higher objectives.”

JNU is a university that stands ‘for humanism, for tolerance, for reason, for progress, for the adventures of ideas and for the search for truth.’ And those who have proved by their actions that they are against humanism, against tolerance, against reason, against progress, against the

adventures of ideas and against the search for truth won't like it. That is the reason behind accusing JNU of sedition.

If a person is charged with section 124-A, we can be sure that the person is a real patriot. The best way to smother dissent, the salient feature of democracy, is to dub it antinational. The right wing organisations have always tried to eliminate dissent and plurality in this fashion. But the irony as far as India is concerned is that it is the RSS, that was never patriotic when the British ruled and crushed India, leads this war of 'patriots versus anti-nationals'! See the patriotism of the RSS (the mentors of the ABVP) at a time when India needed it direly—during the tumultuous period of Quit India Revolt. Three months after the historic Quit India agitation was launched by the Mahatma, a British police commissioner reported (D. O. No 174-S dated Buldana, the 28th Nov. 1942): "The Rashtriya Swayam Sevak Sangh has however no plan to either fight Government or even to oppose it. ...In regards to the objects of the organization, the information so far received by me leads me to the conclusion

that the Sangh does not want to come into conflict with Government." And today they claim to be the patriots!

Independent India has never witnessed such an onslaught against dissent as it is witnessing now. It seems that we are in a position Ambedkar referred to in his 'Annihilation of Caste': "The assertion by the individual of his own opinions and beliefs, his own independence and interest as over against group standards, group authority and group interests is the beginning of all reform. But whether the reform will continue depends upon what scope the group affords for such individual assertion. If the group is tolerant and fair-minded in dealing with such individuals they will continue to assert and in the end succeed in converting their fellows. On the other hand if the group is intolerant and does not bother about the means it adopts to stifle such individuals they will perish and the reform will die out."

*Sukumaran C. V. is a former student of JNU
Courtesy Countercurrents.org, 15 February,
2016*

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N.D. Pancholi, Publisher, The Radical Humanist

JNU: This Time The RSS/BJP Has Bitten Off More Than it Can Chew

Seema Mustafa

NEW DELHI: Delhi police stood by and watched as a handful of BJP lawyers attacked all those who had gathered at the Patiala courts for the hearing of the case slapped against JNUSU President Kanhaiya Kumar. The lawyers—not more than 10 or 12—took the law into their own hands, assaulted the JNU faculty and students and then set about beating the reporters, snatching away their mobile phones (cameras are not allowed inside) to prevent them from filming the attack, tore their shirts and shouted at all to get out, “go to Pakistan.”

Journalists said this was completely unprecedented, the ferocity of the attack left them completely shaken, while the large contingent of police stood by as silent bystanders making no effort to intervene. A young TV journalist said that when she tried to ask the cops to intervene they asked her to leave the court, as they could do nothing to control the situation. All others confirmed this, with the initial un-doctored reports from the ground establishing the presence of the BJP supporting lawyers, the assault with the violence continuing for a while with a “anti nationals go to Pakistan” slogans and warnings, while the police watched. The lawyers took control of the courtroom, and the premises.

The day started with what many construed as a green signal from BJP president Amit Shah who clubbed the JNU faculty and students under the “anti national” brand in a fiery blog targeting Congress vice president Rahul Gandhi. Shah made it clear through the blog that the party was pushing the nationalist versus anti-national agenda, with JNU being used deliberately as the fulcrum to accelerate the BJP/RSS campaign and raise the decibels to strident levels.

The five questions from the blog reported by NDTV and others as well centre around :

1. Has Rahul Gandhi lent his voice to separatists in the country? Does he want another Partition?”
2. “The kind of statements that Rahul Gandhi and his party colleagues have delivered at the campus proves that there is no place for national interest in their thinking.”
3. “Rahul Gandhi hobnobbing with anti-national elements at JNU. Is this his definition of nationalism?”
4. “I ask Rahul Gandhi, was 1975 (Emergency) a demonstration of Congress commitment to democracy? Was Mrs.(Indira) Gandhi not Hitler-like?”

And then he goes on to state that “In the frustration of defeat, Rahul Gandhi is unable to tell the difference between anti-national and national interest.”

The BJP/RSS kidgloves are off with the nationalism debate being made to hit Delhi through the premier education institute in a bid to draw the lines, and polarise opinion. The rush reflects increasing desperation on part of the government, as the protests sharpen in the University and across the country with the Parliament session beginning next week set to be now submerged under Opposition anger.

The questions, given the severity of the anti-reaction from students particularly, thus arise:

1. Why has this government unleashed what is going to become a huge war pitting the students of this country against the Hindutva brigade?
2. Why has this government—through a series

of actions in campuses—turned the students against it, more so when the youth were its biggest supporters at one time. IIT-Madras, FTII, Hyderabad Central University, and now Jawaharlal Nehru University have been rocked by direct, undemocratic intervention by the Ministry of Human Resource Development in action that has virtually united the students against the government, and of course the BJP and RSS it represents.

This constituency, in immediate terms, now includes even those sections of the corporate media that had been supporting the government position on JNU but whose journalists at Patiala House have taken a beating. And the first reports from the ground by the young reporters speak of unprovoked brutality by the BJP lawyers, collusion by the police, and the severity of an attack on all those who were not wearing the black and white lawyers dress.

The attack on the earlier universities—IIT-M, FTII, HCU—was spearheaded, at least for the public, by the Ministry of Human Resource Development and Minister Smriti Irani. In that all intervention was orchestrated by HRD, with the University authorities being pressured directly to act against what was seen as dissent by groups in these educational institutions. In the Hyderabad Central University little would have been noticed had Rohith Vemula not committed suicide. And the persecution of five Dalit scholars leading the Ambedkar students Association—the one point of dissent and debate in HCU—would have gone unreported.

For JNU, HRD was reinforced by the Union Home Ministry as clearly there has been a conscious decision to up the scale. The very fact that the Home Minister was managing the ‘operation’ is an indication of the importance attached to it. When the protests grew, a shaky

Rajnath Singh came on to insist that the

students had links with terror mastermind Hafiz Saeed. He subsequently had to suffer the ignominy of a denial by the Lashkar e Tayaba mentor who said that he had not issued any such statement and that a fake account was being used to put words in his mouth. Interestingly the Indian Express, quoting intelligence sources, carried a detailed report of the fake account actually being fake.

Along with this there has been a concerted effort to create and push the stereotype of the “JNU student”. A musical troupe was detained by the police while on way to attend a Urdu festival currently on in the capital, and released later after being told by the cops that they appeared to be “JNU types.” And judging from their appearance, clearly the ‘type’ dresses in kurtas and jeans, sports beards, and thereby becomes the ‘dissenter’ that now constitutes the new Wanted list of the Delhi Police!

There is a visible strategy by the Hindutva brigade to crush dissent in educational institutions. The opposition to this has been factored in, at least to some extent, by the Nagpur strategists to achieve the goal of ensuring that the new generation of students enters campuses with possible reprisal for dissent in mind. And are thus more pliable and thereby more controllable. The effort is also to win over—through the threat of violence if not debate—the fence sitters by ensuring that they do not cross over to the dissent and debate side, but are “convinced” with the display of power and the brand of nationalism JNU has always been a pet peeve of the Hindutva brigade, following its inability to penetrate the University despite all out effort. This has clearly been a sore point that BJP leaders have never really bothered to disguise.

After HCU and the protests across the student community, the BJP/RSS was expected to

change course. At least momentarily. That this has not happened, but that the government has moved from Hyderabad to hit a major central university like JNU is a clear signal of a decision to clear campuses of ‘dissenters’ and kill debate and freedom of expression, so close to the campuses of Universities known for academic excellence.

Will this intimidation work? Momentarily, but not for long as swathes of Indians are being alienated. Students, teachers, Dalits, Women, Scientists, Writers—certainly not from just the Left or the Congress but largely independent—have come together to form a major resistance to the efforts to bludgeon the democratic rights made available to the people through the Constitution of India.

The reasons why JNU could prove to be the Sangh’s Waterloo:

1. It is recognised the world over as an educational institute of excellence and has a faculty and students used to high standards of freedom; its students are teaching in Universities across the world and the adverse response to the current developments are very visible already on the social media and in international media reports.

2. The blowback will be felt in the very states that the BJP is keen to control—Uttar Pradesh and Bihar—from where most of the students of JNU are drawn. A majority are from the backward and scheduled castes, again the constituency that the BJP had earlier claimed to be wooing but seems to be giving up on now.

3. The violent response by the state to a meeting inside JNU has stunned even those who had been critical of its politics. This is visible again from columns, articles and responses with the government fast acquiring the reputation of being anti-student. The unrest created by the government in the above named campuses is

fast coalescing and it is highly unlikely that the strong arm tactics will subdue the youth of this country to a point where opposition is stifled into asset.

4. The government has run into trouble—because of a series of omissions and commissions—with ex-servicemen, kisans, women, Dalits, minorities as clear disaffected constituencies. This constitutes a large section of the Indian population of which sections had supported the BJP in the Lok Sabha elections.

5. JNU will reverberate in the budget session of Parliament. The government will have no alternative to climb down from the violence it has escalated. Unless it moves to impose Emergency and crush all dissent within—that too temporarily as in 2016 the world is far more connected than it was in 1975.

Interestingly, the lawyers at Patiala court have managed to alienate the one constituency that had been supporting the BJP and the government on the JNU issue till early this morning: the media.

Journalists representing television channels and the print media were threatened, assaulted and in some cases severely beaten. Their mobile phones were snatched and as one of them said, “We were given a taste of brutal medicine.” TV journalists were interviewed by their own channels with a particularly shaken NDTV reporter in trembling voice narrating the sequence of events that together spelt a concerted effort to terrorise all inside the courtroom. At least one news channel that uses the word anti-national as freely at times as the BJP brigade, was also on the receiving end with its reporter at the spot intimidated by the BJP lawyers, as well as by the police that was present in large numbers but refusing to take protect those who were being openly assaulted.

Courtesy The Citizen, Monday, February 15, 2016

PUCL, Delhi condemns the action of Delhi Police in arresting JNUSU President on charges of sedition

It is shocking that the Delhi Police has arrested the President of the Jawahar Lal Nehru University Students Union (JNUSU) on the charges of ‘sedition’ –a provision of law about which Jawahar Lal Nehru, the first Prime Minister of India, had said in 1951, “Now as far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place...in any body of laws that we might pass. The sooner we get rid of it the better.”

The provision of section 124-A of the Indian Penal Code, which provide punishment for ‘sedition’ was enacted by the British to silence all opposition to its autocratic rule. This provision had been used by the British against Bal Gangadhar Tilak, Mahatma Gandhi, M.N. Roy, Maulana Hasrat Mohani, and many other freedom fighters. It is unfortunate that the governments in free India have been misusing this anachronistic colonial era law from time to time in order to silence the voices of dissent. The human rights organizations, especially PUCL, for many years have been campaigning

for its repeal.

The action of the Delhi Police is also in violation of the law laid down by the Hon’ble Supreme Court in the celebrated case “Kedar Nath Das Vs. State of Bihar” (AIR 1962 SC 955) which held that “...comments, however strongly worded expressing, disapprobation of the actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.” It appears that there was no intention on the part of the President of JNUSU to incite violence and therefore the action of the Delhi Police in arresting him is condemnable. PUCL appeals to the Home Minister (Central Government) to instruct Delhi Police to release the arrested leader immediately.

The governments should remember what Gandhi said in 1922 in his trial for sedition, “Affection cannot be manufactured or regulated by law.”

N.D. Pancholi, President, PUCL (Delhi

12th Feb. 2016

Martin Luther King, Jr. noted: “Lamentably, it is a historical fact that privileged groups seldom give up their privileges voluntarily.”

Let us in an upper caste-dominated society, acknowledge the vast undeserved space we occupy. Let us cede what has to be ceded.

“Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing.” Justice P N Bhagwati, former Chief Justice, Supreme Court of India, (1981)

''SAVEJNU'' SAVEDEMOCRACY

Pradeep, Rahul Yadav, Ankit Hans

'Hooliganism not nationalism': Three ABVP leaders resign citing JNU and Rohith Vermula incidents

'We can't be mouthpiece of such a government,' the student leaders said, 'which has unleashed oppression on student community'.

Dear friends,

We, Pradeep, Joint Secretary, ABVP JNU UNIT, Rahul Yadav, President SSS ABVP UNIT and Ankit Hans, Secretary SSS ABVP UNIT are resigning from ABVP and disassociating ourselves from any further activity of ABVP as per our difference of opinion due to the following reasons:

1. Current JNU incident.
2. Long standing difference of opinion with party on MANUSMIRITI and Rohith Vermula incident.

Anti-national slogans on Feb. 9 in university campus were very unfortunate and heart breaking. Whosoever responsible for that act must be punished as per the law but the way NDA government tackling the whole issue, the oppression on Professors, repeated lawyer attacks on Media and Kanhaiya Kumar in court premises is unjustifiable and we think there is a difference between interrogation and crushing ideology and branding entire left as Anti-national.

People are circulating * #SHUTDOWNJNU but I think they must circulate * #SHUTDOWNZEENEWS which has demeaned this world class institution, this biased ZEE news media generalize and related the act done by a few people to the whole student community of JNU. JNU is considered as one of the progressive and democratic institution where we can see intermingling of people from lower to upper income strata of

the society, notion of equality.

We can't be mouthpiece of such a govt. which has unleashed oppression on student community, legislature like O P Sharma, govt. which has legitimized the action of right wing fascist forces either in Patiala house court or in front of JNU north gate. Every day we see people assemble at front gate with Indian Flag to beat JNU student, well this is hooliganism not nationalism, you can't do anything in the name of nation, there is a difference between nationalism and hooliganism.

Anti-India slogans can't be tolerated in campus or any part of country, JNUSU& some left organization are saying that nothing has happened in the campus but here we want to stress that veiled persons in the event organized by former DSU persons shouted slogans BHARAT TERE TUKADDE HONGE of which there is concrete evidence in videos, so we demand any person responsible for the slogans should be punished as per the law, and in this whole process we also condemn media trial which has culminated in Anti-JNU sentiments throughout the country. Today we all must stand together to save JNU which has given us identity, we need to come across party lines to save reputation of this institution, to save future of JNUites as more than 80% of students don't belong to any political party so let's unite to save this JNU culture.

I V A N D E M A T R A M || J A I B H I M || J A I B H A R A T |

Lawyers protest against violence in Patiala House Courts



Can such violence by the goons in black coats lead to the rule of law, a must for a civilized society?

Dispelling the bad impression created against the lawyers in the wake of Patiala House incidents, today, a large number of lawyers took out a procession from Supreme Court of India to the office of the Bar Council of India (BCI) holding placards condemning 'hooliganism in courts'. Lawyers practicing in various courts of Delhi marched peacefully under the banner 'Lawyers for Democracy' to the office of the Bar Council of India and submitted a memorandum seeking immediate disciplinary proceedings against those lawyers who engaged in violence in Patiala House Complex on 15th and 16th. Mr. Somdatta Sharma, The General Secretary of 'All India Lawyers Union' while addressing the gathering reminded the lawyers about the onset of infamous emergency and role of lawyers in

protecting the 'Rule of Law'. The President of PUCL, Delhi Mr N.D. Pancholi recalled the trial of accused in Parliament Attack case. According to him, even the accused in Parliament attack case did not suffer any harassment while they were attending the trial. Mr Rajendra Pal Gautam, the Member of Delhi State legislative Assembly said that the undemocratic forces are trying to convert the country as Pakistan and the lawyer's community which had a major role in the Freedom Struggle Movement should come forward against any such activity which is against Democratic values. The lawyers who attended resolved to be united against any attempt to subvert the constitutionalism.

Courtesy **Live Law News Network, February 24, 2016**

"The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing." Justice K K Mathew, former Judge, Supreme Court of India, (1975)

Dissent and freedom in India: Full text of Amartya Sen's lecture

Amartya Sen

*We have a tradition of tolerance and plurality.
But we — and the courts — have to work hard to preserve it*

I begin on a self-indulgent note. “How is Amartya?” asked my uncle Shidhu (Jyotirmoy Sengupta) — cousin of my father — in a letter written from Burdwan Jail, on August 22 of 1934, before I was one. He complained about the name “Amartya”, given to me by Rabindranath Tagore, and argued that the great Tagore had “completely lost his mind in his old age” to choose such a “tooth-breaking name” for a tiny child. Jyotirmoy was in jail for his efforts to end the British Raj. He was moved from prison to prison — Dhaka Jail, Alipur Central Jail, Burdwan Jail, Midnapur Central Jail. There were other uncles and cousins of mine who were going through similar experiences in other British Indian prisons.

Jyotirmoy himself came to a sad end, dying of tuberculosis, related to undernourishment in the prisons. As a young boy I was lucky to have a few conversations with him, and felt very inspired by what he said and wrote. He was committed to help remove “the unfreedoms heaped on us by our rulers.”

How happy would Jyotirmoy have been to be in today’s India, with the Raj dead and gone, and with no unfreedoms imposed on us by the colonial masters? But — and here is the rub — have these unfreedoms really ended? The penal codes legislated by the imperial rulers still govern important parts of our life. Of these, Section 377 of the code, which criminalises gay sex, is perhaps the most talked about, but happily a Constitution bench of the Supreme Court is re-examining it. It is, however, often overlooked that the putting on a pedestal of the sentiments

of any religious group — often very loosely defined — is another remnant of British law, primarily Section 295(A) of the penal code introduced in 1927. A person can be threatened with jail sentence for hurting the religious sentiments of another, however personal — and however bizarrely delicate — that portrayed sentiment might be.

The Indian Constitution, despite claims to the contrary, does not have any such imposition. In a judgment on March 3, 2014, the Supreme Court in fact gave priority to the fundamental right of the people to express themselves, as enshrined in the Constitution. The Constitution’s insistence on “public order, decency or morality” is a far cry from what the organised political activists try to impose by

hard-hitting kick-boxing, allegedly guided by delicate sentiments. The Constitution does not have anything against anyone eating beef, or storing it in a refrigerator, even if some cow-venerators are offended by other people’s food habits.

The realm of delicate sentiments seems to extend amazingly far. Murders have occurred on grounds of hurt sentiments from other people’s private eating. Children have been denied the nourishment of eggs in school meals in parts of India for the priority of vegetarian sentiments of powerful groups. And seriously researched works of leading international scholars have been forced to be pulped by scared publishers, threatened to be imprisoned for the offence of allegedly hurting religious sentiments.

Journalists often receive threats — or worse — for violating the imposed norms of vigilante groups. The Indian media has a good record of standing up against intimidation, but freedom of speech and reporting need more social support.

To see in all this the evidence of an “intolerant India” is just as serious a mistake as taking the harassment of people for particular social behaviour to be a constitutional mandate. Most Indians, including most people who are classified as Hindu (including this writer), have no difficulty in accepting variations in food habits among different groups (and even among Hindus). And they are ready to give their children the nourishment of eggs if they so choose (and if they can afford them). And Hindus have been familiar with, and tolerant of, arguments about religious beliefs for more than 3,000 years (“Who knows then, whence it first came into being? ... Whose eye controls this world in highest heaven, he verily knows it, or perhaps he knows not,” Rigveda, Mandala X, Verse 129). It is a serious insult to Indians — and to Hindus in general — to attribute to them the strange claims of a small but well organised political group, who are ready to jump on others for violations of norms of behaviour that the group wants to propagate, armed with beliefs and sentiments that have to be protected from sunlight.

The silencing of dissent, and the generating of fear in the minds of people violate the demands of personal liberty, but also make it very much harder to have a dialogue-based democratic society. The problem is not that Indians have turned intolerant. In fact, quite the contrary. We have been too tolerant even of intolerance. When some people — often members of a minority (in religion or community or scholarship) — are attacked by organised detractors, they need our support. This is not happening adequately right now. And it did not

happen adequately earlier as well. In fact, this phenomenon of intolerance of dissent and of heterodox behaviour did not start with the present government, though it has added substantially to the restrictions already there. M.F. Husain, one of the leading painters of India, was hounded out of his country by relentless persecution led by a small organised group, and he did not get the kind of thundering support that he could have justly expected. In that ghastly event at least the Indian government was not directly involved (though it certainly could — and should — have done much more to protect him). The government’s complicity was, however, much more direct when India became the first country to ban Salman Rushdie’s *Satanic Verses*.

So what should we do, as citizens of India who support freedom and liberty? First, we should move away from blaming the Indian Constitution for what it does not say. Second, we should not allow colonial penal codes that impose unfreedoms to remain unchallenged. Third, we should not tolerate the intolerance that undermines our democracy, that impoverishes the lives of many Indians, and that facilitates a culture of impunity of tormentors. Fourth, the courts, particularly the Supreme Court, have good reason to examine comprehensively whether India is not being led seriously astray by the continuation of the rules of the Raj, which we fought so hard to end. In particular, there is need for judicial scrutiny of the use that organised tormentors make of an imagined entitlement of “not to be offended” (an alleged entitlement that does not seem to exist in this particular form in any other country). Fifth, if some states, under the influence of sectarian groups want to extend these unfreedoms through local legislation (for example, banning particular food), the courts surely have to examine the compatibility of these legislation

with the fundamental rights of people, including the right to speech and to personal liberties.

As Indians, we have reason to be proud of our tradition of tolerance and plurality, but we have to work hard to preserve it. The courts have to do their duty (as they are doing — but more is needed), and we have to do ours (indeed much more is surely needed). Vigilance has been long recognised to be the price of freedom.

Text of the annual Rajendra Mathur Memorial Lecture organised by the Editors' Guild of India in Delhi on February 12. Sen, a Nobel laureate in economics, is Thomas W. Lamont University Professor and professor of economics and philosophy at Harvard University.

Courtesy Indianexpress.com

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"I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if it needs be, it is an ideal for which I am prepared to die."

— Nelson Mandela

The Government Has a Duty to Protect the Minority Character of Aligarh Muslim University

Faizan Mustafa

Protection of minorities is the hallmark of a civilisation, said Gandhi. The framers of the constitution showed utmost sensitivity to the needs and aspirations of the minorities. G.B. Pant, while moving the resolution to set up an advisory committee on fundamental rights and the rights of minorities, explicitly stated that “satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free state of India... now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make progress; we cannot even maintain peace in an undisturbed manner.” Accordingly, special safeguards were guaranteed to the minorities and were incorporated in the chapter on fundamental rights with a view to inculcate in them a sense of confidence and security.

In this context, the recent decision of the Government of India opposing the minority character of Aligarh Muslim University and Jamia Millia Islamia University has shaken the confidence of the Muslim minority.

The assertion by the attorney general that the executive of a secular country cannot set up minority institutions and that the Government of India is in agreement with the 1967 five judge bench decision of the Supreme Court and two 2005 judgments of the Allahabad High Court in respect of Aligarh Muslim University, has initiated an avoidable political debate in the country. If the government wants to oppose the minority character of AMU, it should do it before a seven judge bench.

The importance of minority rights

A number of TV channels debated the issue

and did discuss the efforts of playing Muslims against Dalits and OBCs in the context of the all important Uttar Pradesh assembly elections. But most discussions missed out on the fundamental issues which are involved in this historic case of huge constitutional importance: Why have special minority rights been given in the constitution in the first place? Can minorities establish universities? How can the minority character of an institution be determined? Who would determine this status? Can fundamental rights be waived? Can parliament pass a law helping the incorporation of a minority university? If a minority institution accepts governmental supervision in order to ensure efficiency of administration and safeguard itself from maladministration, does it loses the minority tag?

Since universal individualistic rights were considered insufficient for the protection of the interests of the minorities, special rights were given to them. Article 29 gives a right to conserve a distinct culture, script and language. This can be best done in the minority educational institutions. Article 30(1) gives minorities, whether based on religion or language, the right to ‘establish and administer educational institutions of their choice’. Most of the minority institutions in the country are institutions of the linguistic minorities. Hindus too do run a number of minority institutions on the basis of their status in different states as a linguistic minority: hundreds of Sindhi, Tamil, Telugu, Gujarati minority institutions are flourishing in the country. A minority institution may reserve seats for the members of the minority which had established such an institution. Minority institutions under Article 15(5) are exempt from providing SC/

ST and OBC reservation.

The state under Article 30(2) cannot, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is a minority institution. The Supreme Court has given highly liberal interpretations to expressions used in Article 30, which is the only fundamental right which has not been subjected to any restrictions as far as the text of the constitution is concerned and thus has been termed as an absolute right. The apex court has held that term 'educational institution' includes a 'university.' Similarly it said expression 'of their choice' means 'of their choice' and it is within the power of minorities to expand their choice as much as they want. It is thus possible for a minority community to make a choice of a central university with some governmental supervision and whose degrees are recognised on par with degrees of other universities.

The Supreme Court has held "these provisions enshrined a befitting pledge to the minorities in the constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible..."

Supreme Court's argument on AMU

To say that Aligarh Muslim University is not a minority institution is to restrict the ambit of Article 30 of the constitution. TV anchors and BJP spokespersons are not fully aware of the evolution of minority jurisprudence through apex court decisions post 1967. The Supreme Court's line of argument in the Aziz Basha case had been as follows: since the Governor-General in Council established AMU, Muslims do not have the right to administer it. It is strange that

AMU was not a party before the Supreme Court. The conclusion of the court was primarily based on the Aligarh Muslim University Act, 1920. The court concluded that the Muslim community surrendered its minority character in lieu of the recognition of its degrees.

Parliament clarified the doubts raised in *Basha* by the 1981 Act that AMU was merely incorporated by Parliament and that the university had in fact been established by the Muslims themselves as 'an institution of their choice.' Parliament also clarified that MAO College and AMU are one and same. To say that *Basha* is still good law is to deny both the fact as well as law as it stands today after the 1981 amendment. The Allahabad High Court unfortunately termed the 1981 amendment as unconstitutional. The primary issue before the Supreme Court now is to examine the constitutionality of the AMU amendment of 1981. The only test to examine the constitutionality of central law is to ensure that the subject on which parliament has legislated must not be under the exclusive jurisdiction of the state assemblies. AMU is specifically mentioned at entry 63 of the Union list and therefore the legislative competence of parliament as to the 1981 amendment cannot be questioned. Even in the *Basha case*, parliament's power to make amendments in the AMU Act was upheld by the apex court.

Now what did parliament do in the 1981 Act? It deleted the expression 'establish' from the long title and preamble of the Act to make it clear that 1920 Act was not intended to establish AMU. Since *Basha*, it has been clearly held that the Muslim community will have the right to administer AMU if they had established it. Thus Parliament has removed the basis of the Supreme Court's decision by giving legislative recognition to the historical facts about the establishment of the university. Had the 1981

Act been before the Supreme Court in 1967, the court would not have held that AMU is not a minority institution.

In a catena of cases, the Supreme Court has held that judicial decisions can be rendered ineffective by parliament. Recently, the Modi government overturned a property case decided by the Supreme Court in favour of the family of the Raja of Mahmoodabad by promulgating an ordinance on enemy property. Similarly on *jalikattu*, a government notification had overturned an earlier Supreme Court decision. In the Vodafone case too, the apex court decision was overturned by a retrospective amendment. The 2005 Allahabad High Court decisions have gone against this well-known principle in quashing the 1981 amendment and questioning parliament's power to legislate.

No impinging of fundamental rights

Parliament has been prohibited from passing any law which impinges on fundamental rights.

"My friends, I have repeatedly said and say it again that India is like a bride which has got two beautiful and lustrous eyes- Hindus and Mussulmans. If they quarrel against each other that beautiful bride will become ugly and if one destroys the other, she will lose one eye. Therefore, people of Hindustan you have now the right to make this bride either squint eyed or one eyed. "

- Syed Ahmad Khan: excerpts from a speech delivered in 1883 in Patna.

But parliament has all the powers to enact laws for the protection of fundamental rights. The Aligarh Muslim University Act, 1920 was a law passed by the legislature to promote the fundamental rights of the Muslim minority. Similar laws have been passed in different states for incorporating number of minority universities. Several deemed universities of minorities have been established by the Ministry of Human Resource Development under Section 3 of the UGC Act, 1956.

The law is settled that fundamental rights cannot be waived. *Basha* wrongly held that the Muslim community in its long negotiations with the government had surrendered the right to administer Aligarh Muslim University. The media ought not to see this case from the communal angle. It is now for the apex court to decide these contentious and complex constitutional issues.

Faizan Mustafa is the Vice-Chancellor of NALSAR University of Law, Hyderabad.



Improving Collegium System

Satya Narain Shukla*

While the correctness of the Supreme Court judgment striking down the Constitution (99th Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 is debatable, one good fall out of the long overdue exercise undertaken by the central government to streamline the system for selection of judges for High Courts and Supreme Court has been belated realization by the Apex Court about the need for improving the existing Collegium System. In this connection suggestions were invited under the headings: Transparency, Eligibility criteria, Secretariat and complaints and the Central government was asked to draw up with the approval of the Chief Justice of India (CJI) a Memorandum of Procedure (MoP) for selection of SC/HC judges.

As per the newspaper reports, the Central Government invited suggestions from the state governments and High Courts, but the response has been rather poor which shows their non seriousness and indifference in even such an important matter regarding *fair* selection of *the most deserving* persons so essential for ensuring proper administration of justice for 'We the People'. It goes without saying that the Central government and the CJI must seize this opportunity of improving the existing opaque Collegium system for reinforcing the people's faith in the top judiciary of the country. This is also imperative for the much needed reforms in our present system of dispensation of justice down the line by the subordinate judiciary which is controlled by the High Courts. As Lord Krishna said in Bhagvat Gita, 'Whatsoever a highly placed person does, the same is done by others as well. Whatever standards he sets, people follow.'

There cannot be two opinions on that, like

Caesar's wife, the Judges of High Courts and Supreme Court must be above suspicion. It follows that, to ensure this, the procedure for their selection must be fair and transparent so that only the best persons of highest competence and integrity (both financial and intellectual) are selected. For this purpose the following measures need to be adopted-

- (i) The eligibility criteria for appointment as a High Court Judge need to be well defined and spelt out in the notice inviting Biodata/ CV from interested advocates to avoid unnecessary rush of applications by ineligible advocates. These should include: age limit – between 45 years and 55 years; outstanding academic record; professional experience – 15 years practice in the Supreme Court/High Court including experience, if any, as judicial member of a Tribunal; and at least 10 years experience as a Counsel for Central/ State Government/High Court/ State Legislature/ Public authorities/Undertaking(s) and Companies. The ratio of elevation from Advocates and District Judge should be 50:50 and the criteria for elevation should be merit with due regard to seniority. As in the case of super specialty courses in medical profession, caste or creed should have no place in the selection of the best available talent and persons of well known integrity only as High Court Judges.
- (ii) To keep the exercise within manageable limits and to avoid any complaints of favouritism or bias, the field of eligibility for elevation from High Court to Supreme Court should be limited to only the Chief Justices and the criteria of merit be followed strictly at the stage of their elevation as Chief Justice of High Court. A suitable proforma

containing all relevant information for judging their inter se suitability may also be prescribed by the Supreme Court.

(iii) The number of vacancies of High Court judges to be filled up be notified by the High Court Registry to the Chief Secretary, Principal Secretary to Governor, President of Bar Council of the state and the President(s) of the Bar Associations of the High Court and its Benches. Simultaneously, a public notice may be published in at least one National and one regional newspaper having maximum circulation in the state, inviting Biodata/CV within a month from the interested advocates in the proforma to be prescribed by the Supreme Court for this purpose. Likewise, notice for filling up vacancies in Supreme Court may also be displayed on the Website of that Court, at least a month before the date of the Collegium meeting, inviting applications from senior advocates and eminent jurists.

(iv) To facilitate evaluation of candidates on a uniform comparative basis, the proforma for submitting Biodata/CV for appointment as a High Court Judge be standardized and must contain information on all the relevant points such as date of birth; present and permanent address(es); academic qualifications beginning with graduation with year of passing, percentage of marks obtained, name of the University/ Institution and details of any Medals/Prize(s) won; year of enrolment as an Advocate and total period of practice in the High Court/ Supreme Court; total no. of cases argued *personally* in the High Court/Supreme Court; details and outcome of the 3 most important cases argued which involved interpretation of a constitutional/ statutory provision; period(s) of working as counsel for the Central/State Government, High Court/State Legislature/public sector

undertaking(s) along with number of cases handled and the outcome thereof- won, lost, and pending; year wise Income Tax paid on the professional income in the last 10 years; details of legal aid cases conducted with outcome thereof.

(v) The applicants must also file an affidavit about their family background including relationships with Supreme Court/ High Court judges and national/state level politicians, and their political affiliation, details of movable and immovable assets of self, spouse, and dependents including stakes in companies, any criminal cases, pending or decided against him/ her with details i.e. crime no., Act and Section(s) and the outcome of decision, details of any strictures or adverse comment(s) against the applicant in any order/judgment of any Court, details of complaint, if any, to the Bar Council of India/State against the applicant along with the present status/ outcome thereof.

(vi) The Biodata/CV and affidavits received from the interested advocates be scrutinized by the Registry of the High Court to prepare a list of those fulfilling the eligibility criteria. The list of eligible candidates along with copies of their Biodata/CV and affidavits be circulated to the Principal Secretary to the Governor and Principal Secretary to the Chief Minister for short listing of the best eligible candidates by a Committee consisting of the Governor, Chief Minister, and Chief Justice of the High Court. The Committee should select persons twice the number of vacancies and forward their names along with the Biodata/CV and affidavits of the selected candidates for consideration of the SC Collegium. The minutes of Committee meeting must clearly state the objective and verifiable norms adopted for judging the inter se suitability of all the candidates considered

and record the reasons for preferring the selected persons in the preference to those left out.

(vii) The names of candidates recommended by the aforesaid Committee along with their Biodata/CV and affidavits be put on the Website of the High Court for at least a month before the Collegium meeting. Simultaneously, the Bar Council of India and the Bar Council of the State be requested to provide to the Supreme Court Registry all information about any complaints or proceedings against any recommended candidate to cross check the information provided by him in his affidavit.

(viii) The Collegium may consider the recommendations of the Committee headed by the Governor and, if considered necessary, interview all or any of the recommended candidates for making provisional selection for filling up the vacancies subject to IB clearance. The minutes of the Collegium meeting should clearly state the norm(s) adopted for judging the inter se suitability of the candidates and record the reasons for preferring the selected persons in the preference to those left out.

(ix) Similar proforma and affidavit for submitting Biodata/CV and affidavit by senior advocates and eminent jurists for elevation as Supreme Court Judge may also prescribed by the Supreme Court and the names of those fulfilling the eligibility criteria, to be laid down for this purpose by the Collegium, should be put on the Website of the Court at least a month before the meeting of the Collegium. Simultaneously, the SCBA and the Bar Council of India be also asked to rank the eligible candidates in order of their preference so that the input from the representatives of the main stakeholder, the litigants, is also available to the Collegium.

(x) Any complaint made on oath giving specific information/evidence against a person short listed for consideration by the Committee headed by the Governor or by the Collegium must also be put up to the Collegium for their consideration. The Collegium may seek a clarification from the candidate if considered necessary.

(xi) While sending the recommendations of the Collegium in respect of selected candidates to the President, their Biodata/CV, affidavits and the reports of the Bar Council of India/State and complaints, if any, against any selected candidates be also forwarded to the Ministry. The minutes of short listing Committee headed by the Governor and the Collegium meetings must be subject to RTI.

(xii) The secretariats to handle the work of appointment of Supreme Court/High Court judges may be established from the existing officers/staff under the Secretary General of the Supreme Court and Registrars General of the High Courts. The Secretariat in the Supreme Court should collect in respect of the Chief Justices of the High Courts information as regards number of judgments delivered, appealed against along with their outcome and other relevant information on the criteria for their elevation to the Supreme Court.

Let us hope that the central government will seriously consider the aforesaid suggestions and the present Chief Justice of India shall always be remembered for his contribution in this matter of great constitutional and public importance since under our present Constitutional set up top judiciary is the last hope for the country.

**Satya Narain Shukla is General Secretary, LOK PRAHARI,
B-7, Nirala Nagar, Lucknow (U.P.)
Mobile No. 91- 9415464288*

The Truth about The Gita

By Late V R Narla*



V.R. Narla

(On 30th August 2015 Prof. M.M. Kalburgi, a renowned rationalist scholar and former Vice-Chancellor of Hampi University, Karnataka was shot dead at his residence. Co-Convenor of the Bajrang Dal's Bantwal cell, Bhuvith Shetty, welcomed the assassination of M.M. Kalburgi. Earlier a leading rationalist and anti-superstition activist Dr. Narendra Dabholkar was murdered in Pune on 20th August 2013 and another left leader and outspoken critic of Hindutva, Govind Pansare was murdered in Kolhapur on 20th February 2015. All these had the courage to speak the unsavoury truth based on their research without fear of consequences. All of them are suspected to have been killed by right wing religious extremists. With the BJP government at the Centre providing tacit support, right wing Hindutva elements are

emboldened and are increasingly coming out openly against persons who are merely critical of Hinduism. Human rights activists have strongly condemned the killing of Kalburgi and earlier those of Narendra Dabholkar and Govind Pansare. As a mark of respect to these scholars and rational thinkers, and our commitment to rationalist thinking and also upholding the cause of freedom of speech and expression as granted by the Indian Constitution, we are publishing some chapters from the book 'The Truth about the Gita' written by late V.R. Narla, also a great scholar and rationalist, beginning with the September 2015 issue of *The Radical Humanist*.

(Prometheus books in USA has brought out edition of 'The Truth About the Gita' with the introduction by Dr. Innaiah Narisetti and Aramalla. An audio version of the complete book is also available and can be sent on demand. – Editor)

OUTER CITADEL AND INNER FORT

Unless you breach the outer citadel you cannot storm the inner fort. That is the reason why I have been concentrating my attack on the Mahabharata. Once I show how it is a big lie, an outrageous forgery, a pious fraud, I can tackle the Gita easily. The validity of this strategy will be readily conceded when it is remembered that without its dramatic setting the Gita loses much of its appeal.

Right from its start, despite its many groupings and regroupings, its reconnaissances, its ambushes, its rallies, sorties and skirmishes, its diversionary attacks, its rearguard actions, the Mahabharata marches - slowly, tortuously, and yet inexorably— towards the Kurukshetra. It is said to be not merely a battlefield but “a holy

field”, “a field of righteousness.” On that field two vast armies are arrayed. The horses, numbering hundreds of thousands, are stamping their feet to rush forward, but on ebbing held back, neighing in their impatience. The elephants, somewhat less in number, are trumpeting. From the tops of the thickly massed chariots colourful flags are fluttering in the morning breeze. A drone is rising from the ocean of infantry, spoiling for fight. And suddenly, drowning everything else, there is the blowing of conches by the legendary warriors of both sides. It is followed by the blare of the kettledrums and tabors, drums and horns. The tumult is ear-splitting. It is resounding through earth and sky. At that dramatic moment, Arjuna asks Krishna to draw up his chariot into no man’s

land so that he could survey the men and their commanders whom he has to encounter. And once he sees standing before him his “fathers and grandfathers, teachers, uncles and brothers, sons and grandsons, as also companions”, his limbs quail, his mouth goes dry, his body shakes, his hair stands on end and his bow slips from his limp hands. In a mood of deep despondency, of utter gloom, he says: “I have no desire for victory. Please turn back my chariot.” With an indulgent smile, Krishna refuses to oblige, and for exhorting Arjuna to fight the battle of righteousness, he begins to sing his Song Celestial. A hush falls on the Kurukshetra; millions of men thirsting for war stand spell-bound; earth and heaven strain their ears not to miss even a single note of that divine song.

Take away this dramatic setting, this thrilling scene, what remains of the Gita? Only the hotchpotch of faulty cosmology, hackneyed theology, turbid philosophy, primitive sociology, obnoxious ethics, and to create a mood of awe, the oft-repeated claims “I am the God”, “I am the Truth”, “I am the Life” and “I am the Way”. And yet, to a mind that is already captive, it sounds like something great, something profound. Whoever first interpolated the Gita into the already much interpolated Mahabharata at this particular point with scenic tricks and sound effects was a master psychologist. “It is difficult to excel”, as P.D. Mehta says, “the Hindu sense of dramatic in religion ... The poet author of the Gita could hardly have chosen a more arresting opening scene for his philosophical song.” But to deal with the Gita at this stage would be to anticipate, and so, I return to the Mahabharata to fire at it a few final salvos.

A Rajagopalachari, a Munshi or a Sukthankar may appreciate the Mahabharata as a great work of literature, but I cannot. They may think that it has a solid kernel of historicity; I do not. They may extol it for its moral grandeur, its eternal verities; I disagree with them. Among the epics

of the world, it is the most amorphous, the most tortuous and chaotic. It has neither the unity of theme nor style nor vision that is expected in an epic. To borrow the words of Hopkins, it is “pitched together and patched together”. by many hands, including the most detestable of human beings, the priests. If it has one merit, it owes it to its original composers, the Sutas. They were born poets; they were of the earth, earthy; they had the power to sway the hearts of the common people. They could etch character in black and white with practically no intermediate tones, making it typological, and on that score, memorable. For priggishness, tinged with self-pity, there can only be one Yudhishthira; for the he-man who eats like a wolf and drinks like a whale, gruff in his speech and rough in his manners, there can only be one Bhima; for obstinacy for incapacity either to learn or to unlearn, for standing on dignity unmindful of all consequences, there can only be one Duryodhana; and for — well, even the minor characters in the Mahabharata such as Sanjaya and Sakuni are typological. The interpolators and redactors could do little or no damage to those characters originally conceived and created by the Sutas. Draupadi is by far the most superb of their creations. And it is these characters who lend to the Mahabharata its basic appeal, its unabating interest. But simply on the basis of this is one merit, it cannot be rated as a great work of Indian literature, let alone the greatest work of world literature as Sukthankar would have us believe.⁴

Now as for the Mahabharata being a work of moral grandeur, it is (to put it mildly) a preposterous claim. To us who are ordinary mortals without any esoteric powers, the morals of the Mahabharata are muddy, crude, revolting. But to esoteric geniuses like Sukthankar the ‘Mahabharata’ is “the Golden Treasury of the Ideals of the Indians at their best”.⁵ But Indians of what age? Of which political set up? Of which economic and social order? At one point of his

paean of the Mahabharata, Sukthankar says with a thrill in his voice that the epic was “used as a book of education in Banas’ time.”⁶ Bana lived in A.D. the seventh century, and we are living in the twentieth. Bana lived in a monarchy, and we are living in a republic. Bana lived in a feudal social and economic order while we are professing to build a society based on socialism, egalitarianism and secularism. Our world is different from his; our world-view is divergent from his. And yet, Sukthankar thinks that the Mahabharata should continue to be our textbook; Raja-gopalachari publishes a popular translation of the epic at a cheap price so that it could gain the widest circulation; and Munshi spends the terminal years of his life trying to complete his last major literary effort, ‘Krishnavatara’.^g And we have in our midst millions of Sukthankaras, Rajagopalacharis and Munshis! They have a feudal mentality. They have a vested interest in the old order of society. And so, they want the Mahabharata to be our textbook, the Gita to be our scripture. They refuse to read the history of the world, much less, to learn any lessons from it. This is not the place to recapitulate the story of the fading out of the Feudal Age in Europe, giving place to the Modern Era. But I would like to mention one bare fact. Paracelsus, the German alchemist and physician of A.D. the fifteenth century, “burned the books of Hippocrates and Galen before beginning his lectures on medicine at Prague.”⁷ It is that defiant spirit, that daring gesture, which led to the birth of modern medicine. If a modern India were to be born, we should cultivate that defiant spirit of Paracelsus and turn our back on a past that shackles on a world that is dead and gone. Undoubtedly, myth has a place in human civilization. As Bronislaw Malinowski wrote:

Myth fulfills in primitive culture an indispensable function: it expresses, enhances, and codifies belief; it safeguards and enforces morality; it vouches for the guidance of man. Myth is thus a

vital ingredient of human civilization; it is not an idle tale, but a hard-worked active force; it is not an intellectual explanation or an artistic imagery, but a pragmatic charter of primitive faith and moral wisdom.¹⁰

But let it be noted that Malinowski, a great anthropologist, was writing of primitive culture, of primitive society. Is ours still a primitive society? Even Rajagopalacharis, Munshis and Sukthankars would reject that idea. Why, then, are they zealous in propagating the primitive myths? A reply to this query can be found in Malinowski’s essay on “Myth in Primitive Society”. In the course of it, he stated that “myth, taken as a whole, cannot be sober, dispassionate history, since it is always made ad hoc to fulfill a certain sociological function, to glorify a certain group or to justify an anomalous status.” I have added emphasis to what should be taken special note of. Our Rajagopalacharis, Munshis and Sukthankars are out to glorify a certain group (their own) and to justify an anomalous position (again, their own).

A little lower down in the same essay, Malinowski remarked:

It is clear that myth functions especially where there is a sociological strain, such as in matters of great difference in rank and power, matters of precedence 42 and subordination, and unquestionably where profound historical changes have taken place. All these conditions mentioned by Malinowski are present in the India of today. There is “sociological strain”; there is “great difference in rank and power”; there is social and economic “precedence and sub-ordination”. Our Rajagopalacharis, Munshis and Sukthankars are not for wiping out these factors; they are for preserving them; indeed, they would like to strengthen them; therefore, they opt for myth as a buttress to the old order of society. There can be no new society, no new life, unless that buttress is bombarded and blown up.

From the Writings of M.N. Roy:

CHAPTER XVII

The Future of Democracy*

M.N. Roy

(M.N. Roy, a great visionary as he was, had visualised even before the country attained Independence the shape of things to come so far as the functioning of parliamentary democracy was going to take place in the country after Independence. He visualised how there was going to be mad scramble for power by politicians winning elections using money and muscle power, and how they were going to neglect the people who would vote for them; how the party leaders were going to be dictatorial in their approach and how elected representatives of the people were going to be more responsible and accountable to their respective political parties and not to their electors; how delegation of the sovereignty, which rightfully belongs to them, by the people to their parliamentarians was going to make them completely powerless and helpless, being denuded of their democratic freedoms and rights, before the so-called 'servants of the people' who were going to become their rulers and how democracy, 'the government of the people and by the people', was going to become 'the government for the people' run by modern Maharajas and their family members for their own benefits. Roy not only visualised the problem but also suggested the remedy of bringing in 'power to the people' or direct democracy, as defined by some political scientists, empowering the people at the grassroots: exercise of the people's sovereignty by themselves through 'People's Committees', putting up their own candidates for election and not voting for the candidates put up by various political parties.

In 'Politics, Power and Parties' Roy has given a realistic view of our politics and parties today. During the last 68 years of our independence, morality and idealism has completely disappeared from our politics, parties and our political leaders. Given the condition of our politics today, and for the betterment of our political life and democracy in our country Roy's views are insightful and worth considering. Therefore, in order to present a complete view of Roy's thoughts on all these issues facing our country, we have started the publication of his lectures/articles compiled in the book for the benefit of our readers. – Editor)

The future of Democracy is of interest only for those who believe that Democracy is the best form of government so far conceived by human intelligence. There are people who hold a different view. They either do not believe that democracy is desirable or have become sceptical about its possibilities. I shall not argue with them, but start from the assumption that democracy is the best form of government. I shall speak of the future of Democracy in India; but Democracy is threatened throughout the world; the experience is universal. The need of a new approach to the problems of democracy is felt everywhere, and while we can learn from

the experience of others, if we can find a solution, it will be of use to them too.

After a long period of struggle for political freedom, an independent sovereign State has been established in India. The fundamental law of the land is the Constitution of a parliamentary democracy. It is easy enough to write a good Constitution. A few legal minds, given the necessary idealism and knowledge of political and social matters, can produce an excellent blueprint of a State machinery. But it is extremely difficult to put a good Constitution into practice, because that depends on other factors. Until now, the easier part of the task

has been accomplished; an apparently good Constitution has been written. Now the very much more difficult task of putting it into practice will have to be tackled. In that respect, the tendency to find the way of least resistance usually prevails.

It is commonly believed that the working of a Constitution requires only an efficient government machinery and observance of certain procedures or policies which have come to be conventionally believed to be the characteristic features of a democratic regime. In the Constitution of the Indian Republic, a good deal of attention has been given to the details of the government machinery. From the point of view of constitutional theory, that is a defect. A Constitution is the fundamental law of a country. It lays down certain principles to guide the legislative branch of the State and control executive power. Certain fundamental principles are indeed laid down in the Indian Constitution, but not always unequivocally. There are obviously objectionable features, particularly as regards civil liberties. The chapter on fundamental rights is only a small part of the document, which happens to be the longest Constitution of the world. It concerns itself with details of procedure couched in a legalistic jargon not easily understood by the average citizen. The fundamental rights and other basic ideas get lost in the jumble of that jargon.

One of the devices of constitutional lawyers is to provide for checks and balances. The checks and balances are introduced to prevent the abuse of the rights granted. The importance attached to the provision of checks and balances in a Constitution to guarantee against its abuse is significant psychologically. It indicates that the Constitution-makers anticipate abuse of power. That feeling only gives expression, perhaps unconsciously, to the danger for the future of democracy in this country.

The old saying that a country gets the government it deserves has a large grain of truth in it. Under the parliamentary democratic system, a Constitution is worked by governments which are controlled by a party in power. A democratic Constitution works when the party in power is controlled by the people. The vast bulk of the population in India today is completely incapable of controlling the party which claims to represent it. Therefore, if democratic government is government of the people and by the people, an efficient government machinery and a party confessing democratic principles do not by themselves guarantee a really democratic regime.

The establishment and functioning of democracy, of a free society, in the last analysis, is conditional upon the popular mentality, which again is determined by the cultural traditions of a particular country. The political and social doctrines of democracy originally drew inspiration from philosophical Humanism, a philosophy which blasted the time-honoured belief that the affairs of this world and man's destiny were governed by a providential will or a divine creator, and asserted that man's world is made by man himself, that human life was an end in itself and, as man is the measure of all things, all values must be determined by that measure.

Deduced from the humanist philosophy, democratic practice in course of time, however, drifted away from its original source of inspiration; and ultimately, under the parliamentary system, the sovereign individual was reduced to the position of a helpless atom, while government was run by a small group of people in sole control of the administration. Critics of parliamentary democracy ascribe its failure and abuses to subjective factors, lust for power, greed for gain of individual politicians or the selfish interests of social classes. Social

phenomena are, of course, determined very largely by the intentions of men; but there are historical factors which operate independently of the intentions of politicians and parties. These are to be taken into consideration in order to draw the right lesson from the admitted failure of the parliamentary democratic practice throughout the world. Only by learning from that lesson shall we be able to arm ourselves with the guarantee against dangers to the future of democracy in India?

The causes which led to the discrediting of democracy in Europe can be discovered in the light of the origin of democracy. Therefore, those concerned with the future of democracy should be conscious of its source of inspiration. Political doctrines and social theories are deduced from a philosophy, from a comprehensive view of life. From time immemorial, in every part of the world, human life was considered to be the expression of a super-human force, and everything in the world, it was believed, was predetermined by a providential will. This mentality was determined by the circumstances of the time; for a long time, it dominated human history, and evidently placed restrictions on the ability of man to act independently, as the master of his destiny. The belief that everything in the world is predetermined by a force beyond the comprehension of human intelligence, obviously, condemns human life to eternal servitude. That servitude may be glorified as the condition of spiritual salvation in an afterlife. The democratic view of life originated in the revolt against that time-honoured spiritual servitude. Its starting point is that man's life is the highest value; and therefore man should not be degraded as a means to some end, either super-human or even super-natural.

The revolt of man against a system of thought which led to regard these vices as virtues, provided the inspiration for the growth of

political and social theories concerned with the freedom of man on this earth, which maintained that human intelligence was the spring of human progress, that whatever existed in the world of man had been created by man. The corollary to this view is that, if the established political and social institutions no longer serve man's purpose, man has the right and the ability to remake them. To the extent that the vast bulk of a people, not just a few politicians, move away from the authoritarian mentality, and accept the humanist view of life, to that extent does the cultural atmosphere of a country become congenial for the growth of democracy.

Judged by that standard, the future of democracy in India is not bright. Popular mentality is still authoritarian, and politicians and political parties glorify that reactionary cultural heritage as spiritual genius. People with an authoritarian mentality cannot establish democracy. If democracy fails in India, that will not be due to the conspiracy of political parties and leaders; the failure will be predetermined by objective conditions—the mentality of the people which cannot conceive of human freedom and human creativity. Yet, these are the basic values of the democratic view of life.

But the experience of the western world shows that even the theoretical acceptance of these values does not guarantee the success of democracy. However, the fundamental task must be accomplished first, and then the mistakes of others avoided. The formalisation of democracy was the primary mistake. The original philosophical principle of democracy was that every human individual is a sovereign entity. In course of time, even in constitutional theories, the principle was reduced to a legal fiction, and sovereign individuals became helpless social atoms. Although the spiritual foundation for a democratic society was created, the practice of democracy did not

attach sufficient importance to human individuals, did not give sufficient scope for their free development. Consequently, democratic practice defeated its own end.

Parliamentarism is a formalisation of democracy. Parliamentary democracy replaced democratic government by representative government. Representative government is not the same as a democratic government. The formalisation of democracy and its identification with government by representation were determined by existence in the modern world of States with large populations and extensive territories, in which the direct democracy of antiquity is not practicable. The failure to solve that problem led to the discredit of democracy. But the failure was not inevitable. It was due to the fact that, obsessed with the immediate practical problems of political administration, the pioneers of modern political democracy moved away from the concepts of individual liberty and sovereignty, to subordinate the individual eventually to an imaginary collective ego.

Having reduced man to impotence, politics degenerated into a scramble for power between groups of people calling themselves parties. Though the party system is believed to be the essence of democracy, it has done more harm to democracy than anything else. It has reduced democracy to demagogic. The most skilful demagogue is the most successful democrat. In all probability, those who make the big promises, may really want to do good things. But engaged in the game of power, they must play it according to its rules. In the atmosphere of a backward country, the scramble for power will drag down democracy to an even lower depth than in other countries with a more educated electorate. The next elections will be held on the basis of universal suffrage, which is believed to be the highest form of democracy. Degraded to the formality of counting heads,

democracy does not bother about what is in the heads. If the heads are empty of sense, the party getting the largest number of votes will have the largest amount of ignorance as its sanction.

We have had the experience of previous elections. There were many cases of voters going to polling booths as if they were going to the temple, because, they were voting for a Mahatma. They actually dropped rice and flowers in the ballot boxes together with the pieces of paper, which meant nothing to them. There was only one party, and it told them that to vote for the Congress was to vote for the Mahatma. The party got practically all the votes and hence the government controlled by it calls itself democratic. With universal suffrage, things will be worse. That is no argument against universal suffrage. But no use giving people the vote without giving them also some idea, of what it is all about.

Thanks to the blessing of universal suffrage, on the occasion of the next election many more people will go the polling booths in the reverential mood of temple-goers. Consequently demagogues will have a greater chance to come to power by appealing" to the prejudices and superstitions of the people. This time there will be more than one party. But that will only put a higher premium on demagogic. Demagogues will vie with each other to sway the people. To win the election, any opposition party will have to beat the Congress in the game of exploiting the ignorance and superstitions of the masses.

The future of democracy in India, therefore, is not very bright and that is not due to any evil intention on the part of the politicians, but rather to the system of party politics, to the formalisation of democracy. Therefore, whoever is concerned with the future of democracy in India, should give up the comfortable habit of blaming others. They should apply themselves to the task of creating conditions under which

democracy is possible, In the meantime, perhaps for another ten years, demagogic will vitiate political practice. The scramble for power will continue, breeding corruption and inefficiency. That cannot be helped until the foundation of democracy is laid. And that means to promote in the people the feeling that they can be the masters of their destiny. Those who believe that democracy is the best form of government must apply themselves to the fundamental task of bringing about a revolution in the mentality of the people.

Throughout history, any profound political and social change was preceded by a philosophical revolution, at least among a significant section of people. India has not yet made that necessary experience. The mentality of an entire people cannot change from today to tomorrow. But a beginning must be made. We should come out of the condition of the blind leading the blind. The vast bulk of the Indian people live in an atmosphere, surcharged with prejudices and superstitions; and these vices are rationalised as virtues with the help of a modern educational system. In such a cultural atmosphere, public life is bound to be corrupted and democracy is not possible. A growing number of people must break away from the tradition of blind faith and hero-worship, to cultivate a spirit of enquiry and self-reliance and the will to freedom. Man's faith in himself is the condition for a really democratic society.

Even after the more advanced European countries experienced a philosophical revolution, at least partially, democracy failed there, because institutions were placed above man. It was forgotten that institutions were created by men. Good institutions cannot succeed in an

atmosphere where men cannot be good, or have to suffer for being good. The success of democracy presupposes an increasing number of people becoming conscious of the urge for

freedom and realising that they are born to be free, if not born free. Democracy can work only in a rational social atmosphere, and a rational attitude to the problems of society and life is conditional upon the rejection of faith in anything outside nature and above man, and without the will to be free in this mortal world, and the belief that man is capable of remaking the world, democracy is not possible.

A realistic view of the conditions of the country, conditions which are rooted deep in cultural tradition, does not inspire optimism about the future of democracy. And those who talk glibly about democratic freedom and sound the alarm that one-party rule is fraught with danger of dictatorship; do not always realise the gravity of the task they have undertaken. The established one-party rule is antagonistic to democracy, but neither will democracy be guaranteed by the rise of an opposition party so long as the bulk of the people will remain psychologically predisposed blindly to accept authority imposed from above.

Since the danger to democracy does not come from the evil intention of anybody but from the cultural background and the general atmosphere in the country, let us not fight ghosts and quarrel with the motives of others; let us rather create conditions in which dictatorship will be impossible. Popular predisposition to accept authority provides a formal democratic sanction to dictatorship. An intelligent educated people like the Germans fell enthusiastically into the goose-step. On the other hand, the siren call of dictatorship did not find a response in England, and Hitler's formidable military might could not impose it in the other countries of Western Europe. The reason for this remarkable phenomenon is that, notwithstanding a high level of academic education and general intelligence, the average Germans had never outgrown a historically conditioned mentality predisposed to

accept authority, a mentality fostered in the modern setting as reverence for the State; the countries of Western and Northern Europe, on the contrary, had experienced a philosophical revolution which destroyed the mediaeval mentality, encouraged the urge for individual freedom and a democratic way of life. The highest ambition of an average German was to be a soldier or a State official, to put on a uniform as the token of regimentation, feeling strong in the mass and under the shadow of the State. In the Western countries, liberalism taught vigilance against encroachments of the State, and held that the best government was one which governed the least. When people are predisposed to authoritarianism, and look up to God or a benevolent ruler, or a powerful dictator, to do everything for them, then they get the government they deserve. Unless the cultural and psychological precondition for the rise of dictatorship is removed, no amount of alarm against it will be heeded; and those sounding the alarm today, given opportunity, may themselves establish a dictatorship, because they too will have to work in that same atmosphere.

People engaged in party and power politics cannot take a long view. Laying foundations is too long a process for them. They want a short-cut. The short-cut to power is always to make greater promises than others, to promise things without the confidence or even the intention to implement them. Therefore, the future of democracy in our country depends on people who are either outside politics today, or who

will have the courage and vision to step out of the indecent scramble. They will have to act in a manner which may not attract the “practical politicians.” They may have to plough a lone furrow for some time. But because it is the need of the time, it will appeal to more and more people. And unless love of individual freedom, as against the fiction of national freedom or the fraud of class liberation, will be felt by a sufficiently large number of people, in the near future, the prospects of democracy will be dark indeed.

But the task looks more formidable than it really is. Politicians may rationalise their failures by saying that without power they can do nothing. But when a man really wants freedom and to live in a democratic society, he may not be able to free the whole world or all the four-hundred million of India in a single mighty revolution, but he can to a large extent free at least himself by behaving as a rational and moral being, and if he can; do this, others around him can do the same, and these again will spread freedom by their example. If only a hundred people will begin living and working in this manner—leaving the politicians to fight for power at the top—very soon they will multiply themselves to be hundreds and then tens of thousands. The contagion will spread and the movement to lay down the foundation of democracy will gain momentum.

* *Lecture delivered at the University Institute Hall, Calcutta, on February 5th, 1950.*

Martin Luther King, Jr. noted: “Lamentably, it is a historical fact that privileged groups seldom give up their privileges voluntarily.”

Let us in an upper caste-dominated society, acknowledge the vast undeserved space we occupy. Let us cede what has to be ceded.

Human Rights Section:

Why is Chhattisgarh Police afraid of Soni Sori?

The Aam Aadmi Party leader was attacked on the night of Saturday, the 20th of February.

Supriya Sharma

Operation Eviction is underway in Bastar. The police and its supporters want all those who ask questions to leave.

They have managed to evict Scroll.in contributor Malini Subramaniam, who was writing about alleged rapes and killings by security forces, and lawyers Shalini Gera and Isha Khandewal of the Jagdalpur Legal Aid Group, who were defending adivasis and giving them legal assistance to challenge the police. In an extraordinary coincidence, both the journalist and the lawyers were served eviction notices on Thursday, after their landlords were called in for questioning by Jagdalpur police.

The next day, policemen came looking for the landlord of Bela Bhatia, scholar and activist, who lives on the outskirts of Jagdalpur, and has documented the spate of rapes and sexual violence in the region.

But the same strategy will not work with Aam Aadmi Party leader Soni Sori. Unlike other human rights defenders who moved to the region to stand witness to the forgotten war between Maoist rebels and government security forces, the 40-year old adivasi woman is a local. Born and raised in Dantewada, she has a large, extended family, long history, and deep roots. The former school teacher survived police arrest and alleged custodial torture in 2011, only to emerge stronger, contesting Lok Sabha elections in 2014 on an Aam Aadmi Party ticket. She cannot be driven out. She needs to be silenced.

On Saturday night, Sori was returning from

Jagdalpur, where the lawyers had addressed a press conference to place on record the police intimidation that had forced them to leave the town. She was travelling on a motorcycle with her colleague, a young woman named Rinki. On the highway to Dantewada, about ten kilometres short of Geedam town, where she lives, three men on a motorcycle overtook and stopped the women. They threw a black substance on Sori's face, which led to intense burning. In the initial panic, her family and friends thought it could be acid. Later, it turned out to be grease oil, though it is possible that the substance was laced with corrosive materials.

On Sunday morning, Sori told lawyer Shalini Gera that she was still in pain and had difficulty opening her eyes. The identity of the attackers is not known but they had told her to "stop complaining against the IG, stop raising the issue of Mardum, and if you don't behave yourself, we will do this to your daughter as well." The IG is a reference to Inspector General SRP Kalluri who heads the police in Bastar region. Sori has been trying to file a complaint against him.

Most recently, she had taken up the case of Hidma, a resident of Mardum village who was killed by the police in January. The police claimed he was a Maoist, but the entire village contested that claim. Keen to get the case more attention, Sori had taken Hidma's family to Raipur, where journalists were shown his voter identity card and bank account papers. A few stories appeared in the national newspapers, which Bastar police was unlikely to have appreciated.

The black taint might not leave permanent scars. It might not even scare Sori, who has endured worse. But it might still serve its purpose of silencing others who dare question the police.

Last Monday, Sori was in Raipur, planning a protest march from the villages in Bijapur where women had been allegedly raped and molested by security forces, all the way to Jagdalpur, a distance of nearly 200 kilometres.

She wanted the march to begin on February

20 and wind up in Jagdalpur on March 8, International Women's Day. She wanted people from all over Chhattisgarh and India to join it.

But the plans had to be put on hold. The forced evictions of the journalist and lawyers had sullied the atmosphere for democratic dissent.

The attack on Sori has darkened the horizons further.

Courtesy **Scroll.in**

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Mayawati Asks for Irani's Head, Dalit Anger Spirals

THE CITIZEN BUREAU

NEW DELHI: After her theatrical speech in the Lok Sabha that had even Prime Minister Narendra Modi tweeting his appreciation, HRD Minister Smriti Irani spent most of Thursday and all of Friday facing flak from the Dalit leaders, students and even the family of Rohith Vemula whose suicide has sparked off a storm that shows little sign of abating.

Irani who was a recognised television actor, lived up to her reputation while responding to the discussion on the attack on JNU and HCU students, but took liberties with the facts that have since been exposed by not just the MP's inside Parliament but also the students and faculty outside. Vemula's mother, his family and students from the Hyderabad Central University held a press conference in Delhi to expose what they said were lies, and expressed deep worry about what was described as a conspiracy to bury the case, and ensure that justice was not done.

Earlier in the day Bahujan Samaj party leader Mayawati, took off all kid gloves, to fire the central government and Minister Irani for not including a Dalit member in the probe commission set up to enquire into Vemula's suicide. She did not mince words in pointing to her worry that the NDA government was not interested in bringing justice for Rohith Vemula, but was instead trying to cover up its role in the circumstances leading to his death. In characteristic fashion Mayawati refused to budge until she had had her say and towards the end reminded the House that earlier Minister Irani had promised the BSP that she would cut off her head and place it at their feet, if her response to the debate was found wanting. Mayawati then asked Irani who was present in the Rajya Sabha whether she would now fulfil her promise, as her reply was clearly full of holes and was not acceptable. Irani could be heard in the din saying that the BSP members could come and cut off her

head if they so wanted, and that Mayawati was not interested in justice but in politics. The BSP leader ignored the Minister and went on with her remarks, with much of what she said being lost in the din. The Minister could be seen jumping up for repartees, but the fire and brimstone was missing.

This is partly because of Mayawati's no holds barred attack on the government and the RSS on the Rohith Vemula issue, more so as her strong assertion is clearly seen as a damper for the BJP that has already started campaigning in Uttar Pradesh for the state elections next year, as a defeat here after Bihar is something the party cannot afford. After a long time Parliament saw the old shades of Mayawati, who first ensured that the Rajya Sabha was adjourned because the government had not answered her question as to whether it had included a Dalit member in the probe commission; and then returned after the debate with an attack on the government's anti-Dalit positions as reflected in its handling of the Vemula issue.

If this was not enough, Rohith Vemula's family and colleagues as well as members of the Joint Action Committee formed in HCU after his death, held a press conference that attacked Irani for not speaking the truth in Parliament, a charge voiced by other MPs in the Lok Sabha as well. It is not often, in fact a very rare occurrence, when a Minister's statement or reply in Parliament is riddled with as many inaccuracies as Irani's was. And what has made it worse for the government is that it is being seen directly in conflict with the Dalits across the country, with the young scholars' suicide having struck a chord across the country.

The worry in sections of the BJP is growing as a result, with the old timers watching the play out in Parliament without saying a word publicly. However, given the visible disaffection now there

is quiet worry that the BJP's efforts to woo the Dalit vote, at least in western UP, as part of its social engineering through the simmering violence in Muzaffarnagar, might have come a cropper with this anger that seems to be spreading outside Hyderabad with rapidity. Mayawati's strong response is an indication of this, with her constituency clearly reacting to what is fast becoming an emotive issue for all.

The joint Action Committee for Social Justice (UoH) condemns reflected this anger when it condemned "in the strongest possible words, the flagrant manipulation of facts and blatant lies uttered by the Minister of HRD Smriti Irani in Parliament. Through a performance filled with melodrama and sensationalism, Smriti Irani did not leave any stone unturned in vilifying and denigrating our struggle for #JusticeforRohith. We are shocked and deeply outraged by her fabricated statements about Rohith's death."

The JAC sought to nail the following 'lies':

Smriti Irani: "No one allowed a doctor near this child, to revive this child. Instead, his body was used as a political tool. No police was allowed till 6:30 am the following morning. Who tried to help this child?"

1. JAC: this is a blatant lie. Smriti Irani must review her facts and have a look at the medical report and the video evidence that confirms the death of Rohith. Having received a call from a PhD research scholar of University of Hyderabad and Security personnel, Dr. M. Rajshree, the medical officer on-duty on 17th January rushed to the NRS Hostel in four minutes and certified Rohith's death at 7.30 pm. (it quotes from the medical records to prove this)

2. Smriti Irani: "The committee which suspended Dalit scholar Rohith Vemula was not constituted by our government, but by the UPA regime." JAC: This is yet another utterly false statement. The Executive Council that socially boycotted five dalit research scholars was headed by the newly appointed Vice-Chancellor (VC) Prof. Appa Rao

Podile (appointed by BJP government. (the full sequence of events is narrated)

3. Smriti Irani: Political intervention was non-existent in the case. JAC: There was outright political intervention from ABVP, BJYM and BJP. At first, the MLC Ramachandra Rao misused his position and threatened the University to take action against the Dalit research scholars. He warned the University administration that "outsiders" would teach them a lesson otherwise.

Later, the Union Cabinet Minister of State for Labour and Employment, Bandaru Dattatreya wrote a letter to Smriti Irani accusing members of Ambedkar Students' Association with atrocious, baseless and utterly false allegations. He further branded University of Hyderabad as a "den of casteists, extremists and anti-nationals". (sequence of events is presented in detail to highlight the political intervention that they said had led to Rohith Vemula's decision to take his life out of a sense of futility and resignation that he would not get justice from the system.

The anger of the students poured out at the press briefing. Many have travelled from Hyderabad to participate in a march in Delhi for justice for Rohith Vemula. They also participated in a candlelight vigil where the police broke up the peaceful demonstration, detailed the students, while the girls present formed a protecting ring around Vemula's mother so that she was not hurt in the fracas.

The political grapevine in and outside Parliament by Friday evening, with all wondering what the BJP was hoping to achieve through this continuing high handedness. BJP and Opposition MPs mingled to ask this question of each other in central hall, sources said, more so as all political parties are readying for a spate of Assembly elections starting April this year. Senior leaders were certain that the Vemula case would snowball through the country, having a major impact in campuses across as well as on Dalits as a community. All spoken to were agreed that the entry of Mayawati into the controversy was an indication of this.

Courtesy **The Citizen**, Friday, February 26, 2016.

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