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Interpreting UP Assembly Election 2017 Results

Mahi Pal Singh

The recent 2017 legislative assembly election results are important in many ways though the common factor in all of them has been anti-incumbency against the ruling party or coalition. In UP the Samajwadi Party and in Uttarakhand the Congress lost the elections while in Punjab the BJP and Akali Dal combine lost it to the Congress. In Goa the BJP was defeated but there and in Manipur it was able to manipulate and cobble together a majority of MLAs to form governments.

In comparison with the 2014 parliamentary elections in which the BJP got a majority in the Lok Sabha and was able to form government at the centre, though in that election also its overall vote share was a mere 31%, this time another common factor in all the states, except in Manipur where it got 36.3% votes as against 11.9% it got in 2014, has been a fall in the vote percentage of the BJP – in Goa 32.5% as against 53.4%, in Punjab 5.4% as against 8.7%, in Uttarakhand 39.7% as against 55.3% and in UP, where it has made a tremendous victory in terms of seats winning 317 seats in a house of 403, more than 75% of the total seats. In spite of this fall of percentage of votes almost everywhere, the BJP is celebrating the results of the assembly elections as a very big victory for itself and Narendra Modi, the Prime Minister, who was the chief campaigner for the party. It is merely because it has been able to form a government in UP, the biggest state, after a long time and with the highest number of seats it has ever won in the state. Another reason is that it sees it as a trendsetter for the 2019 parliamentary elections in which it now hopes to form a government at the centre again.

The single largest reason of the BJP's electoral victory has been the triangular contest

in which the BJP, the Samajwadi Party and the Bahujan Samaj Party were engaged. The BJP got the benefit of divided opposition as well as that of anti-incumbency against the Akhilesh Yadav led Samajwadi Party government which bore the brunt of accusations of being pro-Yadav, as the party has always been, though during his tenure some good pro-people, pro-farmers, pro-students and developmental work had been done. The eastern UP, including Poorvanchal and Bundelkhand, did not see any development even during the tenure of Akhilesh Yadav as it has remained neglected under the rule of other political parties including the BJP also in the past. But the BJP was able to raise the issue this time effectively against the Akhilesh Yadav government. In the matter of social engineering also the BJP beat both Akhilesh and Mayawati as it was able to pull the support of non-Yadav caste groups like the Kurmis, Rajbhars, Nishads and Mauryas from amongst the OBCs on the one hand and non-Jatav scheduled castes on the other. As a result Akhilesh came to be seen as the leader of Yadavs and Mayawati of Jatavs only. Too much importance given to its own family members in ticket distribution, allegedly 22 of them were given tickets this time, as well as the family feud also put it in a disadvantageous position as it gave the BJP a lot of fuel to keep the fire of criticism red hot. People may disagree with it, but a lot of harm was done to the SP because of its decision to enter the fray with the Congress party led by Rahul Gandhi as its poll ally. Akhilesh Yadav should have known that the Congress was a spent force in UP and a rejected lot in the country even before these elections and after Rahul Gandhi's assumption of its leadership it has been rejected all around and its somewhat good performance in Goa

and good performance in Punjab is not a victory of the Congress or Rahul Gandhi's leadership but a defeat of the utter mis-governance of the incumbent governments there. The Congress won there not because of Rahul Gandhi but in spite of him because of the strong anti-incumbency factor.

During the whole campaign, all the leaders of the BJP including Narendra Modi and Amit Shah had been completely anti-Muslim, casteist and divisive. They had made their intentions to polarize voters on the basis of religion to garner the support of the majority Hindu voters by not giving party ticket to a single Muslim candidate in a state which has about 20% Muslim population although a lone, non-descript, Muslim has been included in the Council of Ministers after the poll, perhaps symbolically. All of them talked of Ram Mandir, anti-Romeo squads, displacement of Hindus from some areas of the Western UP due to the fear of Muslims and appeasement of the Muslims by the Samajwadi Party Government at the cost of Hindus, including backward castes and dalits. The whole campaign was aimed at polarizing Hindu majority votes, including those of scheduled castes and OBCs, in its favour. Above all, the BJP was able to sell the dream of 'uttam pradesh' and development as it was able to sell the dream of bringing back black money from foreign banks and put Rs. 15 lakhs in every person's bank account during the poll campaign during the 2014 parliamentary elections, though within the last more than two and a half years of its rule in the country hardly any development has been noticed and the latter was accepted as a mere 'chunavi jumla' (poll-slogan) by no other than the BJP President, Amit Shah, himself. All this gave the BJP more votes than those of other parties, enough to win more than 300 seats, though its overall vote percentage fell

by 2.6% in comparison with the 2014 parliamentary election tally.

The selection of Yogi Adityanath, the head priest of the Gorakhnath temple who has been notorious for the aggravation of communal division and an explicit hostility towards minorities, as Chief Minister of U.P. by the BJP central leadership does not go in line with their poll slogans of 'sabka saath, sabka vikas', meaning thereby equal development of all without prejudice and the rule of law, but betrays their inherent desire to keep the pot of communalism, polarization and Hindutva agenda simmering, to come to full boil before the next parliamentary elections in 2019 to use it for electoral benefits. He was also responsible for the raising of a vigilante Hindu army, the Hindu Yuva Vahini, which has a reputation for violence and intimidation; the conversion of Muslims and Christians to Hinduism (ghar wapsi); the campaign against 'love jihad' etc. Besides, he is also known for defying BJP's whip on the women's reservation bill, being a defender of the caste hierarchy and an ardent advocate of the restoration of the monarchy in Nepal. Socially he is known for everything that represents the forces of reaction and regression. Adityanath is known more for his communal bigotry and divisive politics than for any developmental task, a perfect hardcore Hindutva icon and Hindu rashtra supporter as per the Rashtriya Swayamsevak Sangh (RSS) ideology. Enthused by their poll strategy and the resultant success in the poll results in UP, the BJP, Narendra Modi and Amit Shah could not have found a more appropriate person to take UP further in that direction of polarization and consolidation of majority Hindu votes – hence his selection for the post.

And as Mukul Kesavan, writing in www.telegraphindia.com has rightly said:

What it tells us is this. When it is in a position of strength the BJP will, other things being equal, choose the most viscerally communal and Hindu-supremacist candidate on its shortlist. And it will choose him not despite the bigotry of his past utterances and actions but because of it. What we are seeing in UP is a textbook example of how a genuinely extremist party behaves when it is released from the constraints of coalition building and negotiation.

Coming together of the government head of a big and important state like UP with 20% minority population and the chief priest of a religious mutt in one person, that too a hardcore Hindutva leader known for his continuous and persistent hate mongering against that minority community is an ominous sign for the future politics of the country and does not portend well for the state itself as well as for the country and its secular framework.

Beef eating is a personal matter

Vivekananda (Narendra - original name given by parents) participated in Chicago world religions conference and made a mark. Dr Bowers reported: ` After the first session of the parliament of religions, says Dr Bowers, I went with Vivekananda to the restaurant in the basement of the Art Institute and I said to him ~ What shall I get you to eat? His reply was ~ Give me beef (Outlook weekly, July 17, 1897).

Similarly M.N. Roy (originally Narendranath Bhattacharya) ate beef during his stay in Mexico 1917-1919 (as per his Memoirs).

Hence it is better to leave the choice of eating to individual, without bringing religion into it.

Wendy Doniger in her research work THE HINDUS quoted about Vivekananda (PP 639).

(Outlook magazine was published in Chicago at that time).

-Narisetti Innaiah

**Indian Renaissance Institute to hold
M.N. Roy Memorial Lecture on
‘FREE SPEECH, NATIONALISM, SEDITION’
by JUSTICE A.P. SHAH (Retd.)**



(Justice A.P. Shah)

**Hon'ble Mr. Justice Jasti Chelameswar
(Supreme Court) will preside.**

Date & Time: 5:00 pm on Wednesday, 19th April, 2017

Venue: Speaker's Hall, Constitution Club, Rafi Marg, New Delhi

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Chairman

S.C. Jain, N.D. Panchol
Vice-Chairmen

Dr. Rekha Saraswat
General Secretary

S.C. Varma
Treasurer

Office-Bearers of the IRI for 2017-2018

The biennial General Body meeting of the Indian Renaissance Institute, in short 'IRI', which was held at New Delhi on 29th January 2017, elected the following office bearers:

1. **Dr. Ramesh Awasthi** – Chairman
2. **Shri S.C. Jain and Shri N.D. Pancholi** - Vice-Chairmen
3. **Dr. Rekha Saraswat** – Secretary
4. **Shri S.C. Varma** – Treasurer

In the moment of his political triumph, Modi has chosen to defeat India

Hubris has set in. The BJP believes it can get away with anything - it now intends to

Pratap Bhanu Mehta

The elevation of Yogi Adityanath as chief minister of Uttar Pradesh is an odious and ominous development. It is an odious choice because the BJP has picked someone who is widely regarded as the single most divisive, abusive, polarising figure in UP politics. He is a politician who has, for most of his political career, been the mascot of militant Hindu sectarianism, reactionary ideas, routinised conflict and thuggery in political discourse, and an eco-system where the vilest legitimations of violence are not far away. It is an ominous development because it sends as clear a signal as it is possible to send at this time; the already accomplished political fact of the marginalisation of minorities in UP and elsewhere will now be translated into a programme of their cultural, social and symbolic subordination.

It signals that the BJP will now be dominated by extremes, its politics shaped largely by resentment rather than hope, collective narcissism rather than an acknowledgement of plurality, hate rather than reconciliation, and violence rather than decency. Hubris has set in. The party believes it can get away with anything. It now intends to.

The election results gave Prime Minister Narendra Modi an unprecedented mandate. It is true that most of us who did not expect the mandate are hardly in a position to explain what the results represented. All we know is that for a variety of reasons, people reposed trust in Modi overwhelmingly over his rivals. He got credit for leading from the front. He has chosen to interpret his mandate in a way that licenses and empowers the worst tendencies of his party. This is now not a statement just about UP: It is a

statement about the prime minister's inclinations and judgement. In the moment of his political triumph, he has chosen to defeat India.

BJP supporters are hiding behind the façade of party democracy to legitimise this choice. Yes, the formal imprimatur of the legislative party is behind him. But given Modi's power, this explanation is hard to digest. If Adityanath was so clearly a popular choice, what was the hesitation in declaring him the chief ministerial candidate before the elections? If it was uncertainty about his ability to win across the state, then the result does not alleviate it. So, the only conclusion is that it was a duplicity of sorts — "of sorts" because the ideological currents were apparent in the prime minister's speeches and the BJP manifesto.

But every argument that leads to legitimising this choice bodes ill for the country. If the legislature electing Adityanath is indeed the best interpretation of the mandate, then Indian democracy is corroded to the core: For it is effectively saying that India is now communalised to the point where a figure like Adityanath is the popular choice. We have to then give up the last vestiges of democratic hope in the idea that while the people may misjudge or commit mistakes, while they may occasionally excuse a crime, they will not vote for the wholesale destruction of basic values. It has been hard to resist misanthropy towards the role of citizens in Indian democracy. Many elites have succumbed to it in a self-defeating way. But it is that democratic respect that has perhaps made us underestimate our capacity to legitimise political evil.

Taking a stand against a democratic mandate,

without losing democratic faith, is not an easy political act to juggle. If Adityanath is indeed the popular choice, then the crisis of Indian democracy deepens: It will essentially seem like a contest between fundamentalism and democratic misanthropy, both destructive of the idea of democracy. On the other hand, if his elevation is a misreading of the mandate, then too we are in deep trouble: For it will show the limits of democracy in containing sheer hubris. Either way, unless there is some imaginative ideological regeneration, India will become a democracy intoxicated by sheer power.

“Every saint has a past and every sinner a future.” This refrain has often been used to excuse big political crimes in India. And it has to be said, from Rajiv Gandhi to the current prime minister, leaders have got away with a lot of political culpability. But even in the tainted annals of our democracy, sinners have had to keep up appearances of reinventing themselves, positioning themselves to show they had something more than the taint to offer — what is striking about Adityanath’s political career so far is that there is not even a whiff of acknowledgement that he might need to speak to something larger, acknowledge civility, or stay away from fear-mongering and the legitimisation of violence. There is nothing else here, other than a tissue of resentment and hate, unless you think the Gorakhpur model of politics is a harbinger of development.

There is an element of truth in Yogi Adityanath’s claim that the BJP is consolidating a politics that goes beyond caste, at least in the way it was conventionally understood. But we are left with the disquieting conclusion that the form of consolidation “beyond caste” he prac-

tises will rely on an even more insidious communal politics. The political challenges of this moment are going to be immense. Modi’s rise to power has empowered a lot of nasty characters. Now they get wholesale control of the state apparatus in India’s largest state, and with every intention to reshape it in their image.

A forcing of the hand on the Ram Mandir issue is now an imminent prospect. Visible opposition will be difficult to mount because of the BJP’s total dominance, and this will likely make the situation worse. The usual safety valves of Indian democracy are slowly shutting. We have no idea of what kind of politics this suffocation will spawn. India’s enemies will be exulting that at a moment in world history, when all India had to do was to have a sensible policy, we have chosen to empower the worst of ourselves.

Naths have a distinguished spiritual tradition. But militant Nath yogis have a destructive history in politics: They were even patronised by Aurangzeb. They were influential in Jodhpur, my home town. The 19th century ruler, Man Singh, was a disciple. He called his kingdom an “arpan” to the Naths. Raja Man Singh was talented. He fancied himself a poet, a king and a yogi. The only catch was that he was not the self-possessed ideal king. He had frequent bouts of madness. He was paranoid, had power but could not master it. Now we have been again asked to do a political arpan to the Naths. Madness cannot be far away.

This column first appeared in the print edition titled 'Yogic Madness'. The writer is President, CPR Delhi, and contributing editor, The Indian Express.

Courtesy **The Indian Express**, March 20, 2017

“Information is the currency that every citizen requires to participate in the life and governance of society.” **Justice A. P. Shah**, former Chief Justice, Delhi and Madras High Courts, (2010)

What Yogi Adityanath Choice [as UP CM] Says About Modi-Shah, RSS

Swati Chaturvedi

[Modi-Shah duo are, surely, bent upon following the "Gujarat model" in UP, the largest state of India - and politically/electorally most significant.

Having once tasted blood, they're just thirsting for more. And, no pussy-footing, no squeamishness, nothing of the sort.

I'd, in this context, like to recall a note of mine, 'BJP's Real Agenda', carried by the EPW back in its Feb 07-13, 1998 issue.

Arguably a relevant extract:

"While aggression/exclusion is crucial, and in fact indispensable, for expanding (and even retaining) the support base, particularly amongst the lower stratum of the social pyramid, the moderation/accommodation phase constitutes the interregnum necessary for stabilisation during

retreat and/or respite (primarily on account of lack of Mate patronage). This, however, is gainfully utilised to reassure the supporters from amongst the upper castes/classes, who look upon the BJP mainly as a bulwark against Mandal and the promoter of a 'strong' state considered essential for implementing the liberalisation/globalisation agenda but do not have the stomach for the prolonged turmoil, and also to pick up allies and accomplices from within the centrist political spectrum."

So, the gloves are off! They're out again foregrounding the aggression/exclusion elementing, at least partly, relegating much trumpeted "development".

Comapre this with the concluding paragraph of the article reproduced below: "Adityanath's anointment is now full proof of the makeover of the BJP under Modi and Shah, an unapologetic, battle-hardened election fighting

machine which takes no prisoners. In a significant way, all

the talk of Vikas is also off the table, as with two years to go for 2019, and some significant elections to win, the BJP goes back to basics. Brace yourself, turbulence ahead."

The fools who had failed to see through the game plan are bound to suffer, rather grievously.

And, make so many others, not falling under the same category, also suffer the same fate.

That's even more unfortunate.]

A 44-year-old monk Yogi Adityanath, often surrounded by gun-toting followers, will be the Chief Minister of India's politically most important state, Uttar Pradesh.

After securing a record majority in UP, the Bharatiya Janata Party has now transformed its win into an expression of complete majoritarianism as Adityanath is a radical along the most delicate fault lines that bedevil UP. It seems that the "Mukhota" (mask) is well and truly off.

After the decision was announced, while the ecstatic crowds roared "Desh Mein Modi, Pradesh Mein Yogi", less enthused observers wondered what this bodes for Modi's much used slogan "Sab ka Saath, Sab ka Vikas".

Adityanath is a five-term MP from Gorakhpur, a science graduate from Garhwal University, but he has absolutely no administrative experience. Modi twice offered him central jobs as Minister of State, Adityanath said a resolute no. He has made no bones about his desire to be UP Chief Minister and has earlier told me that it was his "Sankalp" (resolve) to serve his karambhoomi (birthplace).

In many ways, Adityanath's anointment is a Modi as Gujarat CM redux moment. Modi was equally dogged in his ambition to be Chief Minister and ensured that a reluctant central BJP was left with hardly a choice but to give in. He also ensured that the BJP cadre forced his announcement as PM candidate in 2014, while some top leaders including LK Advani and Sushma Swaraj were palpably reluctant.

Adityanath as Chief Minister will put the Hindutva agenda centre-stage in UP. This perhaps is the main reason behind his selection as the Sangh Parivar is now chary of any divisions in the large "Hindu Samaj" that they have managed to cobble together in UP. This "Hindutva vote" which broke down impregnable caste divisions and secured the BJP a historic mandate is to be kept together by any means.

What does Adityanath's anointment mean for UP? The signs so far are not reassuring. Posters were put up in Bareilly asking Muslims to leave; in Bulandshahr, a group tried to hoist a BJP flag atop a mosque, according to this report. During the campaign, Adityanath stuck to his fire-brand dog-whistle script, which the BJP has always conveniently dismissed as "fringe".

In UP, "fringe" is now centre-stage. The BJP did not give a ticket to a single Muslim candidate for the assembly elections; this legislature has the lowest number of Muslims in 25 years. Only 25 Muslims will be in the assembly this time, while they comprise 18 percent of UP's population. Adityanath's ascent will be a tough pill to swallow as he has often made controversial and minority-baiting speeches about "love jihad" and "appeasement".

Adityanath will also be a completely unknown quantity to the UP administration which is hugely lethargic in delivery to the swathes of desperately poor and backward. Modi had promised Vikas (development) to the UP voter. What version of Vikas will Adityanath deliver?

Will he focus on "bijli, sadak, paani" (electricity, roads, water) which UP desperately needs, or will he choose "mandir" politics? UP needs jobs and a chance to get out of its hugely backward state. Observers are wary of Adityanath's credentials to deliver development.

UP was the original "laboratory" for the Sangh's Hindutva agenda much before Gujarat and is still key to a Modi sweep in 2019, so the vote has to be kept intact. While this does explain the choice, it's still intriguing as Adityanath has always been his own man and is not known to get along with the central leadership. Interestingly, this time around, Amit Shah, during the campaign, gave him his own helicopter and for the first time, he campaigned outside his Purvanchal base. Despite this seeming bonhomie, his own outfit, the Hindu Yuva Sena, angry at Adityanath not being announced the presumptive Chief Minister, had put its own candidates in some seats. Adityanath disowned them. On the face of it.

The BJP has done a careful caste balancing act as well. Adityanath is a Thakur, and his two newly-minted deputies are Keshav Maurya, an OBC, and Lucknow Mayor Dinesh Sharma, a Brahmin. The caste coalition carefully cobbled together with Maurya will be kept intact for the mother of all battles of 2019.

Adityanath's anointment is now full proof of the makeover of the BJP under Modi and Shah, an unapologetic, battle-hardened election fighting machine which takes no prisoners. In a significant way, all the talk of Vikas is also off the table, as with two years to go for 2019, and some significant elections to win, the BJP goes back to basics. Brace yourself, turbulence ahead.

(Swati Chaturvedi is an author and a journalist who has worked with The Indian Express, The Statesman and The Hindustan Times.)

Courtesy NDTV.com, March 18, 2017

The fear of Hindu Rashtra : Should Muslims keep away from electoral politics?

After Uttar Pradesh election results, Muslim community debates whether their very presence in the political arena has become problematic for Hindus.

Ajaz Ashraf

Four months before the Uttar Pradesh election results sent Muslims in India reeling in shock, former Rajya Sabha MP Mohammed Adeb delivered a speech in Lucknow, which, in hindsight, might be called prescient.

“If Muslims don’t wish to have the status of slaves, if they don’t want India to become a Hindu rashtra, they will have to keep away from electoral politics for a while and, instead, concentrate on education,” Adeb told an audience comprising mostly members of the Aligarh Muslim University’s Old Boys Association.

It isn’t that Adeb wanted Muslims to keep away from voting. His aim was to have Muslim intellectuals rethink the idea of contesting elections, of disabusing them of the notion that it is they who decide which party comes to power in Uttar Pradesh.

Adeb’s suggestion, that is contrary to popular wisdom, had his audience gasping. This prompted him to explain his suggestion in greater detail.

“We Muslims chose in 1947 not to live in the Muslim rashtra of Pakistan,” he said. “It is now the turn of Hindus to decide whether they want India to become a Hindu rashtra or remain secular. Muslims should understand that their very presence in the electoral fray leads to a communal polarisation. Why?”

Not one to mince words, Adeb answered his question himself.

“A segment of Hindus hates the very sight

of Muslims,” he said. “Their icon is Narendra Modi. But 75% of Hindus are secular. Let them fight out over the kind of India they want. Muslim candidates have become a red rag to even secular Hindus who rally behind the Bharatiya Janata Party, turning every election into a Hindu-Muslim one.”

Later in the day, Adeb met Congress leader Ghulam Nabi Azad, who was in Lucknow. To Adeb, Azad asked, “Why did you deliver such a speech?”

It was now Azad’s turn to get a mouthful from Adeb. He recalled asking Azad: “What kind of secularism is that which relies on 20% of Muslim votes? The Bahujan Samaj Party gets a percentage of it, as do the Samajwadi Party and the Congress.”

At this, Azad invited Adeb, who was elected to the Rajya Sabha from Uttar Pradesh, to join the Congress. Adeb rebuffed the offer saying, “First get the secular Hindus together before asking me to join.”

Spectre of a Hindu rashtra

A day after the Uttar Pradesh election results sent a shockwave through the Muslim community, Adeb was brimming with anger. He said, “Syed Ahmed Bukhari [the so-called Shahi Imam of Delhi’s Jama Masjid] came to me with a question: ‘Why aren’t political parties courting me for Muslim votes?’ I advised him to remain quiet, to not interfere in politics.” Nevertheless, Bukhari went on to announce that Muslims should vote the Bahujan Samaj Party.

“Look at the results,” Adeeb said angrily. “But for Jatavs, Yadavs, and a segment of Jats, most Hindus voted [for] the Bharatiya Janata Party.” His anger soon segued into grief and he began to sob, “I am an old man. I don’t want to die in a Hindu rashtra.”

Though Adeeb has been nudging Muslims to rethink their political role through articles in Urdu newspapers, the churn among them has only just begun. It is undeniably in response to the anxiety and fear gripping them at the BJP’s thumping victory in this politically crucial state.

After all, Uttar Pradesh is the site where the Hindutva pet projects of cow-vigilantism, love jihad, and ghar wapsi have been executed with utmost ferocity. All these come in the backdrop of the grisly 2013 riots of Muzaffarnagar, which further widened the Hindu-Muslim divide inherited from the Ram Janmabhoomi movement of the 1990s and even earlier, from Partition. Between these two cataclysmic events, separated by 45 years, Uttar Pradesh witnessed manifold riots, each shackling the future to the blood-soaked past.

I spoke to around 15 Muslims, not all quoted here, each of whom introspected deeply. So forbidding does the future appear to them that none even alluded to the steep decline in the number of Muslim MLAs, down from the high of 69 elected in 2012 to just 24 in the new Uttar Pradesh Assembly.

They, in their own ways, echoed Adeeb, saying that the decline in representation of Muslims was preferable to having the Sangh Parivar rule over them with the spectre of Hindutva looming.

“Muslims need to become like the Parsis or, better still, behave the way the Chinese Indians do in Kolkata,” said poet Munawwar Rana. “They focus on dentistry or [their] shoe business, go out to vote on polling day and

return to work.”

He continued: “And Muslims?” They hold meetings at night, cook deghs (huge vessels) of biryani, and work themselves into a frenzy. “They think the burden of secularism rests on their shoulders,” said Rana. “Educate your people and make them self-reliant.”

Readers would think Adeeb, Rana and others are poor losers, not generous enough to credit the BJP’s overwhelming victory in Uttar Pradesh to Prime Minister Narendra Modi’s development programme. In that case readers should listen to Sudhir Panwar, the Samajwadi Party candidate from Thana Bhawan in West Uttar Pradesh, who wrote for Scroll.in last week on the communal polarisation he experienced during his campaign.

In Thana Bhawan, there were four principal candidates – Suresh Rana, accused in the Muzaffarnagar riots, stood on the BJP ticket; Javed Rao on the Rashtriya Lok Dal’s; Abdul Rao Waris on the Bahujan Samaj Party’s, and Panwar on the Samajwadi Party’s. It was thought that the anger of Jats against the BJP would prevent voting on religious lines in an area where the Muslim-Hindu divide runs deep.

This perhaps prompted Rana to play the Hindu card, and the Muslims who were more inclined to the Rashtriya Lok Dal switched their votes to the Bahujan Samaj Party, believing that its Dalit votes would enhance the party’s heft to snatch Thana Bhawan.

Communal polarisation

Sample how different villages voted along communal lines.

In the Rajput-dominated Hiranwada, the Bahujan Samaj Party bagged 14 votes, the Rashtriya Lok Dal not a single vote, the Samajwadi Party seven, and the Bharatiya

Janata Party a whopping 790.

In Bhandoda, a village where the Brahmins are landowners and also dominate its demography, followed by Dalits, the Bahujan Samaj Party secured 156 votes, the Rashtriya Lok Dal zero, the Samajwadi Party nine, and the Bharatiya Janata Party 570.

In the Muslim-dominated Jalalabad, the Bahujan Samaj Party received 453 votes, the Rashtriya Lok Dal 15, the Samajwadi Party 6 and the Bharatiya Janata Party 23.

In Pindora, where Jats are 35% and Muslims around 30% of the population, the Bahujan Samaj Party polled 33 votes, the Rashtriya Lok Dal 482, the Samajwadi Party 33, and the Bharatiya Janata Party 278, most of which is said to have come from the lower economically backward castes.

In Devipura, where the Kashyaps are numerous, the Bahujan Samaj Party got 86 votes, the Rashtriya Lok Dal 42, the Samajwadi Party 1 and the Bharatiya Janata Party 433.

In Oudri village, where the Jatavs are in the majority, the Bahujan Samaj Party bagged 343. With the Samajwadi Party getting a slim share in it, the Jatavs stood solidly behind the Bahujan Samaj Party, and all others simply crossed over to the Bharatiya Janata Party. The BJP's Suresh Rana won the election from Thana Bhawan.

"Can you call this election?" asked Panwar rhetorically. "It is Hindu-Muslim war through the EVM [Electronic Voting Machine]." Panwar went on to echo Adeeb: "I feel extremely sad when I say that Muslims will have to keep away from contesting elections. This seems to be the only way of ensuring that elections don't turn into a Hindu-Muslim one."

The Bahujan Samaj Party's Waris differed. "Is it even practical?" he asked. "But yes,

Muslims should keep a low profile."

Hindu anger against Muslims

For sure, Muslims feel that the binary of secularism-communalism has put them in a bind. Lawyer Mohd Shoaib, who heads the Muslim Rihai Manch, pointed to the irony of it. "For 70 years, we Muslims have fought against communalism," he said. "But it has, nevertheless, grown by 70 times."

Indeed, those with historical perspective think Uttar Pradesh of 2017 mirrors the political ambience that existed there between 1938 and 1946 – a seemingly unbridgeable Hindu-Muslim divide, a horrifyingly communalised public discourse, and a contest for power based on mobilisation along religious lines.

Among them is Mohammad Sajjad, professor of history at Aligarh Muslim University. "The 69 MLAs in the last Assembly was bound to, and did, raise eyebrows," he said.

But what irks Hindus even more is that Muslims constitute nearly one-third of all members in panchayats and local urban bodies. "It is they who have become a sore point with Hindus," said Sajjad. "When they see Muslim panchayat members become examples of the rags-to-riches story, the majority community feels aggrieved. It is not that Hindu panchayat members are less corrupt. But every third panchayat member being Muslim has given credibility to the narrative that Muslims are being favoured."

The Hindu angst against Muslim empowerment is also on account of both the Bahujan Samaj Party and the Samajwadi Party being popularly perceived to be indifferent to the aspirations of certain subaltern social groups. For instance, it is this indifference that has led to non-Jatav Dalits and most backward castes, clubbed under the Other Backward

Classes for reservations, to leave the Bahujan Samaj Party, as non-Yadav middle castes have left the Samajwadi Party. They did so in response to Mayawati turning hers into primarily the party of Jatavs, and the Samajwadi Party pursuing the Yadavisisation of the administration.

“These aspirational Hindu groups are angry with the SP [Samajwadi Party] and the BSP [Bahujan Samaj Party],” said Sajjad. “Their anger against them also turned into anger against Muslims.” This is because it is popularly felt that the support of Muslims to the Bahujan Samaj Party and the Samajwadi Party brings them to power, turning these parties callously indifferent to the aspirations of other groups.

It is to neutralise the efficacy of Muslim votes, and also to teach their parties of choice a lesson, that these aspirational groups have flocked to the BJP. “This is why the very presence of Muslims in the political arena has become problematic for Hindus,” Sajjad said.

So then, should Muslims take Adeeb’s cue and retreat from the political arena or at least keep a low profile?

Sajjad replied, “Go ahead and vote the party of your choice. But after that, play the role of a citizen. If people don’t get electricity, protest with others. You can’t be forgiving of those for whom you voted only because they can keep the BJP out of power. This is what angers aspirational Hindu social groups.”

Indeed, it does seem a travesty of justice and democracy that Muslims should rally behind the Samajwadi Party in Muzaffarnagar after the riots there. Or that they voted for the Bahujan Samaj Party in Thana Bhawan in such large numbers even though Mayawati didn’t even care to visit the Muslim families who suffered unduly during the riots.

Introspection and self-criticism

Like Sajjad’s, most narratives of Muslims have a strong element of self-criticism. Almost all vented their ire against Muslim clerics. Did they have to direct Muslims which party they should vote for? Didn’t they know their recklessness would trigger a Hindu polarisation?

Unable to fathom their irresponsible behaviour, some plump for conspiracy theories. It therefore doesn’t come as a surprise to hear Obaidullah Nasir, editor of the Urdu newspaper Avadhnama, say, “They take money from the Bharatiya Janata Party to create confusion among Muslims. I got abused for writing this. But how else can you explain their decision to go public with their instructions to Muslims?”

Poet Ameer Imam, who teaches in a college in the Muslim-dominated Sambhal constituency, said, “Muslims will have to tell the maulanas that their services are required in mosques, not in politics. When Muslims applaud their rabble rousers, can they complain against those in the BJP?”

To this, add another question: When Mayawati spoke of Dalit-Muslim unity, didn’t Muslims think it would invite a Hindu backlash?

Most will assume, as I did too, that Muslims fear the communal cauldron that Uttar Pradesh has become will be kept on the boil. But this is not what worries them. Not because they think the Bharatiya Janata Party in power will change its stripes, but because they fear Muslims will feel so cowered that they will recoil, and live in submission. “Our agony arises from being reduced to second-class citizens, of becoming politically irrelevant,” said journalist Asif Burney.

True, members of the Muslim community are doing a reality-check and are willing to emerge

from the fantasy world in which they thought that they decided which party won an election. The Uttar Pradesh results have rudely awakened them to the reality of being a minority, of gradually being reduced to political insignificance, and their status as an equal citizen – at least in their imagination – challenged and on the way to being undermined.

But this does not mean they wish to enter yet another world of fantasy, which journalist and Union minister MJ Akbar held out to them in the piece he penned for the Times of India on March 12. Akbar wrote,

“...[T]his election was not about religion; it was about India, and the elimination of its inherited curse, poverty. It was about good governance.”

One of those whom I spoke to laughed uproariously on hearing me repeat Akbar’s lines. So you can say that with them believing their future is darkled, Muslims at least haven’t lost their humour.

Ajaz Ashraf is a journalist in Delhi. His novel, *The Hour Before Dawn*, has as its backdrop the demolition of the Babri Masjid. It is available in bookstores.

Courtesy **scroll.in**

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The Guardian view on a key poll: victory for anti-Muslim bigotry

Editorial

In India there is increasing concern that minorities are being told they exist merely on the goodwill of the majority. For some of India's 140 million Muslims it is enough to debate withdrawing from public life Indian Prime Minister Narendra Modi arriving at the Bharatiya Janata Party headquarters a day after the party's landslide victories in key state legislature elections, including Uttar Pradesh, India's largest state.

The world breathed a sigh of relief last week as the Islamophobe populist Geert Wilders failed to become the head of the biggest party in Holland. The respite from elected bigotry did not last long. On Sunday an even more stridently anti-Muslim extremist took power in the biggest election of this year. Uttar Pradesh, with a population of more than 200 million, is not an independent nation. It is India's biggest and most important state. UP, as it is known, by itself would be the world's fourth biggest democracy – behind the rest of India, the United States, and Indonesia. In a stunning victory, the ruling Bharatiya Janata party swept the state elections, winning, along with its allies, 80% of the seats. Elections here are the most significant in India. UP sends 80 MPs to India's national parliament of 545 seats. Regardless of party, they pay careful attention to the mood of UP's electorate. If the nation's governing parties do well in UP, parliamentarians feel they ought to stay in line. If opposition parties do well in UP, then gridlock rules in Delhi.

The man chosen by the Indian prime minister, Narendra Modi, to lead UP, home of Hinduism's holy Ganges river and the Moghul tomb of Taj Mahal, is a fellow Hindu nationalist, Yogi Adityanath. Mr Adityanath is a Hindu priest who,

while elected five times from his temple's town, has been shown repeatedly to be contemptuous of democratic norms. He has been accused of attempted murder, criminal intimidation and rioting. He says young Muslim men had launched a "love jihad" to entrap and convert Hindu women. Mother Teresa, he claimed, wanted to Christianise India. He backs a Donald Trump-style travel ban to stop "terrorists" coming to India. On the campaign trail, Mr Adityanath warned: "If [Muslims] kill one Hindu man, then we will kill 100 Muslim men". This cannot be dismissed as mere rhetoric. The argument that once in power the BJP would become more reasonable does not wash. There's little sign India's constitutional protections would enable the BJP to continue in power while the dynamics of its wider movement are kept in check. Mr Adityanath, now a powerful figure, is signaling that in India minorities exist merely on the goodwill of the majority. Step out of line and there will be blood. For some of India's 140 million Muslims the threat is enough to see them debate withdrawing from public life to avoid further polarisation.

Mr Modi's BJP is full of religious zealots. He himself claimed plastic surgeons in ancient India grafted an elephant head on to a human thousands of years ago. The BJP's skill is producing a circus to divert attention from how poorly the country is doing. This has been successful: voters overwhelmingly endorsed Mr Modi's decision last November to cancel high-value banknotes – the so-called demonetization of 86% of all currency – which they were told was a key anti-corruption reform.

The public, and especially the poor, appear to put up with the chaos because they wrongly

believe the rich suffered more. They did not because the wealthy long ago converted ill-gotten cash into houses, businesses and jewellery. The turmoil cost the economy, experts say, an estimated £14bn. Money that might have been better spent in UP providing electricity to half of households that don't have it, or tackling the highest infant mortality rate in India. The

country instead is told that Hindus must have a temple on the site of a Muslim mosque demolished by a BJP-led mob in 1992 because it was said to be the birthplace of a deity. This is a nation that once was said to succeed in spite of the gods. Now it is going backwards because of them.

Courtesy theguardian.com

Angelina Jolie on Nationalism and Patriotism

"We see rising tide of nationalism masquerading as patriotism and re-emergence of policies encouraging fear and hatred of others. We are grappling with a level of conflict and insecurity that seems to exceed our will and capabilities with more refugees than ever before with new wars erupting on top of existing conflicts, some already lasting for decades. I am a proud American and I am an internationalist. I believe any one committed to human rights is. It means seeing the world with a sense of fairness and humility and recognizing our own humanity in the struggles of others. It stems from love of one's country, but not at the expense of others, from patriotism, but not from narrow nationalism."

Angelina Jolie speaking at U.N.

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Is judiciary in peril?

DELHI University teacher G.N. Saibaba has been sentenced to life imprisonment for his links with Maoists. With due respects to the court, I beg to differ with the punishment. Maoists are ultra-left and most people in India do not like their philosophy. Some who follow them can be criticized, but cannot be imprisoned for their views and that too for life.

It appears that the courts are also getting influenced by the party in power. The ruling Bhartiya Janata Party (BJP) believes in Hindu rashtra. Conceded that it is not doing anything in the form of a bill or any order to impose Hindutva, but the very fact that the Prime Minister Narendra Modi supports the cause does carry weight.

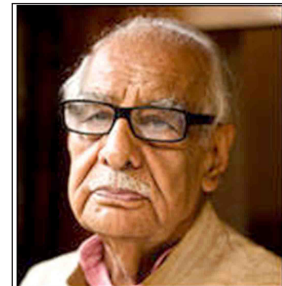
The Maoists should be fought on the ideological ground. The BJP should present its case that the Hindu philosophy would bring more prosperity than that of the leftists which promises an egalitarian society. In fact, the left itself has to sell what it believes in and how the people, by adhering to their thesis, would benefit.

India is not alone in facing the challenge. All over the world, especially after the election of Donald Trump in America, people feel insecure in pursuing their right to espouse views. As his rival Hillary Clinton said, they would adhere to what the constitution of America says on individual rights. The US President should know that the popular movement against the Soviet system which brooked no other voice was brought down by the people themselves.

Even Soviet leader Stalin had to go because the people's voice became louder and louder. Although he had suppressed every dissent, not just that of a particular community but also of others, the popular sentiment was that

expression of views should be free and without fear.

Germany also proved this point. It had the best of constitution which guaranteed free speech in every way, but a person like Adolf Hitler used the same constitution to found the worst of rules. It took a full-fledged war to oust him and his philosophy.



Kuldip Nayar

Even now Germany takes different stringent steps to see that the ghost of Nazism does not surface. Nazis' swastika has been found scribbled on the walls of Berlin. It seems that some Germans are still dreaming about ruling the entire Europe. Economically, the country does dominate but politically it has not yet learnt to take its turn.

It is surprising that Maoism has very little following although it is the same kind of philosophy which does not entertain another point of view. Nationalism in Germany is so deep that it does not allow any other thinking which may be embracing other parts of Europe. The country has allowed some immigrants who have become a great burden on Greece. Berlin is now vigilant. It is not now possible to migrate to Germany even on human grounds.

New Delhi is unnecessarily worried. The idea of India counts so much with the people that there is no room for any other thought to germinate. It is probably this Indian-ness which binds people from Kashmir to Kanyakumari. The Maoists cannot penetrate.

Democracy is more than a faith with the

people. It was seen how the popular leader, Mrs Indira Gandhi, was swept off her feet soon after lifting of the emergency in 1977. She too was defeated at the polls. The voters did not like the authoritarian rule and revolted against it when they got the opportunity.

The ruling BJP, which was then Jan Sangh, also suffered and its followers were put behind bars. Even then Delhi Mayor Hansraj Gupta was not spared. Members of the Jan Sangh and the Gandhites shared the same cell. The Janata Party was born in the jail itself. The credit, however, goes to Raj Narain, a socialist, who challenged Mrs Gandhi for her poll malpractices. The Allahabad High Court debarred her from occupying any elected post for six years. She, however, imposed the emergency but that is a different story.

The DU teacher and four others who were sentenced for life did not commit any heinous crime to deserve the punishment for having mere links with the Maoists. Even otherwise, I believe that the Maoists should have a say and express their viewpoint as citizens of this country. It should be left to them to choose or reject their philosophy but the criterion should be that they would not incite violence.

The experience has been that once you make leeway in one case the demand would be that the same attitude should be exhibited in other cases. The precedent will be quoted and the court would have to decide whether the case

was similar or any different. Fortunately, the victims would most likely appeal in higher courts and it all will depend on what the verdict of the higher judiciary is going to be.

Ultimately, it would come to what Maoism means. In a country where the constitution guarantees free speech and expression, the views of a particular philosophy cannot be banned. But there should no exhortation to violence. The manner in which the killings have taken place in Bastar indicates that the Maoists have no respect for life and would use any method to ensure that their idea is not opposed.

The court should not be influenced by what the Maoists preach or not because I find that verdicts are becoming dependent on the philosophy that the ruling party espouses. It is healthy to see that appointment of judges is now made by the collegium of senior Supreme Court judges. Yet my experience says that the chief justice comes to be influenced by those in power. This was not the case till recently. The judges were appointed by the government and they delivered some of the best of verdicts. It is no use recalling that time but taking necessary steps to create the same atmosphere of independence of the court.

(Kuldip Nayar is a veteran syndicated columnist catering to around 80 newspapers and journals in 14 languages in India & abroad. kuldipnayar09@gmail.com)

Gandhi, the eternal anarchist!

When Gandhiji was being tried under the notorious sedition 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 Collegium is Under Siege as the Executive Flexes its Muscles

Dushyant Dave

Judges whose rulings have gone against the BJP and its leaders are discovering that their prospects for advancement have been blocked.

Should the proceedings of the Supreme Court collegium – which clears appointments to the higher judiciary – go unchecked? In larger public interest, I feel the process of appointment must be more open and objective.

The collegium's recent decisions – non-transparent and secretive – have left the legal world surprised, if not shocked. The decisions do not appear to be objective or independent. Pertinently, these decisions have come after the present Chief Justice of India, Justice Jagdish Khosla, took charge of the apex court on January 4, 2017, after he presided over a constitution bench which delivered the judgment in a case relating to the National Judicial Appointments Commission (NJAC) on October 16, 2015. The court rejected the NJAC Act which gave politicians and others a say in the appointment of judges.

That the collegium has to be objective in its decisions has long been emphasised by the Supreme Court. “The Chief Justice of India, for the formation of his opinion, has to adopt a course which would enable him to discharge his duty objectively to select the best available persons as judges of the Supreme Court and the high courts,” a bench of nine Supreme Court judges said in a judgment delivered on October 6, 1993, in the case of *Supreme Court Advocates on Record Association and others v Union of India*.

“Due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness and, therefore, this also is a norm to be observed by

the Chief Justice of India in recommending appointments to the Supreme Court,” it observed, stressing that “merit” was the “outweighing consideration” for selecting judges to the apex court.

The rationale behind it, inter alia, was the necessity to “eliminate political influence”; the “constitutional purpose” was to select “the best from amongst those available” for appointment as judges of the superior judiciary.

“It is obvious that only those persons should be considered fit for appointment as judges of the superior judiciary who combine the attributes essential for making an able, independent and fearless judge... Legal expertise, ability to handle cases, proper personal conduct and ethical behaviour, firmness and fearlessness are obvious essential attributes of a person suitable for appointment as a superior judge,” it said.

But the recent decisions on the appointment of judges by the collegium leave much to be desired. The cases of Justice K.M. Joseph, chief justice of the Uttarakhand high court, and Justice Jayant Patel, the senior most puisne judge of the Karnataka high court, are classic examples of the destruction of the “legitimate expectations” of two of the most independent judges in the country. Both seem to be paying the price for their independent judgments in the president's rule case in Uttarakhand and *Ishrat Jahan's* case in Gujarat. These judgments are unpalatable to the Narendra Modi government at the Centre.

Though Chief Justice Joseph was earlier slated to be transferred to Andhra Pradesh by a

decision of the previous collegium to which some of the members of the present collegium are party, it has not been implemented. He deserved to be elevated because the law seeks to “select the best from amongst those available”. This is not to comment on the merits of the five recent appointees to the Supreme Court who are equally outstanding. But there are three more vacancies in the Supreme Court today. So why was Chief Justice Joseph excluded?

Justice Patel, appointed on December 3, 2001, is senior to four of the five recent appointees. For no reason he is not being confirmed as chief justice although the previous collegium had recommended the transfer of the incumbent chief justice out of Karnataka to facilitate the appointment of Justice Patel in his place.

More painful is the fact that the collegium has recommended nine judges for appointment as chief justices in nine high courts. Each of them is junior to Justice Patel by periods ranging from two months to four and a half years. Why so?

Justice Patel deserved to be considered for the Supreme Court even directly because Gujarat has no representation on the bench or at least be appointed as the chief justice of an important high court.

The collegium system rests on three Supreme Court judgments known as the Three Judges Cases. In the fourth judgment in the series, popularly recognised as the NJAC case, Justice Khehar (as he then was) held, “...as a proposition of law, we are not inclined to accept the prayer of the Union of India and the other respondents, for a re-look or review of the judgments rendered in the Second and Third Judges cases.”

He further observed, “Secondly, the final intent emerging from the Constituent Assembly debates, based inter alia on the concluding remarks expressed by Dr B.R. Ambedkar, main-

tained that the judiciary must be independent of the executive.” The appointment of judges to the higher judiciary had a direct nexus with the “independence of the judiciary”, he said.

“When the issue is of such significance, as the constitutional position of judges of the higher judiciary, it would be fatal to depend upon the moral strength of individuals. The judiciary has to be manned by people of unimpeachable integrity, who can discharge their responsibility without fear or favour,” he observed.

He rejected as “clearly questionable” the participation of the Union law minister in the NJAC. “One of the rules of natural justice is that the adjudicator should not be biased,” he pointed out. This meant that that he or she should neither “entertain a prejudice against either party” nor be “favourably inclined” towards them. Further, the adjudicator should not have a conflict of interest as it would have “the inevitable effect of undermining” the independence of the judiciary.

“The sensitivity of selecting judges is so enormous, and the consequences of making inappropriate appointments [are] so dangerous that if those involved in the process of selection and appointment of judges to the higher judiciary make wrongful selections, it may well lead the nation into a chaos of sorts,” he said.

So far so good. Beautiful words, great principles and laudable objectives. But in actual practice, these are empty words.

Take the case of Justice Hemant Gupta, acting chief justice of the Patna High Court, who, according to reports, is being appointed chief justice of the Madhya Pradesh high court. Justice Gupta is facing allegations about financial impropriety on the part of his family members which have resulted in an investigation by the Enforcement Directorate. Newspaper reports state that Justice Gupta has directly “obstructed justice” by interfering in those investigations. So

why even consider him and send him to a state whose chief minister is facing serious charges in the Vyapam scam, which has resulted in the death of over 12 people?

Equally disturbing is the case of Justice M.R. Shah of the Gujarat high court. The previous collegium had recommended his transfer to Madhya Pradesh almost a year ago. He continues to be in Gujarat because the Modi government did not agree to the recommendation. The present collegium is a mute spectator to that.

Justice Shah had rendered a judgment in 2009 paving the way for the appointment of Amit Shah as president of the Gujarat Cricket Association. History bears witness to the fact that those who decided the cases of Amit Shah in his favour were rewarded with positions of governor and Law Commission chairman. Interestingly, on March 24, 2011, Justice Shah and his family attended the India-Australia World Cup cricket quarter-final match at the Sardar Patel Stadium, Ahmedabad, in the president's gallery and were received by Amit Shah's son and an eminent lawyer. I too was there to watch the match in the president's gallery.

Questions are also being raised about the deci-

sion to elevate Justice S. Abdul Nazeer, an outstanding judge, when a senior and an equally outstanding judge was available in Justice Badar Durrez Ahmed for elevation to the Supreme Court.

The collegium is bound to follow the "norms" laid down in the Second Judges case in the exercise of its powers. Expediency in appointments is required to fill up vacant posts – but not at the cost of compromising the independence of the judiciary. And certainly not at the cost of ignoring its own law.

These questions arise because decisions are taken behind closed doors within the four walls of the Supreme Court. The higher judiciary has refused to allow the applicability of the Right to Information. The entire process is opaque and shrouded in mystery. One hopes that the collegium, which consists of some outstanding judges, will be vigilant in ensuring that wrong appointments are not made so as to push "the nation into a chaos of sorts".

Dushyant Dave is a senior advocate and former president of the Supreme Court Bar Association

Courtesy **The Wire**, 16/03/2017

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- Mahi Pal Singh, Editor, The Radical Humanist

The Legitimacy and Morality of Prof. Saibaba's Conviction

Prabhakar Sinha

I would not express any opinion on the legality of Prof. Saibaba's conviction and the award of a term for life in prison because I have not read the judgment, have not gone through the evidence before the court and most importantly am not a legal expert. But I would like to examine its legitimacy and morality because the judgment's legality is not the only question that concerns the people. If the legality of a law and judgment were all that should be of concern to the people, then the racial segregation in South Africa was sound, Hitler's anti-Jew laws causing death of millions of Jews were sound, slavery was sound, anti-Hindu and anti-Christian laws in Pakistan are sound. By the same token, the Rowlatt Act enacted by the colonial government to suppress the 'revolutionary movement' was also sound; but the people of India did not think so, rose in protest against it, which led to the massacre of more than a thousand peaceful men, women and children, who had gathered at Jallianwalabag to protest against the black law. And the Rowlatt Act was a very liberal and just law compared to the draconian laws enacted by democratic India. It is not enough that a law should be legally sound but it must also be morally sound and legitimate must ensure justice. A law and its operation, which does not deliver justice, is immoral and illegitimate and not a proper law.

Prof. Saibaba of Delhi University is 90% physically challenged and is bound to his wheelchair. He is incapable of a violent act unless one is blind enough to say that he can fire from a gun sitting in his wheelchair. He cannot kill, maim or break bones. Prof. Saibaba at best or worst can only be a non-violent revolutionary due to his physical handicap. He

has not been found guilty of any violent act, but has been convicted of unlawful activity. Even the judgment says the accused had conspired 'to create violence, cause public disorder and spread disaffection towards the central government and the state government.' The court does not find him guilty of inciting any particular violent incident, but inciting violence because of his ideas, which support the use of violence by the Maoists. I DO NOT KNOW IF THE FINDING OF THE COURT IS TRUE, BUT WOULD ACCEPT IT FOR THE TIME BEING TO MAKE MY POINT.

Mahatma Gandhi was prosecuted and charged with sedition (Raj Droh, 1922) for creating hatred and disaffection against the government of India. He confessed to the court that he was the biggest rebel against the British Raj. He also confessed that he was in a way responsible for the violence at Chaura Chauri and in Bombay despite his commitment to non-violence. He was prosecuted for his seditious articles published in the Young India. The punishment for sedition was imprisonment for life, but Gandhiji was sentenced to just six years. Bal Gangadhar Tilak was also charged with sedition (1909) for a number of articles published in the Kesari he edited. He had expressed the view that violence by the young revolutionaries was a reaction against the repressive government. Tilak was also awarded six years of transportation (imprisonment in Andaman Nicobar).

Compared to the award of six years of imprisonment to Tilak (1909) and Gandhi for sedition by an imperial court, the life sentence awarded to Prof. Saibaba by a court of democratic India appears as nothing short of

judicial lynching. Our judges in such cases appear so devoid of human feelings, sense of proportion and sense of morality. The case of Tilak and Gandhi should be the measure for judging the justness and legitimacy of a sentence in cases in which no violence is planned or committed by an accused and is held only guilty of inciting hatred or disaffection against the government.

Our Criminal Justice System is a Criminal Injustice System. Several thousand innocent Sikhs were openly butchered in Delhi following Indira Gandhi's assassination, but the then P.M. Rajeev Gandhi and his men continued to rule the roost despite the public knowledge that his hands were blood-stained. Hundreds of Muslims were butchered in Gujarat riots of 2002, but Modi remains innocent in the eyes of law because no court has found him guilty of the shedding of innocent blood of the Muslims. But the people know the difference between truth and judicial truth. The best example is the case of Md. Shahabuddin, three or four time M.P. of Siwan, and probably the most cruel and savage criminal known. But he, too, was an innocent and respectable leader like Rajeev and Modi till the arrival of Nitish Kumar as Chief Minister, whose government got him convicted of the crimes he had been committing with impunity.

The State follows a double standard in the application of law. With the coming to power of Modi, the terrorists associated with the Parivar, who were charged with the bomb blast at Malegaon, Samjhauta Express and Ajmer, are being bailed out or acquitted with the open support of the government. The NIA persuades the Public Prosecutor to help the terrorists involved in the bomb blast at Malegaon and Samjhauta Express secure acquittal. The NIA did not oppose the bail application of Pragya Thakur, an accused in Malegaon terror attack. The Public Prosecutor, who had been

conducting the case, resigned because she was being persuaded to collude with the accused. The culprits of 2002 Gujarat riots are receiving full protection of the State, and the state agencies are changing their stand to help the accused.

There is discrimination in dealing with the people accused of the same or similar crimes. The policy being followed is to kill and rape those who are suspected to be Maoists or their supporters and to protect those who do the killing, maiming or raping and also to instigate the police to kill, rape and maim with impunity in Bastar, Chhattisgarh as has been discovered by the National Human Rights Commission. Prosecute Zakir Naik for 'spreading communal hatred' and give a free hand to the RSS, BJP and the other members of the Pariwar to not only spread communal hatred but to engineer communal riots.

Communalism has become the 'Raj Dharm' and its adherents are above the law while the Minorities and the Maoists are the enemies of the Raj not entitled to the protection of the law and to be witch-hunted.

The discriminatory criminal justice system has robbed the judiciary of its majesty and credibility and made its judgment devoid of legitimacy and morality. It is not in command of the criminal justice system and cannot be blamed for its ills, but it must find some way to prevent its 'Cheer Haran' (Disrobing) because Shree Krishna would not come to its rescue.

And finally, why is the judgment in Prof. Saibaba's case devoid of legitimacy and morality? Because while Tilak and Gandhi, the towering and formidable enemies of the British empire, were awarded only six years of imprisonment by the judges of an imperial government, Prof. Saibaba, a 90% disabled person and the co-accused in the case were sentenced to life by the court in democratic

India. The judiciary must change its mindset and do justice uninfluenced by the ideology of the power that be if it does not want to become a handmaiden of the government. The judiciary must act as a protector not only of legal rights but of justice by cutting through the maze of technicalities created by the Executive, which has made justice captive to serve its interest.

Prabhakar Sinha is a former President of People's Union for Civil Liberties (PUCL)

* I am not a supporter of the Maoists, do not support violence as a means of solving political

problems, but believe in adherence to the rule of law to ensure justice to all without discrimination. I believe that adherence to the rule of law is the way to prevent violence as emphasized in the Universal Declaration of Human Rights in the following words:

WHEREAS IT IS ESSENTIAL IF MAN IS NOT TO BE COMPELLED TO HAVE RECOURSE, AS A LAST RESORT, TO REBELLION AGAINST TYRANNY AND OPPRESSION, THAT HUMAN RIGHTS SHOULD BE PROTECTED BY THE RULE OF LAW.

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Mahi Pal Singh

‘Preplanned inhuman collective violent act of terrorism’: What Modi got away with in the Godhra case

Manoj Mitta

On the 15th anniversary of the Godhra train burning, a recap of little-known anomalies in the case that changed the course of India's history. - Ahmad Masood/Reuters.

It was only after he had become chief minister of Gujarat in October 2001 that Narendra Modi contested an election for the first time in his life. Yet, Modi was apparently still such a political lightweight that his victory margin was half that of his Bharatiya Janata Party colleague who had vacated a “safe seat” for the by-election. Within a week of this unimpressive electoral debut, the Godhra tragedy occurred on February 27, 2002, setting off a chain of events that ultimately propelled him to the office of prime minister. [Emphasis added.]

Following his “spot assessment of the situation” in which 59 people had been burnt alive in a train, a press release issued by the Gujarat government the same evening quoted Modi as saying that Godhra was a “preplanned inhuman collective violent act of terrorism”. The casualties were mostly kar sevaks returning in the Sabarmati Express from a controversial Ram temple campaign launched in Ayodhya by the Vishwa Hindu Parishad in defiance of a Supreme Court order.

Modi's immediate attribution of the train burning to a terrorist conspiracy was a politically fraught move. It turned the tables on Opposition MPs who had repeatedly disrupted Parliament the previous day demanding action against the Ayodhya campaign for exacerbating communal tension in the country.

The resolve he apparently displayed in dealing with Godhra, the “original sin” of the 2002 Gujarat violence, has served to build Modi's image as a strong and decisive leader.

A face-saver

But then, following the scrapping of the terror

law by the Manmohan Singh government in 2004, a statutory committee recommended that it need not be applied to the Godhra case. The miscreants, it reasoned, had not used any firearms or explosives and that they had attacked the train from only one side and allowed passengers and kar sevaks to escape from the other side. Once the Gujarat High Court endorsed the committee's recommendation, a special court set up in the Sabarmati jail in Ahmedabad began the trial in 2009.

Despite the withdrawal of the terror charge, the trial court, in its judgment delivered in 2011, upheld the conspiracy charge. Given the magnitude of the retaliatory violence in which over 1,000 people had perished, it was a face-saver for the Modi regime to receive a judicial imprimatur for its claim that the Godhra carnage was a premeditated crime. The finding was in the face of all the evidence suggesting that the train burning was the outcome of a group clash at the railway station located next to a Muslim ghetto.

Overcoming the odds stacked against the conspiracy charge, the trial court convicted 31 out of 94 accused persons. Unlike their Hindu counterparts in the post-Godhra massacre cases, who had generally been granted bail sooner than later, most of those found innocent in the Godhra case had languished behind bars for periods ranging up to nine years.

The acquittal of 63 persons and other aspects of the verdict laid bare, however unwittingly, the lengths to which the Gujarat police – and later, even the Supreme Court-appointed special investigation team – had gone to uphold Modi's narrative. The appeals against the trial court

judgment are pending before the Gujarat high court.

On the 15th anniversary of the Godhra train burning on Monday, here is a recap of little-known anomalies in the case that changed the course of India's history, the anomalies that betrayed a shockingly cavalier attitude in the investigation of the alleged terror conspiracy, the anomalies that put in perspective some of the controversies surrounding the current dispensation at the Centre.

Contaminating the forensic evidence Despite the allegations of arson and terror, the police did not call forensic experts for a physical examination of the burnt railway coach for two whole months even as it was freely accessible to the public from day one. If the arson was the result of a terror conspiracy, as made out by Modi on day one, it was all the more a reason to give top priority to forensic evidence. In any case, the police were legally required to preserve the scene of the crime – especially coach S6 where the bodies had been found – until the arrival of forensic experts.

Yet, right from the first day, the police did not stop the public from entering the coach and exploring the devastation. When a fact-finding team of the Editors Guild of India visited the Godhra railway station on April 3, 2002, they were “surprised to see this prime exhibit standing in the yard unguarded and stray people entering it at will. Anyone could remove or plant anything in the carriage, tampering with whatever evidence it has to offer with none being any the wiser”.

It was only on April 28, 2002 that the police for the first time requested any forensic experts to make a physical inspection of the coach. That's how a team from the Ahmedabad-based Forensic Science Laboratory made their maiden visit to the spot on May 1, 2002, two months after the mass crime. The outcome of this belated inspection conducted in such dubious circumstances was a simulation experiment,

which apparently indicated that the coach caught fire after petrol had been thrown from inside it. After another couple of months, the Forensic Science Laboratory conducted further tests on the coach, displaying little concern about the contamination of the forensic evidence. This was to corroborate the theory floated by then by the police that the arsonists had entered the coach by cutting the canvas vestibule and breaking the sliding door.

Rejected nationalist testimonies

The testimonies of all the nine Vishwa Hindu Parishad members produced to advance the Modi line that Godhra Muslims had attacked the train without any provocation were rejected by the trial court. These nine VHP members from Godhra were produced by the prosecution as independent eyewitnesses to parrot a nationalist story: that they had all gone to the railway station as early as 6 am, armed with garlands and food packets, to greet the kar sevaks returning from Ayodhya. But when they were cross-examined by the defence counsel, the VHP witnesses had no answer as to how they could possibly have planned such a reception given that the Sabarmati Express was originally due to arrive much earlier, at 2.55 am. Such an unearthly hour could only have been, as the trial court said in its verdict, “for peaceful sleeping journey, and can never be accepted as a proper time for welcoming or offering tea-snacks to kar sevaks and thereby to create disturbance to kar sevaks themselves, as also to other passengers”.

Even otherwise, the VHP witnesses had no explanation for the timing of their visit given that they were unaware of the five-hour delay in the running of the train. Nor was there any corroborative evidence of their visit. Though they claimed to have garlanded kar sevaks and handed over food packets, none of the kar sevaks testified to have received any such treatment at the station. Neither kar sevaks nor other witnesses, including officials on duty,

vouched for the presence of any of those VHP members.

Another key issue that damaged the credibility of the VHP witnesses in the eyes of the trial court was their “ignorance” of the clash between kar sevaks and Muslim hawkers on the platform. They were clueless about the evidence accepted by the trial court relating to disputes over payments and the attempts by kar sevaks to make Muslim hawkers shout Hindu slogans and to molest Muslim women.

Having found every one of the VHP witnesses “unreliable”, the trial court said that it was left with no option “except to discard their evidence in totality with regard to their presence at the time of the incident, at or near the place of occurrence and about witnessing of the incident as narrated by them”.

As a corollary, the trial court acquitted over 30 Muslims named by VHP witnesses as members of the mob that had attacked the train. One such Muslim who had by then been incarcerated for nine years on the basis of this trumped up evidence was Mohammad Kalota, who was the president of the Godhra municipality at the time of the train-burning.

All initial arrests found wrongful

All the 28 Muslims arrested within 24 hours of the train burning –and before the eruption of the post-Godhra violence – were found to have been framed. To the Gujarat police, what was more damaging than the collapse of all the VHP witnesses was the exoneration of all the 28 Muslims arrested at the outset in the Godhra case. For the charges against these 28 accused persons had been based mainly on the testimonies given by policemen themselves.

They happened to be arrested in two batches: 15 on the first day and 13 the next morning. The 15 picked up on February 27, 2002 were claimed to have been arrested “from the spot”, at 9.15 am. Out of the 94 tried in all the Godhra cases, the evidence against 14 of the 15 arrested on the first day (one having died before the trial)

should, therefore, have been the strongest. After all, those caught red-handed normally stood the least chance of getting away with the crime. If the Godhra case deviated from such a logical pattern, it was because of the sheer implausibility of the alleged timing and location of those arrests.

In a bid to reconcile their own contradictory records, the police claimed that after they had been nabbed on the spot, those 15 Muslims were detained for three hours in that “very tense” atmosphere at the very place where rescue operations were going on in the vicinity of the Godhra railway station. None of the eyewitnesses, including officials, corroborated this improbable police claim. The trial court concluded that those 15 were more likely to have been picked up from their homes that evening in the course of a “combing operation”. Similarly, it rejected the testimonies of the same police witnesses claiming that 13 more arrests had been made the next morning, at 9.30 am, allegedly because those persons had been “noticed” in the mob that had attacked the train. The launch of the Godhra investigation with such 28 false arrests was a measure of the prejudice likely to have been caused by Modi’s outright branding of the incident as a terror attack.

‘Framed for embarrassing Modi’?

The mastermind who had allegedly ordered the burning of coach S6 was acquitted after eight years of incarceration, leaving a gaping hole in the conspiracy story. Maulvi Hussain Ibrahim Umarji was an unlikely person to be involved in the Godhra violence, let alone masterminding it for he was the only community leader in Godhra to have been trusted by the district administration to run a relief camp in the wake of the 2002 anti-Muslim riots. He participated in peace meetings called by the district collector and apologised on behalf of Muslims for the train-burning. Still, Umarji was arrested early one morning in February 2003, in a high-security operation, following a confession by a co-accused.

In his bail application to the Supreme Court, Umarji alleged that he had been framed for embarrassing Modi during Prime Minister Vajpayee's visit to Godhra in April 2002. He had given a representation to Vajpayee on the alleged persecution of Muslims in Godhra. When Vajpayee had asked him to elaborate, Umarji pointed to Modi and said sarcastically that he would not "know better". However, having failed to obtain bail from any of the courts, he secured freedom only on his acquittal, after he had been detained for eight years.

The two grounds on which he was accused of plotting to burn the train were tenuous. One was that, under the guise of running the relief camp for riot victims, he gave financial aid to those accused of arson. The trial court pointed out that the allegation pertained to "subsequent help" and that it was "to some extent hearsay". The other allegation was that in a meeting called at his instance on the eve of the crime, one of the conspirators conveyed a message from Umarji ordering them specifically to burn coach S6. The prosecution gave no explanation for why he had allegedly targeted coach S6 and why he was himself not in the meeting allegedly held in a guest house near the railway station. Worse, as the trial court said, "Except the bare words alleged to have been told by co-accused Bilal Haji, [there was] no other supporting evidence against this accused."

Thanks to the exoneration of the alleged mastermind, there was a vital gap in the chain of events. If the meeting had actually not been called at Umarji's instance to convey his deadly message, then what was the alternative explanation for it? Since there was none, the trial court simply said: "Conspiracy came to be hatched on the previous day, i.e., 26-2-2002 during the meeting held in Aman Guest House between the conspirators ..."

Why no eyewitness to petrol being splashed?

None of the authorised passengers and kar

sevaks traveling in S6 corroborated the prosecution's claim that the arsonists had broken into the coach and splashed petrol from 20-litre cans. They testified to have neither seen nor physically felt any petrol in the overcrowded coach. Making light of this infirmity in the prosecution's account, the trial court said:

"Admittedly, at the time of the incident (around 8 am), all the doors and windows of the entire train were closed because of the tense atmosphere and the passengers were not in a position to see or identify the assailants and that too, unknown assailants."

The judgment was walking a fine line as the issue was not so much of identifying the assailants. The real gap in evidence, which remained unaddressed, was that nobody inside the coach had seen or felt anybody break open the door and splash petrol.

Why impunity for those who halted the train?

The two Muslims who had allegedly halted the train twice near the Godhra station as part of the conspiracy to burn it were produced not as accused persons but, ironically, as prosecution witnesses. And when Iliyas Mulla and Anwar Kalandar had turned hostile during the trial, the court relied upon their pretrial testimonies recorded before a magistrate. Had their contention that their testimonies had been extracted under torture been accepted, another crucial link in the chain of events constructed by the prosecution would have gone missing. It's not unusual though for a retracted testimony to be relied upon. What remains a mystery is the compulsion of the prosecution to have never arraigned the two persons who had been ascribed such a pivotal role in the execution of the alleged plot.

Manoj Mitta is the author of *The Fiction of Fact-Finding: Modi and Godhra* and co-author of *When a Tree Shook Delhi: The 1984 Carnage and its Aftermath*

Courtesy **Scroll.in**,

Defeated by policy

Farmers simply couldn't wait for the next five years

Devinder Sharma

Policymakers must see beyond economic interests of companies dealing with agriculture inputs or implements so as to pull farmers out of the current farm crisis.

The objective behind what the Niti Ayog, NABARD and agricultural universities propose as the roadmap for increasing farmer's income hinges upon increasing crop productivity — It is believed higher crop productivity translates into higher farm incomes. It is a flawed hypothesis.

Even as the debate over the government's proposal to double income of farmers over the next five years has intensified, the spate of farm suicides remains unabated.

Some days back, a 58-year-old farmer of Chikkamsihosur village in Haveri district of Karnataka electrocuted himself by climbing up a transformer and touching the power line. Crop failure for two consecutive years and harassment by moneylenders pushed the farmer to suicide. He had an outstanding debt of only Rs3 lakh. In the Mansa region of Punjab, three farmers committed suicide over two days recently. Among them was 45-year-old Gurjeet Singh, who owed Rs2 lakh to banks and commission agents.

Hardly a day passes by without reports of farmers killing themselves in some part of the country. And that makes one wonder why farmers don't have confidence in PM Modi's promise of doubling the income of their lot in the next five years. It is not just the PM who has been giving assurances. Cong Vice-President Rahul Gandhi, Samajwadi Party leader Akhilesh Yadav, Punjab CM Parkash Singh Badal, Maharashtra CM Devendra

Fadnavis and almost every other CM and party leader have time and again assured farmers that the government will come to their rescue.

Farmers have also been eulogized by successive finance ministers while presenting the annual budget. Newspaper headlines have feted the annual documents presented by Arun Jaitley, Chidambaram, Jaswant Singh, Yashwant Sinha and Pranab mukherjee as focused on farmers and the rural economy.

The question, therefore, is how come farmers continue to kill themselves in such large numbers if the annual budgets and electoral promises were all in their favour? Does it not mean the finance ministers have failed to make allocations where required? Since issues with budgetary allocations of the past cannot be rectified, it is time for Arun Jaitley to take a fresh look at his own budget proposals before these are finalised and find out areas in which he has been misled by economists and advisers.

More of the same is certainly not the answer. Not just the finance minister, even agricultural scientists around the country are prescribing the same technological approaches to double farm income. I find what is now being prescribed as the way forward to double farm incomes is the same as what has been happening over the past 20 years, if not more. The Niti Aayog is leading the debate with the same faulty prescriptions - raise crop productivity, reduce cost of cultivation, expand irrigation and provide national agricultural market. The National Bank for Agriculture and Rural Development (NABARD) is allocating

resources in the same seven areas that have earlier failed to prop agriculture up. Agricultural universities are only repackaging forgotten proposals and recommending them as the way forward.

Farmers have no confidence in the government's promise to double income of farmers owing to what Niti Aayog and NABARD are proposing. Niti Aayog is primarily proposing higher public investment in agriculture. This is certainly welcome, particularly when the annual outlay for MGNREGA is much higher than that for agriculture. But it is completely wrong to package it as the mechanism to double the income of farmers. After all, building swanky eight-lane highways, flyovers, super markets and such other infrastructure in cities cannot replace salaries of employees. Similarly, it is wrong to assume that providing more irrigation, technology and markets compensates for income of farmers.

The objective behind what the Niti Aayog, NABARD and agri-varsities propose as the road-map for increasing farmer's income hinges upon increasing crop productivity. And increasing crop productivity is being seen as the way to raise farm incomes. It is believed higher crop productivity translates into higher farm incomes. It is a flawed hypothesis.

Punjab, the food bowl of India, has 98% assured irrigation, the highest anywhere in the world. Even the USA is able to provide only

12% assured irrigation to its farmers. Now let us look at the crop productivity. At 45 quintals a hectare, wheat productivity in Punjab is the highest in the world. In case of paddy, the productivity in Punjab is 60 quintals per hectare, which matches the highest productivity of 67 quintals per hectare recorded in China. With such high productivity of wheat and paddy and with 98% assured irrigation, farmers in Punjab should be very prosperous.

The sad part, though, is that despite having highest crop productivity and the highest acreage under irrigation, Punjab has turned into a hotspot of farm suicides.

Hardly a day passes by without reports of farmer suicides in Punjab. Does it not, therefore, mean that proposals of the policy makers for doubling farmers' income are terribly flawed? This is primarily because every disaster becomes a business opportunity. The prevailing agrarian crisis, too, has become a business opportunity for input providers - fertiliser, pesticides, seeds and implement manufacturers - to make more money. It is not wrong. But I expect policymakers to see beyond the economic interests of the companies dealing with agricultural inputs/ implements.

This is perhaps the reason why farmers who continue to commit suicide do not see much hope in the promise of doubling their income in the next five years. They simply couldn't wait for the next five years.

Courtesy **OrissaPost**, Feb 23, 2017.

"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)

(The following article in the Indian Express suggests that the methodology that works in normal times is not applicable when the economy has suffered a shock. So, why is government still talking of 7% rate of growth)

Unusual times, usual ways

Methods to use GDP estimates cannot account for the shock caused by demonetisation

Arun Kumar

The latest official data on GDP growth has shown that the economy grew at 7 per cent in the quarter ending December 2016. It belies the argument that the economy was hit hard by demonetisation. But this data is not surprising given that the budget for 2017-2018 assumed that the economy will grow at 11.75 per cent. The government has also not changed the assumption of an 11 per cent growth rate for the current year (2016-17) in the budget. So, the budget assumed that demonetisation had no impact on the economy. The budget figures were provided by the CSO. It was unlikely that the organisation would provide drastically different figures for the GDP estimate.

A GDP figure of less than 7 per cent would have implied that the budget figures for both 2016-17 and 2017-18 are wrong. That would have meant that all the budgetary calculations are incorrect and created turmoil in the economy. Admitting lower growth would have adversely impacted the stock markets, the international sentiment about India and the business environment in general. The data just released shows that investment has taken a hit of about 3 per cent. More bad news would have made the post-demonetisation recovery even more difficult.

The growth projected by the OECD is almost the same as the official figure. The IMF had earlier said that demonetisation will have a marginal impact and suggested that the recovery would be fast. But it needs to be remembered that neither the IMF, nor the OECD collect

independent data; they rely on figures provided by the Government of India.

Predicting GDP growth is no mean task. Data has to be generated from a number of sectors and sub-sectors. Each sub-sector has its own method for collecting data and calculating the growth rate. The methodology is time-tested and, therefore, not questioned by analysts. Moreover, the actual data comes after a time lag which means that only estimates can be made and these are periodically revised. But is it right to apply the methodology that is used in normal times when the economy has experienced a big shock? Surveys by manufacturers, business associations and others indicate that over the last four months, employment, production and investment have been hit hard in several sectors.

The Indian economy is heterogeneous; that makes estimating growth difficult. The unorganised sector produces 45 per cent of the output and employs 94 per cent of the work force. Agriculture is its largest component in terms of employment. Data from the non-agriculture unorganised sector is not available for making predictions. This component was the hardest hit. How then were estimates drawn for this sector?

The document Methodology For Estimating Quarterly GDP says, "The production approach used for compiling the QGVA estimates is broadly on the benchmark-indicator method". The document adds, "A key indicator or a set of key indicators for which data in volume or quantity terms is available on quarterly basis are used to

the value of output/value added estimates of the previous year”; it says, “In general terms, quarterly estimates of Gross Value Added (GVA) are extrapolations of annual series of GVA.” All these point to the use of the “benchmark-indicator” and extrapolation of “the value of output/value added estimates of the previous year”. But when the economy is severely affected, can the benchmark indicators be the same as earlier years and how can the projection from the previous year be valid? Can even projection from before November 2016 be valid post-demonetisation?

It is well-known that the unorganised sector works largely on cash and was severely dented by demonetisation. The organised sector was less impacted. Thus, the proportion of the activity in the organised and unorganised sectors changed dramatically due to demonetisation. The government’s press note announcing the growth figures says, “GVA from quasi corporate and unorganised segment has been estimated using IIP (Index of Industrial Production) of manufacturing”. The IIP reflects the growth of the organised sector. Can it help estimate the unorganised sector production in the changed circumstances?

It is stated that this index is the key indicator for calculating unorganised manufacturing sector activity. A similar methodology was adopted in other sub-sectors of the economy. But in the post-demonetisation regime when the growth of the organised and unorganised sectors diverged dramatically, the method is not useful in calculating the unorganised sector’s contribution to the GDP. A sub-sector that is clearly declining is taken to be growing at the same rate as the organised sector.

The press note adds, “IIP from manufacturing sector registered a growth rate of (-) 0.5 per cent during April-December 2016-17”. Intriguingly, in spite of this, it is said that the manufacturing sector grew at 7.7 per cent. Once the organised sector’s growth is overstated and an incorrect indicator is used for estimating the unorganised sector growth, the economy can be shown to be growing at 7 per cent. But, is it?

Some argue that the undeclared output in the organised sector, used to generate black incomes, has now been declared. If this is correct, the methodology for estimating the unorganised sector’s contribution becomes even more flawed. Some argue that there was extra consumption with old notes in November. But the reports in that month described lack of footfalls in shops and malls and decline in wholesale trade and truck movements.

There is an urgent need for the government to explain the use of the unchanged methodology in the drastically changed circumstances post-November 2016. Yes, the CSO cannot change the method on its own, but in unusual times should unusual steps not be taken? Should a rider not be put on the data? The head of the statistical department has been arguing that the impact of demonetisation on the economy will have to be studied over time and a lot more data is needed. However, should the government put out figures which they feel cannot be calculated at present and, therefore, are premature? The point is the economy (and the budget) is not governed by official data but by what is happening on the ground.

Courtesy indianexpress.com, March 9, 2017

“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)

After demonetisation : As cash comes in, digital deals show sharp dip

Sandeep Singh, Pranav Mukul

(The decline in digital transactions in two successive months goes against the government's stated objective of scrapping high-value currencies — that of moving towards a "less cash" economy. In fact, the value of digital transactions in February slipped below that in November when demonetisation was announced.)

THE SURGE in digital transactions during the demonetisation period is seeing a sharp reversal with data for February showing an accelerated pace of decline in electronic transactions. February 2017 saw a month-on-month decline of 21.3 per cent in the volume of electronic transactions, higher than the 9.1 per cent fall seen in January 2017 over December 2016.

According to data released by the Reserve Bank of India, the decline in value terms also accelerated in February over January 2017. The decline in electronic payments is being seen as reflective of the improved cash availability situation over the last couple of months since 500 and 1000-rupee notes were scrapped on November 8 last year.

The decline in digital transactions in two successive months goes against the government's stated objective of scrapping high-value currencies — that of moving towards a "less cash" economy.

3rd Quarter Substantially Impacted by Demonetisation, Says Arun Jaitley

The biggest fall in usage was seen for cheque payments, use of debit and credit cards at point of sale terminals and mobile banking, that had emerged as preferred modes of payment following the lack of availability of cash during the demonetisation period.

The data shows that in volume terms, transactions through electronic payment modes

fell 21.3 per cent from 870 million in January 2017 to 684 million in February.

In value terms, the decline was 16.7 per cent from electronic transactions valued at Rs 97,011 billion in January 2016 to Rs 80,765 billion in February 2017.

In fact, the value of digital transactions in February slipped below that in November when demonetisation was announced. [Emphasis added.]

The decline in transactions in value terms in January 2017 over December 2016 stood at only 6.8 per cent.

Even as February had three transaction days less in comparison to January 2017, the pace of decline shows that consumers have begun to move back to their traditional payment method. [Emphasis added.]

A senior government official told The Indian Express that demonetisation was a great opportunity to drive the digital transaction ecosystem. He, however, added that people would go back to old habits as and when the cash supply eases. "Currently, both cash and digital payments have convenience but cash comes without a cost, whereas digital has a cost attached to it. If that's not dealt with, cash will become more convenient by default and people will go back to using it when supply in the economy is normalised. For this, some tweaking of policy is required so that digital payments

become a habit,” the official said.

The decline in February was seen across various payment modes that people had adopted for their payments at the time of demonetisation.

While the volume of transactions through NEFT fell 20.4 per cent that for cheque payment fell 22.9 per cent over the previous month. Volume of transactions through the use of debit and credit cards at PoS terminals fell sharply by 28.3 per cent while that through mobile banking also declined by 20.7 per cent.

In January, the decline in usage of cheque, NEFT and debit and credit cards at PoS was much lower. While the cheque usage fell by only

2.8 per cent over December 2016, that for NEFT and card usage at PoS fell by 1.5 and 7.8 per cent respectively.

Electronic payment methods had picked up significantly in November and December 2016 following the government’s decision to demonetise the old Rs 500 and Rs 1,000 notes. In December 2016, transactions through electronic payment methods had peaked and the volumes jumped to 957 million (684 million in February) following the cash crunch and the slew of incentives announced by the Centre to promote digital payments.

Courtesy **indianexpress.com**, March 4, 2017

What exactly is a money bill?

Suhrith Parthasarathy

Supreme Court will begin hearing final arguments next month on a writ petition challenging the validity of the Aadhaar (Targeted Delivery of Financial & Other Subsidies, Benefits & Services) Act, 2016 — or the Aadhaar Act. The proceeding, initiated by Jairam Ramesh, a Member of Parliament in the Rajya Sabha, primarily questions the legality behind the Union government’s move in introducing the Aadhaar Act as a money bill. Through this categorisation, the government had the law enacted by securing a simple majority in the Lok Sabha while rendering redundant any opposition to the legislation in the Upper House of Parliament.

Imperils liberties

During preliminary hearings, the Supreme Court has suggested that it isn’t entirely convinced of the merits of Mr. Ramesh’s

petition. But a closer examination will only show that the introduction of the Aadhaar Act as a money bill contravenes the bare text of the Constitution. In this case, the breach is particularly disturbing, because the legislation imperils our core liberties, in manners both explicit and insidious.

Originally, Aadhaar was conceived as a scheme to provide to every Indian a unique identity number, with a purported view to enabling a fair and equitable distribution of benefits and subsidies. There is little doubt that the scheme’s introduction, with no prior legislative backing, was a flagrant wrong, and was completely unjustifiable as a measure of democratic governance. For this Mr. Ramesh’s party, the Congress, must take full responsibility. But, when a draft of a statute was eventually introduced in the Rajya Sabha,

in December 2010, it was done so as an ordinary bill. This meant that both Houses of Parliament had to provide their imprimatur to the bill for it to become law.

Nonetheless this draft legislation contained serious misgivings, so much so that a parliamentary standing committee released a detailed report differing with the government of the time over critical aspects of the bill, particularly its treatment of concerns over privacy and protection of data security. In the meantime, given that the Aadhaar project was being implemented even without statutory support, public interest petitions were filed in the Supreme Court challenging the project's legitimacy. In these cases, the court issued a series of interim orders prohibiting the state from making Aadhaar mandatory, while permitting its use only for a set of limited governmental schemes.

In March 2016, the Union government withdrew the earlier bill, and introduced, in its place, as a money bill, a new draft legislation, titled the Aadhaar (Targeted Delivery of Financial & Other Subsidies, Benefits & Services) Bill, 2016. This categorisation was extraordinary because a money bill, under India's constitutional design, requires only the Lok Sabha's affirmation for it to turn into law. Right on cue, within days of the bill's introduction, the Lower House, in complete disregard of the Rajya Sabha's protestations, passed the legislation, as Act No. 18 of 2016. This law, Mr. Ramesh now argues, is patently illegal, because its classification as a money bill infringes the Constitution's mandates.

A money bill is defined by Article 110 of the Constitution, as a draft law that contains only provisions that deal with all or any of the matters listed therein. These comprise a set of seven features, broadly including items such as the imposition or regulation of a tax; the

regulation of the borrowing of money by the Government of India; the withdrawal of money from the Consolidated Fund of India; and so forth. In the event a proposed legislation contains other features, ones that are not merely incidental to the items specifically outlined, such a draft law cannot be classified as a money bill. Article 110 further clarifies that in cases where a dispute arises over whether a bill is a money bill or not, the Lok Sabha Speaker's decision on the issue shall be considered final.

Flawed counterpoint

The government's response to Mr. Ramesh's claim is predicated on two prongs: that the Speaker's decision to classify a draft legislation as a money bill is immune from judicial review, and that, in any event, the Aadhaar Bill fulfilled all the constitutional requirements of a money bill. A careful examination of these arguments will, however, show us that the government is wrong on both counts.

To be fair, the assertion that the Speaker's decision is beyond judicial review finds support in the Supreme Court's judgment in *Mohd. Saeed Siddiqui v. State of UP* (2014). Here, a three-judge bench had ruled, in the context of State legislatures, that a Speaker's decision to classify a draft statute as a money bill, was not judicially reviewable, even if the classification was incorrect. This is because the error in question, the court ruled, constituted nothing more than a mere procedural irregularity.

But there are significant problems with this view. Chief among them is the wording of Article 110, which vests no unbridled discretion in the Speaker. The provision requires that a bill conform to the criteria prescribed in it for it to be classified as a money bill. Where a bill intends to legislate on matters beyond the features delineated in Article 110, it must be

treated as an ordinary draft statute. Any violation of this mandate has to be seen, therefore, as a substantive constitutional error, something which Siddiqui fails to do.

There are other flaws too in the judgment. Most notably, it brushes aside the verdict of a Constitution Bench in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha* (2007), where the court had ruled that clauses that attach finality to a determination of an issue do not altogether oust the court's jurisdiction. That is, the bench held, there are numerous circumstances where the court can review parliamentary pronouncements. These would include instances where a Speaker's choice is grossly illegal, or disregards basic constitutional mandates, or, worse still, where the Speaker's decision is riddled with perversities, or is arrived at through dishonest intentions.

What Aadhaar Act shows

A simple reading of the Aadhaar Act would show us that its contents go far beyond the features enumerated in Article 110. If anything, it is the provisions in the legislation that pertain to the Consolidated Fund and its use that are incidental to the Act's core purpose — which, quite evidently, is to ensure, among other things, the creation of a framework for maintaining a central database of biometric information collected from citizens. Ordinarily, a draft legislation is classified as a money bill when it provides for funds to be made available to the executive to carry out specific tasks. In the case of the Aadhaar Act, such provisions are manifestly absent. The Speaker's decision to confirm the government's classification is, therefore, an error that is not merely procedural in nature but one that constitutes, in substance, an unmitigated flouting of Article 110.

In many ways, Aadhaar has brought out to plain sight the worryingly totalitarian impulses

of our state. The government has argued, with some force, that Indian citizens possess no fundamental right to privacy. This argument, however, is predicated on judgments of the Supreme Court that have little contemporary relevance, and that have, in any event, been overlooked in several subsequent cases where the court has clarified the extent of the liberties that the Constitution guarantees.

Right to privacy

Privacy is important not merely because it advances the cause of equality and freedom but also because it is, in and of itself, a treasurable value. A failure to protect privacy adequately can have disastrous consequences that affect our abilities to determine for ourselves how we want to live our lives. And the Aadhaar Act hits at the core of this value. It permits the creation of a database of not only biometric information but also various other private data, without so much as bothering about safeguards that need to be installed to ensure their security. We scarcely need to stretch our imaginations to wonder what the government — and other agencies to which this information can be shared without any regulatory checks — can do with all this material.

That a statute so pernicious in its breadth can be enacted after being introduced as a money bill only makes matters worse. It has the effect of negating altogether the Rajya Sabha's legislative role, making, in the process, a mockery of our democracy. It is imperative, therefore, that the court refers the present controversy to a larger bench, with a view to overruling Siddiqui.

Suhrith Parthasarathy *is an advocate practising at the Madras High Court*

Courtesy www.thehindu.com, FEBRUARY 27, 2017.

IDENTITY PROJECT

[In response to a right to information application filed last year in the course of Scroll.in's Identity Project series, the Unique Identification Authority of India refused to share data on how many security breaches, intrusion attempts or security incidents it had detected or been notified of. It denied this information for both its Central Identities Data Repository, where it stores all core biometric information, as well as for the other databases it maintains.]

Not just mid-day meals: Aadhaar made mandatory for 11 more schemes, violating Supreme Court ruling Disabled citizens getting scholarships and women rescued from sexual trafficking seeking job training will now have to produce UID.

Mridula Chari , Anumeha Yadav & Shreya Roy Chowdhury

Days after news broke of the central government mandating that children will not be served mid-day meals at school without Aadhaar cards from June, it turns out that five central government ministries have in the last week issued a series of 14 similar notifications for 11 schemes, including access to primary and secondary education.

In this, the central government continues to violate a Supreme Court order of October 2015 specifying that the Universal Identification Document, commonly known as Aadhaar, cannot be made mandatory for any government scheme. It can only be used as voluntary identification for five specific government programmes: public distribution scheme, National Rural Employment Guarantee Act, National Social Assistance Programme, Jan Dhan Yojana and for LPG subsidies.

No schemes of this sort are among the 14 notifications from the Ministries of Social Justice and Empowerment, Human Resource Development, Health and Family Welfare, Labour and Employment, and Women and Child Development issued since February 21.

The notifications follow a similar format: they describe the general benefits of Aadhaar, the scheme and its beneficiaries, and lay out a deadline for enrolling in Aadhaar to continue

accessing these schemes. None of the notifications specify the particular benefits of Aadhaar for that particular scheme.

Proof of Aadhaar or Aadhaar enrolment is now necessary for accessing these government schemes.

While most deadlines for application range from the end of March 2017 to 2018, the Labour ministry's notifications mandate beneficiaries to apply for Aadhaar by the same date on which the ministry issued the notification.

Privacy in question

Beneficiaries of government schemes who will have to apply for an Aadhaar number and have their status logged into the Aadhaar database include immensely vulnerable groups such as children between 6 and 14 years old, women rescued from sexual trafficking, and even disabled citizens who wish to apply for or continue getting scholarships or government-funded aids and appliances.

Other beneficiaries listed in these notifications include adults who are not literate and seek skill training, health workers, aspiring women entrepreneurs and those seeking career guidance and jobs.

The notifications have also raised concerns of privacy of beneficiaries, such as women rescued from trafficking and other groups. In

February, several instances of security weaknesses in Aadhaar, through leak of demographic data of children and instances of private firms illegally storing biometrics have come to light.

“This manipulation at the highest level is not good for the country and democracy,” said Bezwada Wilson, National Convenor of the Safai Karmachari Andolan and one of the petitioners in the Supreme Court case against the mandatory implementation of Aadhaar.

People from the most discriminated against communities like ragpickers and safai karmcharis do not want their identity to be revealed, Wilson noted. Pointing out the privacy issues in surrendering biometric details to the government, he added, “Tomorrow, I can become doctor or a journalist. Why should I reveal what I have done previously?”

Education rights ‘violated’

For education activists, making Aadhaar enrollment mandatory for accessing an umbrella scheme like the Sarva Shiksha Abhiyan is a “clear violation” of the Right to Education Act.

The Sarva Shiksha Abhiyan, funding for which is shared by the Centre and most states in a 60:40 ratio, is meant to support the implementation of Right to Education and help achieve universal elementary education. Consequently, its funds go toward a very wide range of activities including building new schools and maintaining existing ones, supplying textbooks and uniforms, paying teachers and running special training centres for out-of-school children. All children in public schools in the six-14 age-group are likely to be beneficiaries and, therefore, required to produce Aadhaar cards.

Lawyer and education activist Khagesh Jha pointed out that the act itself was created to “remove barriers to education” and has been interpreted to mean that no documents will be required for a child in the six to 14 age-group to

take admission in a school. “This is violation of the fundamental right and of the Act,” he said. He also added that this is the first barrier – in the shape of a required document – being introduced in schools across India. In some states, including Delhi, Aadhaar has already been made mandatory and scholarships and other amounts are transferred directly into bank accounts linked to the unique identity numbers.

“When no document is required for enrollment, how can they ask for Aadhaar to access a scheme like SSA?” asked Ambarish Rai of the Right to Education Forum. “To get an Aadhaar card, in practice, you are asked to produce residence [and identity] proof. Many families do not have any. Landlords hesitate to endorse applications. Migrant families will be excluded in the process.”

Signing up

There are two ways in which a resident can enrol oneself in Aadhaar: by producing two existing valid ID or, for those unable to produce such ID, by the “introducer system” through an introducer appointed by a registrar. A Right to Information query filed by Scroll.in, the Unique Identification Authority of India shows that till 2016, when over 105.1 crore residents had enrolled, only 8,47,366 – or 0.08% – got Aadhaar through “introducer system.” Over 99.9% had to show two pre-existing ID to obtain an Aadhaar.

Disabled children, already out of school in large numbers, will be further deterred.

“As per the last sample survey by IMRB-Social and Rural Research Institute [2015], 28% of disabled children were out of school,” observed Radhika Alkazi of Astha, an organisation that works with disabled children. “There are already huge barriers to getting into school and staying on. Adding one more pre-condition is cruel.”

Aadhaar number has been made mandatory

for accessing a range of schemes of the Department of Empowerment of Persons with Disabilities under the Ministry of Social Justice and Empowerment, including pre and post-matric scholarships, free coaching and travel allowances. The scheme for distributing aids and appliances been added to the SSA in the case of disabled children. "Certification is already such a cumbersome process and now more people will give up along the way," said Alkazi. "The irony is, we now have a new act. While policies are being strengthened, on the ground they are being constantly undermined."

Rai suspects the process of linking the schemes is intended to help weed out "fake enrollments and beneficiaries". Till now, funds for most functions were released on the basis of enrollment reported by schools. "Now they want to track all children in that age-bracket," he added. "But this exercise is dangerous and will lead to many being excluded. Unique IDs have nothing to do with enrollment, retention or quality."

The time allowed for applying for Aadhaar is

not sufficient either, felt activists. For most education or related schemes under the Ministries of Human Resource Development and Social Justice and Empowerment, the deadline is June 30. Teachers or staff-members employed under Sarva Shiksha Abhiyan have to enroll Aadhaar up too and by June 30. "Three-and-a-half months for a country like India is nothing," said Alkazi. But beneficiaries of adult education schemes – Saakshar Bharat for skill-development and another one supporting NGOs and private organisations in the field of adult education – have till the end of the month."

*****Said legal scholar Dr Usha Ramanathan: "They are making it clearer and clearer that the Unique Identification project is not about inclusion or reaching one's entitlements, but coercion and exclusion. Now that they have reached children, I hope people will realise what this project is about."*** [Emphasis added.]**

Courtesy **Scroll.in**

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Condemn Conviction and Sentencing of Maruti Workers!

The Sessions Court in Gurgaon today announced the quantum of sentence for 31 workers convicted by it on 10th March in the *State of Haryana Vs. Jiyalal and Others* case. Thirteen union leaders have been awarded life imprisonment, four others five years imprisonment and remaining 14 sentence as already undergone. Peoples Union for Democratic Rights strongly condemns not just the severity of punishment, but the conviction itself. The case was filed in connection with the incident of violence, setting the office on fire and unfortunate death of one HR manager due to asphyxiation at the Manesar unit of Maruti on 18th July 2012.

It should be recalled that the workers of the Maruti plant in Manesar had to struggle hard for the Constitutional right of forming a union. Ever since its formation in 2012, Maruti Suzuki Workers' Union (Reg. no. 1923) had been engaged in negotiations with the company management on various demands of the workers, including that of contract workers. On 18th July 2012 after an altercation between a supervisor and a worker, the worker was suspended. This happened when a meeting of the union members and the management regarding some pending issues was on. Hearing about the illegality of suspension of the worker, the union demanded its revocation. The company had deployed many bouncers in the premises that day and the police was also called in while the negotiations were on. Due to the flip flop of the management on revoking the suspension and anti-worker attitude of the labour department officials present there, tension built up. In the melee that followed, some of the management personnel were injured (none

seriously) and a number of workers were also injured. A fire broke out leading to tragic death of one HR manager due to asphyxiation.

From day one after the incident, the investigation was marred by high handedness of the police acting in collusion with the management. The police arbitrarily indicted and arrested 148 workers on the basis of the list provided by the management even before their being named by the prosecution witnesses, especially targeting the office bearers and other active members of their union. It ignored the discrepancies in the management's account, the facts such as presence of bouncers at the plant and the workers getting injured that day. What followed was a blatantly illegal police action involving violation of statutory norms regarding arrests and detention, third degree torture of the arrested workers and harassment of the family members and repeated attacks on the other workers protesting the arrests, etc. The over enthusiastic behavior made it very clear that they were acting on behalf of the management.

Most importantly, there was a presumption that the workers were responsible for the violence and therefore no investigation was done on the possibility of the company executives, managerial staff and the bouncers as perpetrators of violence.

In the course of the trial, while 139 accused managed to get bail from the High Court after spending 3-4 years in jail, nine remained behind bar throughout. The fact that 117 of these have been acquitted shows that they were made to suffer incarceration for long durations without any basis. Close examination of the trial raises serious doubts about the conviction of the rest

of the 31 accused. Thirteen of these accused have been charged with murder, all of whom are office bearers and the active members of the union.

The conviction is a result of a trial full of infirmities. These include naming of the accused by the prosecution witnesses in alphabetical order, inability of the witnesses to identify the accused correctly and to specify their exact role in the violence, weapons of attack changing from *lathi*, iron rod and *birja* to car door beams and shocker rods from FIR to trial stage, staged recovery of weapons from the accused houses days after the incident, inability of the prosecution to prove who lit the fire and how, absence of any corroborated evidence, absence of any evidence of any fatal attack on the deceased or any other managerial staff member etc. In nut shell no evidence was established in the court of law linking any of these workers to either murder or igniting fire, damage of property.

In the light of absolute gaps in establishing any evidence in court, we believe that this conviction is absolutely partisan, based on unfair trial and is a result of a nexus between the state institutions - the police, the administration, the judiciary in collusion with the Maruti management. All of them together are guilty of violating the rights of the workers and for the injustice they have suffered and are suffering. It is a stark example

of the coming together of the state and capitalist classes. A previous High Court judgment denying bail for Maruti workers said that giving bail to workers would set a bad precedent for FDI in the country.

The judgment is clearly aimed at giving a strong message to the workers in the entire belt that they can't fight for their constitutional rights. The constant threat of 'Maruti like situation', the tactics of threat and intimidation, regular enforcement of Section 144, criminalization of workers are an everyday reality of workers in the entire industrial belt from Gurgaon-Manesar-Dharuhera and Bawal. For the working class in India the judgment is a signal that Justice bends in favour of the Capitalist class and heralds acceleration in erosion of their rights and expansion of the power of management over them.

PUDR reiterates that it stands in solidarity with the Maruti workers in their struggle for justice. Meanwhile the least that the Haryana Government can do is to appropriately compensate the 117 workers for their illegal incarceration, loss of precious years of their lives and loss of livelihood.

Cijo Joy & Anushka Singh, (Secretaries,
PEOPLE'S UNION FOR DEMOCRATIC RIGHTS)

Reader's Comments

Dear Shri Singh,

In view our WP which resulted in striking down of the 62 years old provision on convicts continuing as Hon'ble MP/MLA/MLC, and other WPs, relating to First past the post System and against MPLAD Scheme and Pension & Perks to ex-MPs, as also for disclosure of sources of income by the candidates and their spouse & dependents in their affidavits and for notification of disqualification and consequent vacancy of seat being issued by the Election Commission instead of the Secretariat of the concerned House, etc. perhaps our Lok Prahari also deserved a mention along with other better known organisations mentioned in your very topical Editorial. With best wishes,

S.N. Shukla

(M. N. Roy 1887-1954)

**Philosopher- Revolutionary/
' Author of the Philosophy of Radical Humanism'**



M.N. Roy on Postage Envelope



Roy on Postage Stamp

“Lie-hunting is my profession. This is a thankless job. But someone must tell the truth, if it is not to remain an empty concept. I have been lie hunting ever since I learned to think for myself-to distinguish facts from fictions. It has not won me popularity.”

- M.N. Roy

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