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Justice Ajit Prakash Shah (Retd.)

'Indian Society is now more intolerant'
Justice Jast Chelameswar

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IRI/IRHA Section: M.N. Roy Memorial Lecture: 19th April 2017

‘Free Speech, Nationalism and Sedition’

-By Justice Ajit Prakash Shah (Retd.)

[(Justice) A.P. Shah delivering M.N. Roy Memorial Lecture 2017. On the dais from left – N.D. Pancholi, Justice Jasti Chelameswar, S.C. Varma, S.C. Jain]

A. Introduction

“A parochial, selfish, narrow minded nationalism has caused so much misfortune and misery to the world. A mad and exaggerated form of this cult of nationalism is today running rampant....”



This statement made by M.N. Roy, as far back as 1942, may resonate with many even today, particularly in these times we live in.



Audience attending the lecture

Good evening, Justice Chelameswar, Mr. Pancholi and distinguished members of audience. It is a privilege and an honour to be here to deliver the M.N. Roy Memorial lecture today.

M.N. Roy was a leading intellectual and thinker, and an activist philosopher, who was deeply involved in the Humanist Movement. He was critical of the fundamentals of Indian nationalism and the ideology of nationalism in

general, particularly in light of the rise of Fascism and Nazism and the outbreak of the Second World War.

Roy left India during the earlier part of the First World War as a full-blooded nationalist, but changed his views after much reflection and new political experiences. He founded the Communist Party of Mexico in 1919, the first Communist Party outside Russia. During the second World Congress of Communist

International, Roy helped formulate the famous Thesis on the National and Colonial Question by Lenin, although he disagreed with Lenin on the class composition of the leadership of the nationalist movement in colonies. Subsequently, on account of disagreements with Stalin, Roy returned to India in December 1930.

His return, however, was short lived. In July 1931, he was arrested on charges of sedition for the Bolshevik Conspiracy Case and tried in Kanpur Jail, without any open trial. He was sentenced to jail for 12 years, and was eventually released within six years in the year 1936. Thereafter, Roy joined the Congress, although he ultimately fell out with them on account of their reluctance to support the British to oppose fascism (which he considered to be a greater evil) in the Second World War.

After India became independent, Roy became a chief proponent of the idea of “radical humanism”, which he described as “a new humanism”. He continued writing on nationalism and on its economic and political aspects. In 1944, he drafted a “Constitution of Free India”, where he included a chapter on “Declaration of Fundamental Rights” which clearly stated that a “right to revolt against tyranny and oppression is sacred”.

A. The Situation Today

Roy’s ideas thus covered a broad range of topics, including speech and dissent. In fact, that is exactly why I have chosen to speak on Nationalism, Free Speech and Sedition for this memorial lecture.

Today, we are living in a world where we are forced to stand for the national anthem at a movie theatre, we are told what we can and cannot eat, what we can and cannot see, and what we can and cannot speak about. Dissent, especially in the university space, is being curbed, and sloganeering and flag raising have become tests for nationalism. We have a 21-year old

University student who is subject to severe online hate, abuse, and threats, only because she dared express her views.

In any society, at any given point of time, there will always be people holding divergent views. Such views are integral and inevitable in a healthy, functioning democracy. Nowhere has this been better expressed than by the judgment of the Bombay High Court in *F.A. Picture International v CBFC*, where the Court said:

“History tells us that dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon”

Unfortunately, however, our institutions of learning are under attack today and there is a concerted attempt to destroy any independent thought. Today, sadly, in this country I love, if anyone holds a view that is different from the government’s “acceptable” view, they are immediately dubbed as “anti-national” or “desh-drohi”. This marker of “anti-national” is used to intimidate and browbeat voices of dissent and criticism, and more worryingly, can be used to slap criminal charges of sedition against them.

All these factors have led me to choose the present topic to generate further discussion and debate. I think it is all the more important to discuss and talk about nationalism.

B. What is Nationalism?

At the very outset, I would like to caution against, what the celebrated Nigerian author Chimamanda Adichie terms, the “danger of a single story” – the danger of understanding an idea only from a single perspective and ignoring the diversity of views present. Mridula Mukherjee points out the nuances in the word

“nationalism” and how it encompasses the ideas of progressive nationalism, a revolutionary pro-people nationalism, and a regressive and jingoistic nationalism. Hitler’s nationalism, after all, was very different from Gandhi and Nehru’s nationalism. The European conception of nationalism, developed from the days of the Treaty of Westphalia and in the age of imperialist expansion, focused on the enemy within, whether the Jew or the Protestant. In contrast, the Indian conception of nationalism, developed as an opposition to an external imperialist British state, was more inclusive in uniting the people against them. This was then, an “anti-colonial nationalism, where the primary identity of an Indian was not their religion, caste, or language, but their unity as equals in their demand for freedom. It is thus important to remember that there is no single overarching “right” conception of nationalism.

How then did M.N. Roy understand nationalism? In Roy’s view, nationalism was representative of the desires and ambitions of a group of people within a certain geographical area, as opposed to people uniting on the basis of class. Nationalism thus emphasised the placing of one’s country’s interest over the interest of the rest of the world. There was a time in the 19th century, when countries were still isolated from each other, when nationalism was a historic necessity, under whose banner people came together and humanity progressed. However, he believed, it had now become a selfish, narrow-minded “antiquated cult”, and the world should progress towards internationalism and international cooperation. The ambitions of different nations began to conflict with each other, contributing to an exaggerated and irrational form of nationalism, which manifest itself in the rise of Fascism and Nazism, eventually leading to the Second World War. Nationalism, in Roy’s eyes, had thus become a synonym for revivalism, whose

advocates were consigned to glorify the past and advocate for a return to the bliss of the middle ages and a simpler life.

Rabindranath Tagore, the composer of the Indian national anthem, had even more radical views on nationalism. He believed that a fervent love for the nation represented a conviction of national superiority and a glorification of cultural heritage, which in turn was used to justify narrow-minded national interest. Writing in 1917, Tagore said, “*when this organisation of politics and commerce, whose other name is the Nation, becomes all powerful at the cost of the harmony of higher social life, then it is an evil day for humanity.*” He thus cautioned against such an exclusionary and self-aggrandizing form of nationalism that was based on a hate culture against an imagined or actual Other, who was viewed as the enemy.

On the other hand, the revivalists focus on the glory of ancient India, going back to the Aryan race as the building block of the Indian civilisation. This takes the form of cultural nationalism, where anyone celebrating “Western” festivals such as Valentine’s Day or even couples merely holding hands are to be ostracised and attacked. As religious nationalism, it endorses the two-nation theory, which envisages a nation under Hindu rule, a *Hindu rashtra* in *Akhand Bharat* (a United India). This is premised on the belief that only a Hindu can claim the territory of British India as a land of their ancestry, i.e. *pitribhumi*, and the land of their religion, i.e. the *punyabhumi*. As Vinayak Damodhar Savarkar propounded, “*Hindu Rashtra* (state), *Hindu Jati* (race) and *Hindu Sanskriti* (culture).” Muslims and Christians are viewed as foreigners, who are not indigenous to the territory of India, and whose religion originated in a separate holy land.

At this point, I would like to share my personal background. My maternal grandfather was the President of the Hindu Mahasabha in the 1940s,

and the first literature that I ever encountered in my school days was Sarvarkar's writings. Writing in 1938, when Hitler was on the rise, Sarvarkar justified Hitler's policies towards the Jews and driving them away from the motherland. He said, "*A nation is formed by a majority living therein. What did the Jews do in Germany? They being in minority were driven out from Germany.*" I am not sure whether his views changed after World War 2, and when the extent of the holocaust came to be known. Sarvarkar further believed that minority groups must lose their separate existence and separate identity if they want to live in India.

Roy, unsurprisingly, was critical of such views. While discussing the declaration made by the President of the Hindu Maha Sabha that "*the majority is the nation*", Roy said that it sounds quite in "tune with formal democracy", but in reality "*particularly in the prevailing atmosphere of Indian politics, it means that in a nationally free India the Muslims, constituting nearly 1/3rd of the population, will have no freedom*". He was thus against removing an imperialist regime and replacing it with a nationalist regime, which would continue to deny real freedom to most of the Indian people.

It is important to remember that both Tagore and Roy wrote in the context of the First and Second World War respectively. They had thus, witnessed first hand, how the pursuit of the glory of the nation had resulted in the great wars, and betrayed the ideas of liberty, equality, and fraternity of the French Revolution. Today, in independent India unfortunately, having such views is almost blasphemous and perhaps seditious.

India is a diverse country and people hold different views about nationalism, the idea of India, and our place in the world. We must respect these differences, not silence those who

hold a different view on nationalism and patriotism for the country. Elevating only a single view – one that idolises the nation and staunchly rejects any internal or external criticism – will only polarize citizens against each other.

At the end of the day, it is important to question, what is the defining characteristic of a nation – is it the territorial boundary or the collection of people that is a country's defining feature. Our Constitution starts with a solemn declaration of "We, the people of India..." In this context, is being anti-national equivalent to being anti-Government or is the hallmark of an anti-national that they are against the interest of the people, especially the minorities and the depressed classes? Can an entire University and its student body be branded "anti-national"?

Our current state of affairs is especially sad when we consider that the freedom struggle gave us a country and a Constitution that was committed to the ideals of democracy, free speech, civil liberties, and secularism. Unlike Pakistan, religion is not the founding basis of our nation. Our right to free speech and expression is not a gift or a privilege that the Government bestows on us; it is our right, guaranteed by the Constitution of India, and won after decades of struggle and sacrifice by the people of India.

C. Free Speech

Free speech and the Constitution

Writing in Young India in 1922, Gandhi said, "*We must first make good the right of free speech and free association before we make any further progress towards our goal. We must defend these elementary rights with our lives.*"

Gandhi's views were based on his belief that liberty of speech is unassailed even when the speech hurts and that "*freedom of association is truly respected when assemblies of people can discuss even revolutionary projects.*"

Gandhi was not alone in his ideas. Our early nationalist leaders too, from Raja Ram Mohan Roy to Bal Gangadhar Tilak, made the grant of civil liberties to ordinary Indians an integral part of the national movement.

These very ideas were incorporated into the Constitution by the Constitution drafters. They understood that while the freedom of worship is part of democracy and is a fundamental right, the edifice of modern democracy has to be the freedom of thought and expression. Our Constitution is drafted as a positive, forward-looking, inclusive document that binds the aspirations of all Indians. The Preamble expresses the resolve of the people to constitute India into a sovereign, socialist, secular, democratic republic securing justice, liberty, equality, and fraternity of its citizens. This achievement is all the more noteworthy if we consider, as Fali Nariman recently pointed out, that in a Constituent Assembly of 299, 255 members (85%) were Hindus. Despite being in a massive majority, the Constitution drafters took pains to protect the interests of the minority, the oppressed, and the dissenters.

Having been given a magnificent and inclusive Constitution, it then fell on the Supreme Court to protect the rights guaranteed therein, especially the right to free speech and expression.

Free speech and the Court

The Supreme Court has repeatedly emphasised the value of free speech, noting that the freedom of speech and expression lies at the foundation of all democratic organisations, inasmuch as free political discussion facilitates public education and enables the proper functioning of the processes of government. The Court has emphasised the function of free speech as promoting autonomy and self-fulfilment, maintaining truth, and performing the function of a watchdog. It has also given express recognition to the value of free speech in a

“market place of ideas”, by quoting the famous dissent of 1919 of Justice Holmes in *Abrams vs. United States*:

“But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.” (*Emphasis supplied*)

The value of free speech is thus, both intrinsic and instrumental, and has consistently been linked to democratic ideals. For example, the censorship of the play “Mee Nathuram Godse Boltoy”, which was extremely critical of Mahatma Gandhi was not permitted by the Bombay High Court. In an insightful judgment in *Anand Chintamani Dighe vs State Of Maharashtra*, the Court highlighted the importance of respect for, and tolerance of, a “diversity of viewpoints”, as being essential to sustain a democratic society and Government. The Court further went on to state, “*Popular perceptions, however strong cannot override values which the constitution embodies as guarantees of freedom in what was always intended to be a free society.*” In the same vein, the Supreme Court in *Director General, Doordarshan vs Anand Patwardhan* held in 2006 that the State cannot prevent open discussion, regardless of how hateful such discussion was to the State’s policies.

The importance of dissent is best understood by the Supreme Court’s view in *S. Rangarajan v P. Jagjeevan Ram* that “*In a democracy it is not necessary that everyone should sing the same song.*”

It has thus long been understood that free speech has to be countered by more speech; that the response to criticism is not to shut it down, but to engage with, and respond to, the speaker. Moral vigilantism, as Upendra Baxi rightly recognises, has no place in our Constitutional polity and democracy.

Free speech, though, is under attack. The joy over the striking down of Section 66A of the IT Act in *Shreya Singhal* was soon replaced by despair over the Supreme Court's decision to uphold the constitutionality of criminal defamation in *Subramaniam Swamy v UOI* and its "order" directing all cinema halls across India to play the national anthem before the start of a film, and requiring the audience to stand up as a "show of respect". I shall discuss the National Anthem order in further detail later on in my speech.

Just last month, in relation to the comments made by Azam Khan regarding the Baulandsher gang rape, the Supreme Court raised the question of whether the right to free speech under Article 19(1)(a) is to be controlled singularly by the language under Article 19(2) or is it also impacted by the expansive right to life and personal liberty under Article 21 of the Constitution. The answer to this question will have a profound impact in restricting the scope of Article 19(1)(a) and undermine our Constitutionally guaranteed right.

Even the Bombay High Court, whose decisions I have referred to above, has on occasion failed to protect the right to free speech. Recently, it constituted a three member committee (comprising of two lawyers) to give a report on the scenes in the movie *Jolly LLB-2* it found "objectionable", because it was *prima facie* of the view that certain scenes – those involving a cowering judge and some dialogue between the lawyers – were in contempt of the judiciary and the legal profession. Mind you, this was a movie where the CBFC, i.e. the Censor

Board, has given the requisite certification for its release. It was also a case where the High Court entertained the writ petition (later converted to a PIL) based only on two trailers and some photographs! As Justice Lodha had said, while dismissing a similar petition when *Jolly LLB-1* released, if the Petitioners don't want to watch the movie, no one is forcing them. The Bombay High Court's order, the report of the three member "committee", and the proximity of the release date, essentially forced the producers and director of the movie to "compromise" and undertake to make the requisite modifications and deletions to the objectionable scenes.

I only hope that these judgments are aberrations in an otherwise glorious history of the Indian Judiciary in protecting and promoting the Constitutionally guaranteed right to free speech and expression.

However, free speech has to be protected institutionally – not only by the Courts, but also by statutory institutions and the media. Unfortunately, we read about reports where the CBFC, our "censor board" has refused to certify a movie such as *Lipstick under my Burkha*, because it was "lady oriented", contained "sexual scenes, abusive words, audio pornography"; deleted the line "mann ki baat" from the upcoming movie *Sameer* because that is the name of the Prime Minister's radio show; and demanded that the *Hanuman Chalisa* be muted from a scene in *Phillauri*, because it failed to ward off the ghost. How can you forget that in *Uda Punjab*, a Adult-only certified movie, the Censor Board demanded 94 cuts (based on 13 suggestions), including deleting the name "Punjab", deleting certain abuses and deleting the words "Election", "MP", and party worker". If this is not an assault on the freedom of speech and expression, then I don't know what is.

The freedom of the press is part of the freedom of speech guaranteed under Article 19(1)(a). This is because a free press is essential to disseminate different views, and promote democratic ideals. More importantly, today, when mass-communication and digital media have become prevalent, the media assumes an even greater importance in playing the role of the opposition and checking facts. In fact, no other institution wields as much power and influence on public opinion as the media. However, in recent times, a section of the media, through its biased and one-sided reporting, has unfortunately aided in the restriction on free speech. A news channel airs false and doctored footage, while others openly flame the fans of this patriotism and anti-national debate. It is ironic that the media, which played a critical role in asserting its right to free speech during and after the emergency, and in the process helped develop our Article 19(1) jurisprudence, is now the institution that is compromising and challenging the same freedom of speech of the dissenters today.

We also have social media, where online trolls and threats of rape and murder are regularly made against people supposedly making anti-national statements. I am left to ask myself, which part of Indian culture permits or promotes the making of such statements threatening a girl with rape or murder. Who are these people on Twitter and other social media, who take comfort in their anonymity to make such aggressive threats against individuals?

Laws criminalising speech such as sedition, defamation, and blasphemy have been used against activists, dissenters, and even political cartoonists to silence and harass them. In such a situation, using these offences to deter a person from speaking, instead of engaging with the underlying concerns of their speech, is detrimental to democracy. In fact, the chilling effect and consequent stifling of free speech

caused by the threat of invocation of these offences and tactics undermines the constitutional protection to free speech guaranteed by Article 19(1) of the Constitution. More worryingly, though, a debate around nationalism and patriotism prevents a real conversation about the social and economic problems that ail the country.

Having discussed the meaning of nationalism and the importance of free speech in some detail, it is appropriate for me to now turn to examine issues that are raised by nationalistic fervour, whether sedition, the national anthem, the attack on universities, and cow slaughter. A common theme linking these topics is the idea of “cultural nationalism”, where cultural conformism is being foisted upon the entire nation, without consideration of people’s personal choices, values and regional differences.

D. Nationalism and Sedition

Sedition is a word, almost everyone in India has heard of today, because of the events at JNU last year. Historically, our conversation around sedition centred around British injustice in convicting and sentencing Tilak and Gandhi to prison for their publication of allegedly seditious material. Tilak, before his arrest in 1908, reportedly told a police officer, “*The government has converted the entire nation into a prison and we are all prisoners. Going to prison only means that from a big cell, one is confined to a smaller one.*” Gandhi, in 1922, pleaded guilty to the charge of sedition, stating that he was proud to oppose a Satanic government.

These stories are shared with bristling outrage about the British misuse of this law and pride with which our freedom fighters opposed them. More than 90 years later, however, we are still grappling with the fact that the crime of sedition was invoked against a group of 20-something University students for doing what students in

a campus should feel *entitled* to do – raise slogans, debate, disagree, and challenge each other on complex, political issues that face the nation today.

Sedition laws were enacted around the 17th Century in England in a bid to protect the Crown and the State from any potential uprising. The premise was that people could only have a *good* opinion of the government, and a bad opinion was detrimental to the functioning of the government and the monarchy. It was subsequently introduced in the Indian Penal Code in 1870.

The first major case was when Bal Gangadhar Tilak was brought to trial for sedition in 1897 for his lectures and songs at the Shivaji Coronation Ceremony. Given that these speeches and songs made no mention of overthrowing or disobeying the government, the Court widened the interpretation of sedition by equating “disaffection” to “disloyalty,” and including within it hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government. This interpretation became a part of the legal text, when Section 124A was amended to add the words “hatred” and “contempt” alongside “disaffection”, which was defined to include disloyalty and feelings of enmity. Thereafter, in 1908, Tilak was again charged with sedition for the publication of a critical article in his magazine *Kesari*. He was held guilty and sentenced to six years imprisonment by the Bombay High Court, which ruled that no one was permitted to “attribute dishonest or immoral motives to the Government.”

The next landmark sedition case pre-independence was Gandhi’s trial for the offence of sedition for his articles in the *Young India* magazine. The trial itself was remarkable for his decision to plead guilty to the charge of sedition and Justice Broomfield’s reluctance to sentence him, because he did not believe that

Gandhi deserved to be charged with sedition in the first place.

Interestingly, during the Constitution Assembly debates, there were two attempts made to include sedition as a ground for restricting free speech. Eventually, however, due to trenchant opposition by members of the Constituent Assembly and their fear that sedition would be used to crush political dissent, it was dropped from Article 19(2) and the Constitution. These actions of the framers were expressly noted by the Supreme Court in 1950 itself, in its decisions in *Brij Bhushan* and *Romesh Thapar*.

The decisions of the Supreme Court prompted the First Amendment to the Indian Constitution, wherein Article 19(2) was amended and “undermining the security of the State” was replaced with “in the interest of public order”. However, while speaking in Parliament, Nehru clarified:

“Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better.” [Emphasis supplied]

Finally, in 1962, a Constitution Bench of the Supreme Court had the chance to authoritatively decide on the constitutionality of Section 124A of the IPC in *Kedarnath Singh v State of Bihar* in light of the “public order” restriction in Article 19(2). It had to grapple with conflicting decisions of the Punjab and Patna High Courts on the constitutionality of sedition. The Court upheld the constitutionality of sedition, but limited its application to “*acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.*” It distinguished these acts from “very strong speech” or the use of “vigorous words” which

were strongly critical of the Government.

The final case that I would like to discuss is the 1995 decision of the Supreme Court in *Balwant Singh v State of Punjab*, where it acquitted the persons who had shouted slogans such as “*Khalistan zindabaad, Raj Karega Khalsa*” outside a movie hall a few hours after Indira Gandhi’s assassination on charges of sedition. Instead of simply looking at the “tendency” of the words to cause public disorder, the Court held that “*raising of some lonesome slogans, a couple of times... which neither evoked any response nor reaction from anyone in the public*” did not amount to sedition, for which a more overt act was required. The Court took cognizance of the fact that the accused had not intended to “*incite people to create disorder*” and that no “law and order problem” actually occurred.

It is through this lens that one should view the JNU incident. The law, as we saw above, is quite clear on the distinction between strong criticism of the government and the incitement of violence, with only the latter being related to sedition. Thus, regardless of whether the JNU students’ slogans were anti-national, hateful, or an expression of contempt and disdain against the government, as long as they did not incite violence, it does not get covered under sedition. As Upendra Baxi reminds us, we should remember the distinction between “constitutional patriotism” (and fidelity to the Constitutional purpose) and “statist patriotism” (what Gandhi called “manufacturing affection for the state”). Keeping this in mind, I would like to express my anguish on the language of the Delhi High Court’s bail order and the unnecessary invocation of patriotism and nationalism.

Gandhi said, “*Affection cannot be manufactured or regulated by the law. One should be free to give full expression to their disaffection unless it incites violence.*” This,

as we have seen above, is in fact the standard of *Kedar Nath*. Unfortunately, the broad scope of Section 124-A allows it to be used by the State to go after those who challenge its power, whether it is the JNU students, activists such as Hardik Patel and Binyak Sen, authors such as Arundhati Roy, cartoonists such as Aseem Trivedi, or the villagers of Idinthakarai in Tamil Nadu protesting against the Kudankulam Nuclear Power Plant. These examples are demonstrative of the misuse of the provision. The law is clear that mere sloganizing is not enough, and has to be accompanied by a call for violence. However, at the stage of registering the FIR and initiating criminal proceedings, the question of the interpretation of the section in line with the Supreme Court’s jurisprudence, does not arise. Thus, sedition charges are easily slapped, but seldom stick, but cause immense harassment in the process. Even if one is eventually acquitted of sedition, the process of having to undergo the trial itself is the punishment – and more importantly, the deterrent against any voice of descent or criticism.

The enforcement or the threat of invocation of sedition constitutes an insidious form of unauthorised self-censorship by producing a chilling effect on the exercise of one’s fundamental right to free speech and expression. That is why the law needs to be repealed. However, it is unlikely that any government will give up this power, and it is therefore left to the courts to re-examine the constitutionality of sedition. It is not enough to expect an acquittal by the courts after 4-5 years; we need to stop the misuse of the law to silence dissent by removing the source of the power itself.

Interestingly, England, from whom we have inherited the offence of sedition, recently repealed the offences of sedition and seditious libel, along with defamatory libel, and obscene

libel. In doing so, the Justice Minister, Ms. Claire Ward observed in 2009,

“Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn’t seen as the right it is today.... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom...Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech.”

E. Nationalism and the University Space

It seems that February is the season for targeting dissent. If it was JNU and *azaadi* in 2016, this February saw the Ramjas-DU protests. University spaces are traditionally meant to be spaces for dissent, where students engage and challenge each other and the dominant narrative, in an attempt to develop their own principles and beliefs. In fact, the best Universities in the world are those that champion free thinking and disagreement amongst their students, faculty, and administration. However, this space is under challenge in India.

Just think about the events that have transpired over the last couple of years that have sought to undermine academic institutions and academic freedoms – from the backlash against University of Hyderabad’s Rohit Vemula’s mother, declaring that she was not a “dalit”; to the charges of sedition levelled against JNU students; to protests at Ramjas/DU about the organisation of a seminar; and the outcry against an undergraduate student’s tweet.

As part of the #FightbackDU campaign that was launched in response to the Ramjas protests, a 21 year old LSR student, Gurmehar Kaur, tweeted a photo “I am not afraid of

ABVP”. A video, where she held a placard saying “Pakistan did not kill my father, war did” went viral and became the subject of intense national discussion and debate, with cricketers, actors, and politicians all joining in to criticise the girl. In fact, she was subject to such hostility, threats, and violence, especially online that she had to get security and leave Delhi. Have we really reached such a stage of insecurity that a 21 year old’s views have to be met with such backlash? That the Union Home Minister for the State has to tweet, “Who is polluting this young girl’s mind?” The guarantee of freedom of speech rings hollow, if the State cannot guarantee freedom *after* speech.

The inaction of State institutions like the police in light of the violence and bullying by certain groups leads to a fear psychosis amongst students. Unless some remedial action is taken, we will produce an entire generation of students who will never have been encouraged to question the dominant ideas and encouraged to think differently. This will influence not just the nature of democratic citizenship, but will have a direct impact on the innovation and creative thinking that are necessary for economic progress of a nation.

F. Nationalism and patriotism

Before concluding, I would like to talk about two more issues connected to free speech and nationalism. The first relates to the Supreme Court’s national anthem order requiring all movie-goers to “stand up in respect” for the national anthem before the start of a movie in order to “*instill a feeling within one a sense of committed patriotism and nationalism*”. The order of the Court, which seems a little short on reasoning to help understand how such an interim order was passed befuddles, and seems contrary to the spirit of the Constitution and past precedent, *Bijoe Emanuel*, which made it clear that we cannot be forced to sing

the anthem. It is important to remember that the right to free speech and expression also includes the right not to speak or express ourselves. However, under the guise of “law”, the Court has now stepped in and restricted our fundamental rights.

As Pratap Bhanu Mehta points out, the order fails to understand a distinction fundamental to liberal democracy — everything that is desirable or makes for a better citizen does not, and should not, be made compulsory. In fact, making something compulsory undermines the very meaning of that action and the respect that is normally accorded to it. It is a form of, what I would call, “conscripted nationalism”. Just as joining the Army is a noble career path, our lawmakers have rightly decided that India will not follow conscription, presumably because they believe in the liberty of the individual and the right to choice. Unfortunately, the Judiciary thought otherwise.

I know of many people who considered themselves patriotic and would always stand when the national anthem was played. But the Supreme Court’s order has fundamentally changed their relationship with the anthem and has resulted in undermining its import. The order may have ensured that cinema audiences throughout are now standing before the national anthem plays, but what the Court fails to have realised is that such an action is a performance, motivated by fear of being beaten up, rather than genuine respect and love for the anthem. In the end, it has actually undermined patriotism amongst fellow Indians.

Similarly, preventing people from eating the food they want and effectively forcing a life choice on them undermines any feelings of nationalism and unity, and is another insidious form of cultural nationalism. Recently, Mohan Bhagwat called for a national law against cow slaughter. But we must be wary of forcing a single ideology or way of living on the entire

country, especially a country as diverse as India, where States such as Kerala, or the various states in the North East consider beef a staple part of their diet. One reads multiple reports about slaughterhouse crackdowns in UP, crackdowns that are primarily targeted at Muslim butchers, leaving lakhs of people with fear, but without stable employment. We also recently had the horrific incident in Una where seven Dalits were beaten by cow-vigilantes for alleged cow slaughter. And how can we forget the lynching of Akhlaq, who was suspected for allegedly storing and consuming beef, but where the first thing that was sent for forensic examination was not his body, but the food that is in the fridge. Is this what the value of human life comes to?

Nationalism, when it devolves into such a form of cultural nationalism, is disturbing. I am personally very proud of being an Indian and of the Indian culture. My wife and I practice Yoga. But I am not comfortable with the drive to make Yoga compulsory, to be foisted upon everyone, as if that were a badge of nationalism and Hindu pride.

Enforced nationalism cannot promote true culture. When a culture is arbitrarily prescribed and foisted, freedom of the creative spirit of man disappears or is suppressed. Only free souls can create abiding cultural values; they may physically belong to one particular class or geographically to a particular country; spiritually, they transcend all social and territorial limitations.

G. Conclusion

It has long been known that suppressing and censoring people’s speech will not remove the underlying simmering sentiment. In fact, it will only serve to alienate that section of the population further. If we have to give true meaning to the Prime Minister’s promise of “*sabka saath, sabka vikaas*”, then we must celebrate not only those who profess affection for the State, but also those, who believe that

change is necessary or injustice is being committed. We cannot have an Orwellian situation, where the government speaks in one language, but then fails to walk the talk. After all, as Desmond Tutu said, “*if you are neutral in situations of injustice, you have chosen the side of the oppressor.*”

The strength of a nation is not gauged by the uniformity of opinion of its citizens or a public profession of patriotism. The true strength of a nation is revealed when it does not feel threatened by its citizens expressing revolutionary views; when there is a free and open press that can criticise the government; and when citizens do not resort to violence against their fellow citizens, merely for

expressing a contrary view. That is when we will have achieved liberty of speech. And that is when we will be truly free.

I would like to end this speech with a short poem “*Speak*” from one of my favourite poets, Faiz Ahmed Faiz:

Speak, for your lips are free;
Speak, your tongue is still yours
Your upright body is yours
Speak, your life is still yours
....
Speak, this little time is plenty
Before the death of body and tongue
Speak, for truth is still alive
Speak, say whatever is to be said.

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‘Indian Society is now more intolerant’

Hon’ble Mr. Justice Jast Chelameswar



‘Hon’ble Mr. Justice Jast Chelameswar’ presided over the M.N. Roy Memorial Lecture: ‘Free Speech, Nationalism and Sedition.’ He made the following presidential comments:

Justice Chelameswar said that he viewed the problems of free speech, nationalism and sedition from a different point of view. In his view the enjoyment of legal rights is not dependent on the legal regime which is operational in a society. There is another factor which facilitates or restricts the enjoyment of those rights i.e. the evolution of the civil society. When State makes the law, it has to be seen whether it is within constitutional limitations, whether it is reasonable or unreasonable. And then it is to be seen as to how the law made by the State is enforced. A wonderful law may be abused. The core problem is the understanding of the civil society about a particular situation. Referring to the Indian Renaissance Institute, which had organized the lecture, Justice Chelameswar said that ‘renaissance’ is a French word which means ‘rebirth’ and at present it may be assessed as to what is the renaissance this country has achieved during the last 70 years since its rebirth - ever since Manbendra Nath Roy propagated

his idea. Justice Chelameswar personally believed that our society has become progressively more and more intolerant and less and less rational. There is huge disconnect between upper India and rural India. The perception about civil liberties and rights which urban people have, the 70% of the rural people do not share the same. He cited an example of a political leader who was found corrupt and went to jail. A candidate sponsored by such leader was able to win election with huge mandate. We should ponder over how this happens and should devise ways and means to prevent it.

He further said that another issue which agitates the people is the ‘caste’. If state patronizes one ‘caste’ and any allocation is made in favour of that ‘caste’, the organizations of other communities come forward and start demanding the same benefits. There is no problem for welfare measures being adopted but when it is stated that it is based on ‘caste’ the trouble starts. If such basic issues are not addressed,

any debate about the nature of the state whether it is totalitarian or not, whether it is liberal or not, is meaningless. A society which is inherently intolerant, whose value system is based upon perverted ideas and intolerance, that society is bound to produce laws which are draconian, which are not liberal. Every wing of the state, whether it be the executive or the legislature or the judiciary, in fact shares the same value system as generated by the society.

Sometime back he saw on TV where a particular leader made a statement on an issue concerning an inter-state dispute saying, "We shall seal out borders with so and so state. I do not know whether it is nationalism, whether it is sedition or whether it is in tune with constitutional intent.....but the masses did not find anything wrong with such a statement!"

Referring to the recent Jallikattu agitation in Tamilnadu, he said that this practice was confined to only to some limited villages/towns in remote areas few years back, but suddenly it has proliferated to even urban areas. To his surprise educated and English speaking citizens in Tamilnadu, mostly belonging to urban areas, as late Ram Manohar Lohia used to say frequently 'these English knowing gentlemen', were seen encouraging and supporting agitation in favour of it. And questions were being asked as to what Supreme Court would do when so and so state is defying the order of the Supreme Court? Where we are we going in the process? It only shows that we have become an intolerant society, an irrational society. Unfortunately the intention of the judgment of the Supreme Court to prevent cruelty against animals had not reached the masses; instead of understanding the spirit of the Court's order people started agitating and began to raise their voices even against the Supreme Court itself. He said that if English knowing gentlemen, the educated persons, were unable to convince the common man about what is wrong and what is right, the core issues of Indian

society could not be resolved. If we want the development of an healthy society, then we should devote our energies in generating a functional education which will create awareness among the common people, which will educate the masses as to what is wrong and what is right. And I am sure an organization like the one committed to 'renaissance', has an obligation to do this, and like of you who are present here have to go along in promoting this programme.

Citing an instance that in a meeting of officials, some of them were holding high statutory or constitutional offices, a former Chief Election Commissioner of this country said that in this country one has to spend 40 to 50 crores rupees for getting elected to as member of Parliament, and five to ten crores for getting elected to a state legislature, and reaction of the gathering to this state was 'smiles' on their faces. In my opinion this is the trouble, that we have become totally indifferent to such a situation and smile it away. It is not a matter of 'smile'. Such practice is not conducive to the development of an orderly society. It is against the law. It is obnoxious. It only enables a few people to capture power- the few people who have access to money! We claim to be interested in the progress and development of this country and we are able to smile at the statement like this as given by the Chief Election Commissioner! I am not asking that one should resort to such an action to take A.K.47 and go..., at least one could show a different reaction than 'smile' - at least a different reaction to such state of affairs! "It is not a matter of smile at all..... Unless we do something to stop it there is no point in lamenting upon what is wrong in this country..... What is to be done is more important. It is time that those who are concerned about this country should start thinking as to what is to be done. .."

(Hon'ble Mr. Justice Jast Chelameswar
is sitting judge of the Supreme Court of India).

Report by **N.D. Pancholi**

A Report:

Meeting of the Indian Renaissance Institute at New Delhi

28th & 29th January, 2017

The General Body meeting of the Indian Renaissance Institute, in short **IRI**, was held at Gandhi Peace Foundation, New Delhi on 28th and 29th January, 2017. Those who participated included: Ramesh Awasthi (Pune); Ajit Bhattacharyya (Kolkata, WB), Mohd. Nazimuddin (Murshidabad WB), Vinod Jain (NOIDA-UP), Rekha Saraswat (Meerut-UP), Dr. Shalu Nigam (Gurgaon-Haryana), G. Veeranna and Chandrashekhar (Hyderabad-Telangana), N. D. Pancholi (Sahibabad-UP), S. C. Jain (Jaipur-Rajasthan), Narottam Vyas, S. C. Varma, Mahi Pal Singh, Malathi Maitre, Rajendra Kumar Sharma, Sheoraj Singh, Arun Maji, Krishan Kumar Gogna, Anil Sinha, Vidya Sagar, Amit Srivastav, Rakesh Tripathi, Ved Prakash Arya and Rao Dalip Singh (All from Delhi).

Shri Ramesh Awasthi, Chairman of the IRI, presided.

Following proceedings were taken:

(1) The minutes of the meeting of the Board of Trustees held on 13th Feb. 2016 at New Delhi were confirmed.

(2) N. D. Pancholi presented Secretary's report which was approved.

(3) Accounts of IRI from 1st April 2015 till 31st December 2016 were presented and approved. Shri S. C. Varma, Treasurer informed that this year IRI had surmounted the previous year's loss and was running into surplus of Rs.64, 059/-.

(4) **Future Management of the property 13 Mohini Road, Dehradun:** N. D. Pancholi,

Secretary, gave details of the proceedings of the Appeal filed by late Shri S. N. Puri at Uttarakhand High Court at Nainital (Uttarakhand) relating to the IRI property at 13 Mohini Road, Dehradun and informed that the next date was fixed for February 2017 and the case was likely to be finalized within 4/5 months.

(5) Publication and Circulation of the Radical Humanist:

(i) It was decided that the members should make efforts to raise subscribers and donations for the journal. The efforts of Shri Mahi Pal Singh in editing the journal 'The Radical Humanist' were appreciated.

(ii) It was decided that free copies of the journal should be sent to various university and college libraries, Students' hostels, institutions, Bar associations and other institutions in India and abroad to popularize the journal and the humanist ideas.

(iii) Decision to appoint Mr. S. C. Varma as publisher and printer of 'The Radical Humanist' in place of Mr. N. D. Pancholi with publishing address as A-1/103, Satyam Apartments, Vasundhara Enclave, Delhi-110096 was approved.

(6) PUBLICATION OF THE HUMANIST LITERATURE AND M. N. ROY'S SELECTED WORKS And other decisions:

(i) Selected Works of Roy: Vth Volume:

N. D. Pancholi will finalize the final copy of the Vth Volume of Selected Works of M. N. Roy within a period of about 6 months

and thereafter an eminent scholar/professor would be approached for its editing.

(ii) **Publication Committee of IRI:**

It was reported that the IRI should explore steps to print and publish Roy's books and other humanist literature on its own without approaching the Book Publishers. For this purpose a committee was formed under the name of '**IRI Publication Committee**' with following members:

1. Rekha Saraswat – Convenor
2. Vinod Jain
3. Malthi Maitri
4. G. Veeranna
5. Rahul Jain

(iii) **Research Committee:**

A Research Committee was formed with the following persons:

1. N. D. Pancholi – Convenor
2. Rekha Saraswat
3. Dr. Shalu Nigam

Research Committee will explore the possibilities of initiating research projects on various important social, economic and political issues.

(iv) **“Study Group on The Feasibility of political participation of the Radical Humanists and other like-minded friends in electoral process”:**

On the proposal of Shri Ajit Bhattacharyya, a Study group was formed under the name of “Study Group on The Feasibility of political participation of the Radical Humanists and other like-minded friends in electoral process” with following members:

1. Ajit Bhattacharyya - Convenor

2. Anil Sinha
3. Anjali Chakravarti
4. Shamsul Islam

President and Secretary to be the ex-officio members of this Committee.

(v) **“Programme Committee”:**

A Programme Committee was formed with following members:

1. Vinod Jain - Coordinator
2. Ramesh Awasthi
3. Rekha Saraswat
4. Gautam Thaker
5. Malathi Maitri

The purpose of the Committee would be to chalk out activities and programmes involving seminars, study camps, conferences on behalf of the IRI.

(vi) **Website of the Indian Renaissance Institute:**

It was decided that website of The Indian Renaissance Institute under the name of ‘The Radical Humanist’ would be created.

(vii) **M. N. Roy Memorial Lecture: 21st March, 2017**

M. N. Roy Memorial Lecture (2017) would be delivered by Justice A. P. Shah former Chief Justice of Delhi High Court on 21st March, 2017 at Speaker's Hall, Constitutional Club, Rafi Marg, New Delhi.

(viii) **Office of IRI:**

The arrangement of the functioning of the office of the IRI would continue to remain the same as at present.

(ix) **Applications of following persons to become the members of the Indian Renaissance Institute were**

approved:

1. Shri Chandrashekhar (Hyderabad)
2. Dr. Shalu Nigam (Gurgaon)
3. Prof. Shamsul Islam (Gurgaon)
4. Neelima Sharma (Gurgaon)
5. Anil Sinha (Delhi)

(x) Following members were elected as 'elected trustees' till the next election:

1. Mr. S. C. Jain
2. Mr. Mahi Pal Singh
3. Mr. S. C. Varma
4. Mr. Nazimuddin
5. Ms. Anjali Chakravarti
6. Mr. Vidya Sagar

(xi) Following members were appointed as co-opted trustees:

1. Mr. G. Veeranna
2. Mr. Ved Prakash Arya

(7) **OFFICE-BEARERS OF IRI:**

Following office-bearers of IRI were

elected by the Board of Trustees:

1. President: Mr. Ramesh Awasthi
2. Vice Presidents:
 - (i) Mr. S. C. Jain
 - (ii) Mr. N. D. Pancholi
3. Secretary : Ms. Rekha Saraswat
4. Treasurer : Mr. S. C. Varma

(8) It was decided that any two of the following will put their signatures on the cheques, FDRs and other requisite financial transactions:

1. President
2. Secretary
3. Treasurer

(9) During the conference following donations were received:

- (i) Mr. S. C. Jain: Rs.11, 000/- for The Radical Humanist
- (ii) Mr. Ajit Bhattacharyya: Rs.10, 000/- for IRI
- (iii) Mr. S. C. Varma: Rs.4, 500/- for IRI
- (iv) Mr. G. Veeranna: Rs.1, 000/- for IRI

"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)

Articles and Features:

Mahant Yogi Adityanath As Chief Minister Of Uttar Pradesh: Why Hindutva Juggernaut Rolls On?

Few well-meaning friends with genuine concern about the future of our democratic-secular polity are shocked by the decision of the 315 MLAs of BJP and its allies unanimously choosing Adityanath (original name, Ajay Singh Bisht, Mahant of Gorakhnath Temple, one of the richest in India) as CM of largest State of India. They feel it has happened out of blue and BJP top brass, specially PM Modi, should not have allowed it as Aditya's nomination for CM's office goes against former's ruling mantra 'sab kaa saath-sab kaa vikaas'. Some of the friends have even suggested that Muslims of UP and rest of India should forsake election politics so that Hindutva organizations led by RSS have no opportunity to demonize Muslims which they do in the course of elections as they did in the recently concluded UP elections. Interestingly, the demand that Muslims should be disfranchised is often raised by the RSS leaders.

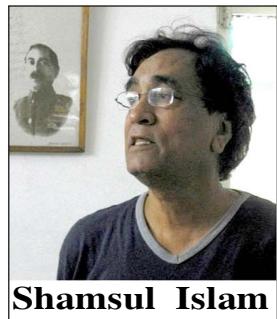
Such responses belittle the seriousness of the Hindutva danger and strengthen the stereotype propagated by many 'secular' organizations and individuals that everything is fine with RSS except that it is antithetical to Muslims and Christians. If the former changes its attitude towards these two minorities of India there is no problem with the RSS vision of India.

The fact is that RSS is not just antithetical to Muslims and Christians but hates democratic-secular India as well. It remains committed to turn India into a Brahmanical Hindu State. Anti-minority rhetoric by RSS/BJP leaders in recently concluded UP elections was an alibi for diverting attention from issues of poverty, unemployment, violence against women, absence of educational and health services. The hate propaganda was aimed at conveying to the Hindu electorate that Muslims

(and Christians) posed greater internal threat than the social and political deprivations of the former.

To rationalize Adityanath's ascendancy to power to his being a crudest and most poisonous anti-Muslim leader is a small part of the story. It is to be noted that despite all kinds of Muslim bashing in UP elections the winners could secure only 39.7% of the polled votes. BSP, SP and Congress together secured more than 50% of the polled votes and at the macro level 60.3% voters of UP voted against the Hindutva dispensation. The whole truth is that RSS/BJP knows it well that they cannot fulfil all those promises which it made to its new amalgamation of Hindu Castes which voted the former to power. Any sense of betrayal of its 'vote-bank' can only be camouflaged by a higher doze of Hindutva politics.

Only Mahant Adityanath with his impeccable zeal and commitment for Hindutva could be the best bet for accomplishing this task. Adityanath combines two most aggressive streams of Hindutva politics, Hindu Mahasabha and RSS. He combines in him Savarkarite and Golwalkarite hatred for democracy, secularism and an all-inclusive India. He is a born dictator and relishes slogans like 'poorvanchal maen rehna hae tau Yogi-Yogi kehnaa hogaa' in tune with the RSS preference for 'one leader' as ruler. He personifies opposition to all symbols of all-inclusive India and it was natural that after declaration of his nomination as CM of UP by the MLA's in Lucknow, these were only saffron flags which were waved.



Shamsul Islam

Adityanath's saffron attire helps RSS in propagating its Casteism laden Hindutva. The role model is BJP winner from Iglas Reserved constituency in UP. Diler a Dalit with family links to RSS while canvassing for the seat, not only used to sit on the floor but carry his own steel glass for drinking water/tea when he visited homes of upper-caste voters. Diler, a Valmiki, justified his desire to remain shackled in Casteism by saying 'Main apni maan maryada khatm nahin kar sakta. Zama na chahe badalta rahe.' (I cannot break away from tradition. Let the world change, I won't). With Mahant Adityanath as political ruler, Dalits are expected to follow Manusmriti norms and Diler will not be an exception but rule.

Adityanath's persistent aggressive calls for India free of Muslims, ban on cow-slaughter (nobody asks him why it continues in many States ruled by RSS/BJP), conversion of Muslims/Christians to Hinduism and demand that Muslims should show their loyalty by chanting 'Bharat Mata ki Jai' (which Hindutva leaders/cadres never chanted against the British rulers) only adds to his aura of Hindutva zealot. This politics of dangerous 'other' will help in reining in the disgruntled Hindus.

Aditya heading the UP State, sharing long border with Nepal sends a favourable signal to pro-king elements there. Aditya and his *math* historically have rendered great support to Hindu kings of Nepal. According to them Nepal king is the king of Hindus of the world. Hindu Mahasabha and RSS both have been demanding restoration of kingship in Nepal and its return as a Hindu State. Thus, Aditya's rule in UP will have international consequences also.

Those who suffered shock by the chief ministership of Gorakhnath Temple's Mahant only manifest their semi-illiteracy about the Hindutva game-plan about India. This juggernaut is on since the times of 1967-68 when parties upholding democratic-secular polity joined hands with RSS in running governments in provinces and at the

Centre. It got further impetus in 1997-8 when Gujarat was turned into 'laboratory for Hindutva.' With Modi's ascendancy and his declaration that he was a 'Hindu nationalist' in 2013 completed the circle. The problem with most of the 'shocked' friends is that they believe that Aditya's crowning is an aberration and not continuation of Hindutva politics which wants to undo present India. Unless we rise up to challenge in totality the RSS idea of 'Bharat Mata' which has nothing to do with the present democratic-secular polity but a replica of degenerated Peshwa State the Hindutva juggernaut will continue rolling on. We should understand that with this process on, no foreign enemy is required to destroy India, the Hindutva gang from within is capable of doing it.

We should rejoice the fact that whether these were elections of 2014 or 2017, the Hindutva camp has been able to secure around 30% of the total votes. Even in UP elections where according to pro-RSS commentators 'Hindutva *aandhi* (storm)' demolished all opposition, as per the polled voted it was less than 40%. Hindutva aggression shows that Hindus are not falling in the Hindutva trap. Unfortunately, those opposed to Hindutva fail in challenging the anti-national philosophy and deeds of RSS due to sheer ignorance. Since RSS/BJP victory in Maharashtra RSS has abandoned its façade of being a non-political body. Now RSS *pracharaks* are appointed as chief ministers and India's fight against Hindutva and RSS nefarious ideology cannot be delayed any more. 70% of Indians are our security against Hindutva juggernaut.

Shamsul Islam is a retired Professor of University of Delhi.
Email: notoinjustice@gmail.com

For some of S. Islam's writings in English, Hindi, Malayalam, Kannada, Bengali, Telugu, Punjabi, Urdu & Gujarati see the following link:

[Courtesy du-in.academia.edu](http://du-in.academia.edu), March 19, 2017.

[Never mind that the speculative analysis below chooses to completely overlook the element of RSS/BJP Long March towards a Hindu Rashtra by dismantling and displacing the current “secular-democratic” edifice of the Indian state.

Just never mind

The chief merit of the speculative analysis lies not in its rather unorthodox suggestion that Adityanath’s choice actually signifies that the bell is going to toll for Modi, rather sooner than later. Its real strength lies in acknowledging the somewhat puzzling nature of the choice, and not because Adityanath is a “Hindu” hard-liner, to put it rather euphemistically. (May like to watch: ‘Adityanath on stage speaker asks to rape muslim women by taking them out of graves- Hate Speech’ at <https://www.youtube.com/watch?v=uLXYzvI_FWs>.) But because the choice of an independent leader, one who’s his very much his own man, that too in a state like UP, politically most important in India, and too without any apparent compulsion, given the humongous scale of the current victory, goes against the very grain of Modi-Shah’s modus operandi.

Then why Adityanath?

It’s precisely in this context, the complete ignoring of the element and the imperatives of the Long March is so very disappointing. Never mind.]

Is BJP moving towards being ‘beyond Modi’?

Santosh Desai

The selection of Yogi Adityanath as the UP CM is not an easy decision to read and make sense of. The reactions to this news have been on expected lines, with one side being appalled at the choice of an avowed and aggressive Hindutvavadi and the other taking great pleasure in the unhappiness it has caused the liberals.

But beyond the expected reactions, this move is intriguing because it runs counter to the script that has been written so far. According to the Modi-Shah blueprint, Modi wins elections in states, hands over the reins to somebody without any real stature, and along with Amit Shah, continues to exercise total dominance over the party by virtue of his connection with voters. In some cases, like Maharashtra, the person chosen goes on to develop local standing while in most others like Haryana and Gujarat, acts unremarkably and stays unheralded.

Also, attempts to polarize voters tend to peak before the elections, and then becomes a lets-keep-the-pot-on-simmer kind of an effort. The

implicit promise is that Hindutva would be assertively deployed to win elections, but the focus would shift to talking about development and governance once victory was achieved.

Puzzlingly, by appointing Adityanath, both elements of this template are being dismantled. Here we have a leader with a strong local base, and with enough standing to be able to convey displeasure to the party leadership when the occasion arises, something no other BJP leader in the country can envisage today. More tellingly, there is already talk of his becoming a Prime Ministerial candidate in 2024. To be sure, this is fanciful kite flying indulged in by a few of his supporters, but the fact that anyone can dare articulate this in the BJP of today means something.

Also, to appoint him is to crystallise and make visible a harder Hindutva line from here on. So far, Hindutva has been used as a retractable weapon, deployed with some flexibility. It comes to the fore on occasion, and is otherwise

deployed symbolically. Social media warriors add to the mix by unleashing textual anger on its enemies. The anointment of Adityanath changes that in a more permanent way. The dog whistle can now be heard by everyone, and that signals a clear shift in strategy.

Why would the party and the Modi-Shah combine take this call? After all, the current strategy is working and the landslide win in UP is proof of that. What additional gain can a more muscular display of Hindutva bring to the party? Perhaps it is time to consider the admittedly counterintuitive possibility that this selection has been driven by Nagpur and is part of a longer-term strategy that addresses certain structural issues that the party faces.

The BJP's biggest strength by far is Narendra Modi and for all the advantages that this brings, it raises some uncomfortable questions for the party in the long run. For instance, how well would it have done in the UP elections, without the help of this gifted politician? The reason for asking this hypothetical question is to argue that for all the apparent visibility they enjoy, the ideas and platforms that are espoused by the party do not by themselves translate into electoral victory. Simply put, without Modi, the BJP platform by itself does not seem capable of getting it to power. The support for Modi is far greater than the support for the BJP. Development and aspiration have undoubtedly appeal, but again without Modi, the BJP does not have the ability to make people believe in this dream. As far as the more ideological part of its appeal goes, in theory, it should not need any individual to convert these into votes- the ideas themselves should suffice but that is clearly not the case. Modi's genius is that he manages to reconcile the two primary motivations that exist in politics- fear and hope in one single package, and in this he is unique.

The BJP is in a curious place. At one level, it

is India's only political formation that can call itself a national party. It is increasingly becoming a force or at the very least a presence in regions where it was virtually non-existent till a few years ago. The Congress has become a joke that the party inflicts on itself, and the AAP is a long way from being any kind of force nationally. Regional parties are even more dependent on select individuals, and most of these parties are in decline, and it is a matter of time before they cede substantial ground, potentially to the BJP.

For the BJP, the fact that their core platform is not enough for it to win consistently in spite of the great weakness that the opposition possesses is a problem that it needs to address at a structural level. This is where Adityanath might fit in. The UP win may have given it confidence that its cultural agenda needs to be made more visible and become a more overt reason for people to vote for it. This would mean that while Modi would be the overall face of the government, the party's ideological thrust would be more sharply represented by Adityanath.

Also, it may begin the process of building a second line of leadership, beyond Modi. Adityanath radiates the aura of strength so vital to excite the party base; what he lacks is Modi's ability to speak to the aspirations of the voter today. If this hypothesis is true, then over time we will probably see Adityanath using the Modi playbook. Use Hindutva credentials for legitimacy, but create a sense of decisive leadership based on a narrative of development and aspiration. The problem for him will be to manage this transition, but more importantly do so without setting himself up as a future challenger to Modi, which is easier said than done. A strategic shift has taken place, the variables have multiplied- the next few days should make things a little clearer.

Courtesy timesofindia.indiatimes.com, Mar 19, 2017

OPINION :

Secular manifesto for change: Here's how secularism must be reinvented to credibly challenge the Hindutva narrative

Saba Naqvi

A Yogi Adityanath could not have been elevated to CM of the country's largest state had there not been a complete hollowing out of secular values. For those of us who still have secular stardust in our eyes, let's recognise that secularism as practised in India has been reduced to electoral management that first sees Muslims as a herd and then tries to keep that herd together.

It's a vaguely insulting formulation, particularly as practitioners of the craft of secular politics have auctioned out the task of delivering the imaginary herd to a bunch of middlemen, all too often clerics or strongmen with criminal antecedents. It should be crystal clear by now that they repel others and have brought Indian Muslims to the point where candidates who presume to be the people's representatives are unelectable and the community's vote has been rendered ineffective.

The secular model currently offers no counter narrative to challenge Hindutva that claims to unite people above caste and region in a national symphony. All of this has been some time in the making. The clout of clerics increased ever since Congress famously capitulated before them when it overturned the Shah Bano judgment in 1986. This reinforced the "separateness" of Muslims and contributed to the rise of BJP in national politics.

The All-India Muslim Personal Law Board (AIMPLB) was at the heart of that churning. Founded in 1973, it is a collection of clerics with a motley crew of professionals whose main purpose is to protect Sharia law. Half its members are life members who represent an

orthodox male viewpoint, by default promoted by the state that swears by secularism, that actually means separation of religion and government. Frankly, the Ulema should have no complaint with Yogi Adityanath, the head of a religious order, occupying political office!

The same clerics also have their hand in managing Waqf properties that can be described as religious endowments made in the name of Allah for the benefit of the poor. There are approximately 3,00,000 registered Waqf properties in India on about four lakh acres of land (the second largest land holding after Indian railways). It is a national resource that should have been developed for the welfare of the community (the Sikh community is a model to emulate here).

Instead, many Waqf boards are repositories of corruption, both petty and large. Yet they get away with it because any demand for scrutiny is described as an attack on Islam. It's all rather pathetic. There is actually precious little that the Indian secular state has given the Muslim community except to ensure that they live for eternity in the museum of stereotypes, most notably that of the clerics who mostly talk rubbish when they showcase their views on television. The imagery of these men as "sole spokespersons" only works to counter mobilise. The community has slipped on all human development indices yet an entire mobilisation has thrived on the argument that they are appeased. It's true, the clerics have indeed been appeased in a manner of speaking.

The real wealth of the Muslim community lies in its artisans, weavers and craftsmen who make both functional and beautiful things with their

hands. It lies in the intellectual reservoirs of poetry and literature, in music and architecture. It is a real irony that over 200 years ago a poet such as Mirza Ghalib would mock the mullahs so relentlessly while we in contemporary India were doomed to take their views so seriously.

These elections have also exposed as a zero sum game the cynical mathematical model that works with the presumed value of the Muslim vote. Indeed, a politician such as Mayawati should recognise that her projection of the mullah-meat trader-muscleman candidates fitted communal stereotyping and hurt rather than helped a community she so grandiosely set out to represent. She spoke so incessantly of Muslims that a casual visitor to Uttar Pradesh during the elections could be forgiven for getting the impression that the state was voting to elect a minority CM!

Now that the shock of the verdict has registered some voices are beginning to express bitterness against the mullah-politician nexus. A process of introspection has begun and at the very least the community must recognise that in the narrative emerging in India their only utility lies as an image that is a caricature of the multiplicity of Muslim identities in India. No one will shed tears unless the change comes from within. Here are my humble suggestions for a manifesto for change:

* Tell the mullahs to restrict their activities to the masjid. Ban them (short of issuing a fatwa!) from appearing on TV. Be vocal about stating that you have different role models. Begin the process of examining the structures of law boards and Waqf boards, managed by groups of men guarding their turfs. Get professionals to create a genuine welfare structure for the community.

* Ask for participation in existing government schemes instead of harping on separate identity constitutional guarantees. Build campaigns over economic issues, jobs, small loans, education and not issues such as triple talaq. Yes, you will be baited but don't fall into the many traps.

* Salvation lies in propagating the many cultural traditions that unite, not those that separate. Take on the conservative views on music, women's right and freedoms. Highlight the pluralist traditions.

* If someone comes asking for votes on the basis of fear and tells you that Muslims are supposed to be in the frontline of the battle to save secularism, turn around and tell them in that case it may not really be worth saving.

Courtesy timesofindia.indiatimes.com, March 21, 2017.

Saba Naqvi is a journalist and an author.

Need for Renaissance

The Renaissance movement, or rather the idea of Indian Renaissance, has been very dear to me for a considerable time. It covers a much wider ground than the political movement, which has been occupying such an important place in the public life of our country for nearly half a century, is only a means to an end.

M.N. Roy (Written between 1937-1944)

[Since he was elected in 2014, Prime Minister Narendra Modi of India has played a cagey game, appeasing his party's hard-line Hindu base while promoting secular goals of development and economic growth. Despite worrying signs that he was willing to humor Hindu extremists,

Mr. Modi refrained from overtly approving violence against the nation's Muslim minority.

On Sunday, Mr. Modi revealed his hand. Emboldened by a landslide victory in recent elections in India's largest state, Uttar Pradesh, his party named a firebrand Hindu cleric, Yogi Adityanath, as the state's leader. The move is a shocking rebuke to religious minorities, and a sign that cold political calculations ahead of national elections in 2019 have led Mr. Modi's Bharatiya Janata Party to believe that nothing stands in the way of realizing its long-held dream of transforming a secular republic into a Hindu state.]

Mr. Modi's Perilous Embrace of Hindu Extremists

THE EDITORIAL BOARD

***Since he was elected in 2014, Prime Minister Narendra Modi of India has played a cagey game, appeasing his party's hard-line Hindu base while promoting secular goals of development and economic growth. Despite worrying signs that he was willing to humor Hindu extremists,

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[Emphasis added.]

Mr. Adityanath has made a political career of

demonizing Muslims, thundering against such imaginary plots as "love jihad": the notion that Muslim men connive to water down the overwhelming Hindu majority by seducing Hindu women. He defended a Hindu mob that murdered a Muslim man in 2015 on the suspicion that his family was eating beef, and said Muslims who balked at performing a yoga salutation to the sun should "drown themselves in the sea."

Uttar Pradesh, home to more than 200 million people, badly needs development, not ideological showmanship. The state has the highest infant mortality rate in the country. Nearly half of its children are stunted. Educational outcomes are dismal. Youth unemployment is high.

Mr. Adityanath has sounded the right notes, saying, "My government will be for everyone, not specifically for any caste or community," and promising to make Uttar Pradesh "the dreamland" of Mr. Modi's development model.

But the appointment shows that Mr. Modi sees no contradiction between economic development and a muscular Hindu nationalism that feeds on stoking anti-Muslim passions. Mr.

Modi's economic policies have delivered growth, but not jobs. India needs to generate a million new jobs every month to meet employment demand. Should Mr. Adityanath fail to deliver, there is every fear that he — and Mr. Modi's party — will resort to deadly Muslim-baiting to

stay in power, turning Mr. Modi's dreamland into a nightmare for India's minorities, and threatening the progress that Mr. Modi has promised to all of its citizens.

Courtesy www.nytimes.com, MARCH 23, 2017

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

Mahi Pal Singh

Back to square one

We are back to square one. The Supreme Court has advised the two parties, those who want the Babri Masjid to be reconstructed and those who claim that the site is that of Lord Rama's. In its judgment, the court has advised the different parties to sit together and sort out the problems through negotiations.

One surprising part of the advice is that the Chief Justice of India is willing to mediate for an out-of-court settlement. He has said "give a bit and take a bit. Make an effort to sort it out." He points out that these are issues of sentiments and he can even step aside and let his brother judges to decide. How can the chief justice or, for that matter, his brother judges mediate because their very office is supposed to be above controversies?

Yogi Adityanath, a Hindu icon, who has been elected as the leader of the Uttar Pradesh legislative party with a huge margin and installed as chief minister. Whether the credit for securing this majority in UP goes to Prime Minister Narendra Modi or to the Yogi, who has the reputation of being a hardcore Hindu leader, it shows that Hindutva is sweeping the country. Obviously, the RSS is behind the move.

In the past, the RSS always stayed distant although it was the final arbiter. But now it is so confident of the Hindu majority, particularly after the BJP swept elections in UP, that it doesn't mind coming out in the open. It is already preparing for the 2019 Lok Sabha elections. Its chief Mohan Bhagwat minces no words when he tells the swayamsewaks to be prepared to meet the increasing attacks on the RSS and get ready for the next Lok Sabha polls.

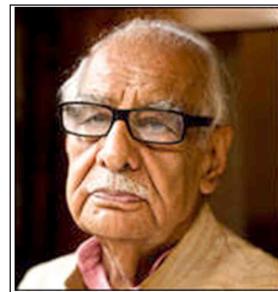
In the face of what has happened in recent assembly elections, the RSS fears that the opposition parties might join hands together to

fight it out. In such a scenario, the BJP-led NDA may lose ground. The RSS, or for that matter, the BJP knows that despite getting 42 percent of vote share in UP, the combined efforts of the other parties fetched 55 percent of vote share. It means that the non-BJP parties would have to come together. This doesn't seem possible at present.

The bigger danger may force them to sink their differences and fight the saffron brigade. As Nani Palkhiwala, the late eminent jurist said, when the house is on fire you don't think whether to save the drawing room or dining room. You want to save the entire house. He was referring to the looming threat of the erstwhile Jan Sangh getting a majority in parliament. It is another matter that Janata Party, comprising most Jan Sanghis, came to power at the centre in 1977. But the sticking point was to sever relations with the RSS.

However, the Jan Sangh elements which are now a part of the ruling BJP, refused to snap ties with the RSS. Subsequently, L.K. Advani walked out and founded a separate party, the BJP. Liberal elements in the party like Atal Behari Vajpayee, too, left the Janata Party. It turned out to a blessing in disguise that his sobering influence did not allow the hardcore elements to take over when the party came to power.

It, however, shows that secularism has not taken roots in the country. It is unfortunate that the independent struggle, aimed at a secular democratic country that included this noble



Kuldip Nayar

thought in the preamble of the constitution, seems to have gone awry. The Hindutva elements, slowly and gradually, swept the country. Today, you can see that soft-Hindutva has spread even in Kerala where the BJP, for the first time, has made inroads.

As it is, the party has captured the imagination of people and has brought to power in over dozen states. This also means that the secular party like the Congress has been losing its grip in the states which it ruled once. Even the regional parties are losing their relevance as it happened in UP. Obviously, the BJP has been able to influence the minds of most people. The Rajya Sabha elections look like strengthening the BJP's hands

The assembly elections in states Gujarat and Himachal Pradesh will really show whether the Rajya Sabha would be captured by the BJP or not. However, the future is ominous. The revival of Ram mandir issue could shape the future of the country and would polarize the nation further.

Yogi Adityanath has repeated the Modi words of 'sabka saath, sabka vikas.' But the content of the party cannot change overnight. Though

the UP chief minister may not be saying it in as many words, he will have to follow the RSS and the BJP agenda of the Ram temple at Ayodhya, sooner or later. If the all-powerful Yogi has been installed as chief minister by the BJP high command, it must be with a clear-cut intention.

Whatever may the outcome, the court cannot decide on what is apparently a matter of faith. That is perhaps why the CJI has offered to mediate for an out-of-court settlement. But then there have been several attempts since 1986, involving five governments of different colours. It was mainly because both parties seem to be adamant since they don't want to make any compromises. Under the circumstances, another attempt by the CJI may not help.

Except for the BJP, none of the other parties is enthused over the offer by the Supreme Court bench. It looks as if the apex court also is not clear in its mind how to settle the dispute. This long-ranging issue needs a quick solution for the comforts of all parties concerned. But, unfortunately, it doesn't seem to coming, at least in the near future.

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Ayodhya Case Should Be Decided By the Supreme Court – No Scope for Mutual Settlement

Justice Rajindar Sachar (Retd.)

The suggestion of chief Justice of India to even act as a mediator in pending Babri Masjid demolition case, showed his concern but was a little odd considering that it has come at the instance of an inter meddler, and without parties involved being before the Court – that is why it caused amongst the parties a certain concern. In my view Babri Masjid demolition case is not a matter for compromise. This case raises the deep constitutional concern regarding our constitution which clearly says India is a secular republic.

I was in Geneva attending U.N. Sub Human Rights Commission meeting when I was told the horrible news that came on T.V. that Babri Masjid had been demolished and saw the gory speckle of B.J.P. hoodlums climbing the Masjid and breaking it down. B.J.P. government Chief Minister Kalyan Singh's assurance to the Supreme Court that he will take full steps to prevent it were belied. The Supreme court by a majority just accepted his apology instead of sending him to jail for contempt of Court. But this was nothing compared to the ominous conspiracy of Congress Prime Minister Mr. Narasima Rao, who suddenly became inaccessible to senior journalists, his Home Secretary and even his colleagues.

I am also ashamed to admit the unworthy role of complicity of the judiciary which inspite of the injunction having given since 1949 against public not to enter the area did not proceed against the public – even the higher judiciary did not intervene – rather turned a blind eye.

This was the time when the magnitude of danger should have been appreciated by all parties but was not. The battle for secularism should have been joined with a singular

determination of nipping the cancer of communalism. But then nothing was done.

I then made a public statement that; "Immediately the Government should have announced December 6, as a 'National Repentance Day' when people will fast and pray for unity and welfare of all the communities". But the non-BJP parties analyzed the situation as merely one of law and order and thus acquiesced in this dastardly Act.

Whatever the past history, all the parties let the matter go to Allahabad High court to give a decision. High Court has given a decision with which both parties are aggrieved. B.J.P. is still insisting that it would build a temple at the site where Masjid undoubtedly stood for over 500 years. Muslims can not obviously agree to a shameful compromise on sanctity of Masjid. The matter is already before the Supreme Court – it cannot run away from giving a decision which may not make everyone happy. But then it is their constitutional duty and it has no other alternative. I cannot foretell the Supreme Court decision. But if past precedents are to prevail, then the case in favour of Muslims is invincible. I say this on the precedence of Shahidganj Masjid case (Lahore now in Pakistan) decided by the Privy Council in 1940. The Supreme Court need not decide on merits whether Babri Masjid had been in existence where Ram Temple existed or not because that is of no consequence as it is not relevant to the decision of case. This is because even if was, there is no denying that Babri Masjid has been in existence since 500 years.

Now it is obvious to the meanest intelligence that it is impossible to prove that the birthplace of Lord Ram was under the masjid — it may

be a matter of faith, genuine or contrived or otherwise, but that is no proof, nor can it ever be put forward as a legal ground to take away the land from the mosque.

If the finding is that the masjid was not built on a Ram Birthday place, then the Muslims get the land back and will be free to use it in any way, including the building of the mosque.

Alternatively even if it is held that there was a temple on the land of Babri Masjid, even with this finding the suit by the VHP/RSS has to be dismissed. Admittedly, Babri Masjid has been in existence for over 500 years till it was demolished by goons of the VHP/RSS in 1992. Legally speaking, even then the Sangh Parivar would have no right even if a temple had been demolished to build Babri Masjid. I say this in view of the precedent of the case of Masjid Shahid Ganj in Lahore decided by the Privy Council in 1940. In that case there was admittedly a mosque existing since 1722 AD. But by 1762, the building came under Sikh rule and was used as a gurdwara. It was only in 1935 that a suit was filed claiming the building was a mosque and should be returned to the Muslims.

The Privy Council, while observing that “their Lordship have every sympathy with a religious sentiment which would ascribe sanctity and

inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely”, went on to hold “The property now in question having been possessed by Sikhs adversely to the waqf and to all interests there under for more than 12 years, the right of the mutawali (caretaker) to possession for the purposes of the waqf came to an end under the Limitation Act”. On the same parity of reasoning even if a temple existed prior to the building of the masjid 500 years ago, the suit by the Hindu outfits like Nirmal Akhara VHP / B.J.P. etc has to fail.

There is another reason why in such a situation, the suit will fail because in common law, even a rightful heir, if he kills his ancestor, forfeits his right of inheritance. In the masjid case too there was a “murder most foul” and hence the murderer cannot be allowed to take the benefit of his own dastardly deeds, whatever the factual position may be.

Of course it is the privilege of the Chief Justice of India to constitute the bench. May however one respectfully submit that it may be more reassuring if bench of seven judges or nine judges was to hear the appeal.

New Delhi, 22/03/2017

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.”

Five reasons why Aadhaar shouldn't be applied universally

Not only is your privacy stripped stark naked, the system itself is illegal and vulnerable

Mitali Saran

Indians have serious red tape PTSD. We live with chronic anxiety about the documents that get us the entitlements and paid services we need—food, cooking gas, SIM cards, sale deeds, passports and so on. We're so tyrannised by bureaucracy that when we hear of an official document that might simplify life, we fall upon it with cries of joy. We laminate and file it, make 294 copies of it, and scan the sucker just to be sure. Thus it was with Aadhaar, the biometrics-based unique identification number. It was going to be purely voluntary, and could be used in lieu of other identification. Imagine that—one piece of paper to cut through the mess! A billion of us ran out and got it.

It's got to be the biggest bait-and-switch in history.

I failed to educate myself about how the Unique Identification Authority of India (UIDAI) was building and handling the database to which I was voluntarily offering my most intimate, personal, irreplaceable biometric information—fingerprints and iris scans. Nandan Nilekani was spearheading it—knows his stuff, modern man, benevolent tech, security, privacy, right? My bad.

Critics of Aadhar have been trying for years to alert us to its real and serious problems, mostly in vain. Today, as we discover that our voluntary, secure, private information is no longer voluntary, or secure, or private, their voices ring loud. Here's my 5-point layperson's recap of the most disturbing problems put forward by legal scholars, economists, and technology and security experts. We all need to consider them, and read up on them, before blindly furnishing

our Aadhaar numbers.

Imperfect authentication: Some people's fingers are too cracked or dirty for prints to properly register. People lose eyes. Children's biometrics change. Machines don't always work. Authentication failure means that the equivalent of the population of Bihar could be turned away from their entitled food rations, despite having a valid Aadhaar number.

It's illegal: The Supreme Court has repeatedly stated that Aadhaar is voluntary, and barring further orders, nobody can be denied anything for lack of it. Despite that, the government is trying to hugely widen the range of services for which Aadhaar is mandatory. The Aadhaar Bill, forced through the Lok Sabha as a money bill last year, makes enrolment compulsory, not voluntary. This year, the BJP used the Finance Bill to smuggle in many more Aadhaar requirements, including for filing income tax, and giving children, whose biometrics keep changing, their midday meals, to which they are entitled not just by law, but by basic human decency. Cherry on top: the government can also revoke or deactivate your number without notice.

It's not secure: This massive database of personal information is wide open to fraud, attack, and theft. Someone was issued two separate Aadhaar numbers. A dog was issued an Aadhaar number. A simple Google search can reveal Aadhaar-linked bank details. If your whole life is Aadhaar-based, a hacker—or an official—need only hack one database number to take over your entire identity and assets, or erase you entirely, with no way to appeal.

It violates privacy: If you're forced to use

Aadhaar to book train tickets, get pensions, use cyber cafes, get phones, verify passports, make provident fund transactions, open bank accounts, transact in real estate, register on matrimonial sites, pay property tax, and visit your favourite jailbird—even though it would be illegal in all those cases—your life is an open book, from the porn you watch, to how healthy you are, to who you sleep with, and how you spend your money. Not only the government, but also private companies, can access that database.

It enables mass surveillance: The government reserves the right to use your information for “national security”—this for a number that any foreign national can get by virtue of being resident. Would you trust this government, which prevented a Greenpeace worker from making a presentation in London on grounds of national security, to exercise the slightest rationality in that department? Would you trust this government, which defends murderous *gaurakshaks* and denies their crimes, not to

enthusiastically profile minority communities? Would you trust it not to penalise people for their choice of spouse, or food, or entertainment? But no government is entirely benevolent. Would you trust any government not to target inconvenient journalists, whistleblowers, opposition funders, or political dissidents? If DNA is ever included in the biometrics, think of how justice might be abused.

Given these and other issues, thoroughly and better articulated by experts like Usha Ramanathan, Reetika Khera, Sunil Abraham, Pranesh Prakash and many others, why this unseemly haste to mainstream Aadhaar? Where's the fire? Until the Supreme Court has passed judgement on Aadhaar, we'd be wise to read up, and to refuse to be bullied.

As they don't say often enough: Aadhaar in haste, repent at leisure.

This is the full text of the piece “Five reasons why Aadhaar shouldn't be applied universally”.

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(The following article in the DNA explains the link of black money and elections in India and why voters do not seem to care about it)

Politicians, voters and the doublespeak on black money

Come election time, the executive and the business class donate money to have their candidate win, expecting a quid pro quo post the elections

Both politicians and voters have become inured to compromising on ethics for selfish long-term and immediate gains

The Union Budget 2017-18 has flagged the linkage between election financing and the black economy. Donations of above Rs 2,000 to political parties have to be declared as compared to the present limit of Rs 20,000. Further, the RBI will issue electoral bonds so that legitimate money can be donated to political parties without fear of being identified by the ruling dispensation. Contributors do not wish to be identified as giving money to the opposition parties lest they be harassed by the ruling party and that is why they wish to give secretly. It is argued that black money is required in elections because they have become expensive over time while the election expenditure limits have remained low in comparison. It is said that much travel is required in a constituency within a short time and that costs a lot. Further, party workers have to be paid and transport and food arranged for them. Rallies, posters, and other publicity material cost a lot of money. Any expenditure over and above the election expenditure limit cannot be officially declared without inviting disqualification and therefore has to be in black.

Elections are high stake since access to power to influence decisions is important for lobbies wishing to push their narrow agenda. These lobbies invest in candidates and are willing to finance their elections. Candidates promise the moon during election campaigns, but when in power, hardly deliver on their promises. Hence,

Arun Kumar

there is a huge credibility gap for those in power. People's trust in politicians has been declining over time. However, the public has little choice since the opposition and the ruling parties behave similarly as far as delivery is concerned. That is why the public defeats most ruling parties from one election to the next whether at the Centre or in states. This is what is often referred to as the incumbency disadvantage.

So, parties and candidates who have lost credibility need to woo voters by spending a lot of money. Parties play vote-bank politics. They create their own vote banks by creating divisions in society by promoting caste, community and regional differentiation and polarisation. Maintaining these vote banks is expensive and those who control vote banks need to be kept happy. Various tricks are adopted to confuse the voters by propping up candidates with similar sounding names as their opponent. The expenditure of these dummy candidates is borne by the candidate putting them up. Since this is illegal, it has to be funded out of illegal funds. Goons need to be hired to protect oneself and also to disturb the opponent's rallies or to browbeat the opponent's supporters.

The phenomenon of 'paid news' has reared its ugly head in the past two decades and more. Candidates admit to paying local papers by column centimetre for favourable publicity during election time. Further, even if favourable news is not given, at least adverse publicity should not take place. This being illegal, requires payments in black. Candidates in India spend a

lot of money in the last three days before polling in distributing cash, clothing, blankets, food, and drinks. This can amount to one-third of the expense incurred by candidates. Since this is also illegal, it has to be done in black cash.

The voters have also got used to being wooed by candidates and expect the goodies to flow at the time of elections. Their psychology is to get what they can since delivery on the promises is rare.

The issue of corruption and black economy gets marginalised in elections. This is not only because all parties have charges of corruption against them, but more importantly, voters believe that my man's corruption has the potential to benefit me. The fellow belonging to my caste would do my illegal work, while the fellow of another caste would not. Also, an honest candidate would not do my illegal work so it is better to elect someone who is seen as a doer. Thus, each community votes for its corrupt and this marginalises the issue of corruption and black economy. Parties are not only like Tweedledee and Tweedledum, but they fool the public about their real intent, which deepens cynicism and distrust in the public. No wonder candidates can stand from a constituency where they have done little political work. All they need is a well-oiled machine and lots of money to buy votes.

At the time of an election, the executive and the business class who wish to have their candidate win, donate money with the clear understanding that there will be a quid pro quo after the elections. Thus, come election time, a 'Triad' emerges between the corrupt politician, the corrupt businessman, and the corrupt

executive. Once in power, this Triad then rules to favour its constituents by setting favourable policies. It is not that huge sums of money are spent in elections. Less than 0.5 per cent of the GDP is spent on a national election. Spread over five years, it becomes 0.1 per cent of the GDP. However, the importance is that the Triad is created which enables illegality and black economy to flourish. State funding of elections has been suggested, but this may become additional to the funds spent by candidates. State funds cannot be spent on illegal activities for which the black funds would be additionally needed.

In brief, genuine representation of the people would not need a lot of money but it is needed by pliable politicians controlled by the vested interests who want to control power for narrow ends. So, the problem is one of a weakening democracy where representation is in a form but not content, and this has led to a wide variety of malpractices which then require dirty money. The public itself needs to reflect on its behaviour and vote against the corrupt no matter which party they are from. This requires a change in consciousness which can only take place through sustained movements and not by mere changes in some laws or provisions.

Courtesy DNA, Sat, 25 Feb 2017

(Arun Kumar, a retired professor of economics, Jawaharlal Nehru University, is the author of Understanding the Black Economy & Black Money in India, An Enquiry into Causes, Consequences and Remedies published by Aleph Book Company)

“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)

Investigation: (H Farook was running a WhatsApp group which was promoting atheist ideas, mostly inspired by rationalist Periyar's ideology. It also had about 400 Muslim members. It is alleged that some hardline Muslims asked Farook to shut down the group which he refused. His visible stand in the social media declaring his decision to raise his children as atheists seems to have angered some fundamentalists who hacked the 31 years old atheist to death on 16th March, 2017 at Coimbatore. He had also posted in the WhatsApp group 15 days ago a photo in which one of his children was seen holding a placard with the handwritten slogan "Kadavul illai, Kadavul illai, Kadavul illai (No God, No God, No God)". According to police, the assailants had met him and requested him once to stay away from anti-religious activities. There were many phone calls, requests and warnings but Farook ignored them and went ahead.

Such acts are attacks on the freedom of speech and democratic values, and must be condemned by one and all. We hope that police apprehends the culprits soon and prosecute them.)

For God's Sake

Despite the constitution having enough safeguards against persecuting practitioners of this philosophy, the murders of H Farook, MM Kalburgi, Narendra Dabholkar and Govind Pansare show that the perpetrators usually go scot-free.

On the morning of March 16, 31-year-old scrap dealer and atheist H Farook received a phone call, started his two-wheeler and left home. That was his last trip. He had been receiving threats over the past few weeks for running a 400-strong WhatsApp group that discussed the ways and thinking of legendary social activist EV



H Farook

Ramasamy Periyar. He was asked to close the group, but had refused.

That day, Farook was waylaid by a gang of four who stabbed him in the stomach and neck. His lifeless body was found near the Coimbatore Corporation's sewage farm. On March 17, Podanur Sriram Nagar resident M Arshad

Sucheta Dasgupta surrendered to the police, claiming responsibility for Farook's murder. Coimbatore DCP S Saravanan told the media that Farook, a Dravidar Viduthalai Kazhagam member, had angered the Muslim community by voicing his rationalist opinions on social media.

Farook's murder is the latest in a series of murders of rationalists in South and West India in the last 3-4 years. These included those of MM Kalburgi, Narendra Dabholkar and Govind Pansare. Even Bangladesh, our neighbor, has had instances of such killings, while in 2015 in Karachi, social worker and rights activist Sabeen Mahmud was shot dead for similar reasons.

Supreme Court advocate and Human Rights Law Network director Colin Gonsalves said that Farook's death, apart from being a murder punishable under Section 302, is also a breach of several Fundamental Rights. These include Articles 19(1)(a) dealing with freedom of speech and expression, 19(1)(c) on freedom to form

associations and unions, 21 (right to life or protection of life and personal liberty), 25 (freedom of conscience and free profession, practice and propagation of religion) and 28 (freedom as to attendance at religious instruction or religious worship in certain educational institutions).

RIGHT TO FREEDOM

“This is pure and simple fascism. This is how Hitler in Germany, Mussolini in Italy and Franco in Spain came to power—on the basis of intimidation of people. The government has done nothing to protect constitutional freedoms. People are persecuted for exercising their rights. Fifteen RTI activists died before the law was passed. Why has the police not done its job? Fanaticism across the religious divide must be condemned,” Gonsalves stressed.

Does India need a constitutional amendment to include the freedom of irreligion as a fundamental right or any other law to officially recognise atheism given the spate of killings of atheists in recent times?

Courts have given divergent judgments regarding religious freedoms. In the *Stanislaus vs State of Madhya Pradesh* case, Reverend Stanislaus of Raipur had challenged the Madhya Pradesh Dharma Swatantrya Adhiniyam Act which prohibits the use of “force, fraud, or allurement” for religious conversions. But the Madhya Pradesh High Court in 1977 upheld this Act. However, when the Orissa Freedom of Religion Act was challenged in the Orissa High Court, the Court held that the definition of “inducement” was too broad and ruled against the Act. However, the Supreme Court heard both these cases together and ruled in favour of the Acts.

It is to be noted that Farook had not resorted

to any force, fraud or allurement to propagate his views. He was also not engaged in any act that was against public order, morality and health, which are the safeguards against the unbridled exercise of Article 25.

RECOGNISE ATHEISM?

Farook’s death also highlights the importance of his activism in the context of the faith he was born into. There is no room for the atheist philosophy in the three Abrahamic religions—Islam, Christianity and Judaism. This opens up the question: Does India need a constitutional amendment to include the freedom of irreligion as a fundamental right or any other law to officially recognise atheism given the spate of killings of atheists in recent times?



(L-R) Sabeen Mahmud, Narendra Dabholkar, MM Kalburgi and Govind Pansare

Both Gonsalves and senior advocate ND Pancholi disagreed. Pancholi said that the freedom of irreligion is “built into Article 19 as the freedom of thought and the freedom to believe or not believe any religion”. “There is no harm trying. The parliament is unlikely to pass it for this reason, but it would lead to discussion on the need to recognise atheism as a philosophy. This will indirectly influence public perception and behaviour towards atheists,” he said. Gonsalves interpreted atheism as a part of Article 25—freedom of religion.

Incidentally, according to the 2011 Census, about

29 lakh people, or 0.24 percent of its 1.25 billion population, are categorised under “religion not stated”. Of them, 33,000 identified themselves as atheists, according to the Census.

On March 10, MP Shashi Tharoor had even introduced the Anti-Discrimination and Equality Bill 2016, a Private Members’ Bill, in the Lok Sabha. This was meant to ensure equality before law for all citizens so as to protect their personal liberty and address various injustices.

Pancholi said that the fact that it is a Private Member’s Bill shows that the government is not interested in protecting the rights of its people. He said that under Article 51(a) which lists some Fundamental Duties, the people of India, “which automatically implies the government, too, must develop the scientific temper, humanism and the spirit of inquiry and reform”. “If the cultural environment in our country is not improved, such

incidents are bound to take place,” Pancholi said.

Another topic of debate is whether a Muslim can be an atheist. Does that give rise to conflict? Is that a moral paradox? Not so, believes All India Muslim Personal Law Board executive committee member Kamal Faruqui.

“Whatever school of thought a person belongs to, killing him for that reason is not only to be condemned but is a serious humanitarian issue. The Quran clearly says, ‘Unto you your religion, unto me mine.’ There is another *surah* which says: ‘There shall be no compulsion in the religion. The right course has become clear from the wrong.’ So it is up to the individual to believe in the faith. If he does good things, he will surely be rewarded.”

Religion or the lack of it is clearly an issue which grips people in India.

Courtesy **India Legal**, 27 March, 2017.

Reader’s Comments

Dear Editor,

I am a regular reader of the Radical Humanist probably since 2005. My wife Pratibha Thipsay is a Life Subscriber of Radical Humanist. Initially, she had subscribed the magazine for three years and later on, became a life subscriber. I first saw Radical Humanist after having learnt about such magazine from late Shri M.A. Rane, Sr. Advocate.

2. I am a retired High Court Judge having demitted the office in March 2017. In March 2011, I was appointed as a Judge of the Bombay High Court after serving in subordinate judiciary for about 24 years. About a year back, I was transferred to Allahabad High Court, Lucknow Bench from where I retired. I am from Mumbai. After retirement, I have come back to Mumbai.

3. The Articles published in recent issues of The Radical Humanist (including the articles written by you) are really good. The articles touch important subjects that are relevant in today's scenario.

4. For the present, I do not intend to take any regular post-retirement assignment but I would like to be active in the legal field. I would also like to express opinions on certain social issues which I earlier could not do by reason of being in judicial service.

5. This is written to you just to have acquaintance with you and I hope to contribute something to the Radical Humanist soon.

Regards :

ABHAY M. THIPSAY

Former Judge of the Bombay High Court and Allahabad High Court

Dated 22nd April 2017

2002 Gujarat riots “update”: 1,926 lost their lives; “historic” efforts on to link violence with state culpability

Rajiv Shah

India’s most renowned human rights activist who has taken up the 2002 Gujarat riots cases, Teesta Setalvad, has told *Counterview* that a fresh exercise by her NGO, Citizens for Justice and Peace (CJP), suggests that “as many as 1,926 lives were lost in the reprisal violence that broke out after the Godhra tragedy from February 28, 2002.”



Contesting the official figures of the Gujarat government, according to which 1,044 persons (790 Muslims and 254 Hindus) died during the riots, Setalvad says, CJP is now involved in a “major exercise to commemorate the 15th anniversary of the Gujarat genocide”, which is to “account for the dead and missing to end for once and for all the falsification of figures by the state.”

In a note sent to *Counterview* on 2002 riots, she says, “Once compiled we shall seek through opposition Members of Parliament (MPs) that the figures on the record of Parliament are also corrected.”

Talking of CJP’s “single most significant achievement”, Setalvad says, it has been “the convictions, at the first stage, of as many as

157 perpetrators (of which 142 were to life imprisonment) in over a dozen major criminal trials related to the Gujarat genocidal pogrom of 2002.”

“In appeal at the High Court, 19 of these have been since acquitted. CJP plans to challenge these further in the Supreme Court”, she adds.

Giving further details, she says, “Most of the 2002 criminal trials have reached completion at the first sessions court stage. Apart from the list of trials that CJP was directly involved in, Bilkis Bano, Eral, Ghodasar and Sesan reached adjudication.”

However, she regrets, “The Pandharwada gaam massacre trial and Kidiad (61 Muslims burned down in a tempo) have been aborted by the Gujarat Police.”

Then, Setalvad says, “Appeals to the trials CJP is involved in lie in the High Court. Sardarpura has been heard. Naroda Patiya has started”, though rueing, “The Special Investigation Team (SIT) has completely abandoned the survivors.”

Further, Setalvad says, “The Zakia Jafri Case that seeks, for the first time in criminal jurisprudence, to establish criminal and administrative culpability for the mass crimes that broke up in Gujarat is still pending, having charted an arduous course from the police, to the Gujarat High Court, down to the magistrate’s court, and now is being heard in the Gujarat High Court.”

Insisting that it is this case which brought in

“the perverse attack of state agencies” on CJP, especially she and her husband Javed Anand as CJP’s office bearers, she says, the attack has been in “direct proportion to the furtherance of this judicial exercise.”

Characterizing the judicial exercise “an attempt to establish for the first time in Indian history a chain of command responsibility for the mass crimes that broke out in the state from February 28, 2002”, Setalvad says, these were “not contained until May 5-6, 2002, when KPS Gill was sent by the then prime minister Atal Behari Vajpayee to oversee the law and order situation.”

Suggesting that things have intensified over the last 10 months, Setalvad said, “the Gujarat police and administration have made several attempts to threaten, humiliate, and implicate” her “in a number of cooked up cases, and even held out threats of impending arrest.”

She adds, “Similar tactics have been used against police officers from Gujarat – RB Sreekumar (IPS, retired), Rahul Sharma and Sanjeev Bhatt (IPS) – for discharging their constitutional duties.”

According to her, it is an attempt “to divert the CJP secretary’s attention from her legal aid

work to enforced self-defence, a price that human rights defenders must be prepared to pay”, insisting, though, “What is critical to understand in the progress of the criminal trials related to 2002 has been the reluctance to adjudicate on criminal conspiracy.”

“In that connection”, Setalvad says, “The Naroda Patiya judgement (delivered on August 28, 2012) by Judge Jyotsna Yagnik is historic, as it establishes clearly the criminal conspiracy behind the massacre.”

However, she says, “The Gulberg verdict dated June 17, 2016 delivered by Judge PB Desai discards that the Gulberg massacre was part of any conspiracy. As stated by Tanvirbhai Jafri it was as if one 12,000-15,000 strong mob had gathered ‘to have chai and smaosa’ that day!”

“Survivors Rupabehn Modi and Sairaben Sandhi supported by CJP have had their appeal admitted against this on February 3, 2017”, she said, adding, “Critically, the SIT has not challenged the special court verdict despite stating that it would (to the media) immediately after the judgment”.

This article was first published on [Counterview](#) on: February 28, 2017

Articles/Reports for The Radical Humanist

Dear Friends,

Please mail your articles/reports for publication in the RH to: mahipalsinghrh@gmail.com, or theradicalhumanist@gmail.com or post them to: E-21/5-6, Sector- 3, Rohini, Delhi-110085.

Please send your digital passport size photograph and your brief resume if it is being sent for the first time to the RH.

A note whether it has also been published elsewhere or is being sent exclusively for the RH should also be attached with it.

- Mahi Pal Singh, Editor, The Radical Humanist

Should triple talaq be outlawed?

Zakia Soman, Kamal Faruqui, Syeda Hameed

Zakia Soman, co-founder of Bharatiya Muslim Mahila Andolan, an autonomous organisation, and a co-petitioner in the triple talaq case before the Supreme Court, writes:

It is the constitutional obligation of the government to enable Muslim women to obtain a level playing field. There are four or five judgments where the triple talaq provision has been struck down as invalid. But it has not led to this un-Koranic practice being rooted out from our society. Triple talaq continues to be the most common method of divorce. We had done a sample study of 4,710 women and found that out of 525 women who were divorced, 349 were victims of triple talaq. While the courts have settled the matter, we have to look at the unjustice of the entire process. How can we accept that a man can simply utter the word talaq thrice or communicate it through phone with no witness deemed necessary and where the burden is on the wife to legally contest it? There is no law binding the man, he can just act on his whim. This is absolutely unfair and must be stopped.

Seeking a level playing field

Let me cite a case from Madhya Pradesh where a woman who did not wake up when her husband returned late from work received talaq thrice when she was asleep! She was informed about her husband's decision by her mother-in-law. It is a convoluted argument to say that triple talaq is not an issue only because a few judgments have declared it invalid. Why should a man have unilateral powers to divorce, and the woman just comply? What is wrong in seeking a level playing field between husband and wife? Such arguments only further the patriarchal order.

As far as the Koran is concerned, triple talaq is just not valid. There are verses calling for reconciliation and mediation over a period of 90

days involving both sides. The objective is that the woman should not be rendered a destitute. Also, when the final pronouncement of talaq is made, the women should not be menstruating. This is an evolved system of jurisprudence calling for just and fair divorce.

All we are seeking is that the Supreme Court should lay down the procedure for talaq based on the talaq-e-ehsan method. There is a debate about personal laws being violative of fundamental rights. But the personal law being practised by the Muslim community in India is not based on Koranic injunctions. Rather triple talaq is a violation of the tenets of justice and fairness.

Gender justice is a central tenet of the Koran and gender inequality and triple talaq are in violation of the Koranic principles. In fact, in the Koran, the very conception of humankind is based on an equal footing between man and woman. But patriarchal misinterpretations and distortions rule our lives. Any talk of reform in personal law is brushed aside as interference in religious matters.

On a Uniform Civil Code

As far as our position on the Uniform Civil Code (UCC) is concerned, we are clear that a secular law alternative must be available to every citizen. This alternative exists in the form of the Special Marriages Act. But abolition of triple talaq and UCC are two separate issues. The UCC question applies to the entire Indian population, not just Muslims. Muslim personal law needs drastic reform just like the Hindu code or the Christian laws. There has been a legal discrimination of Muslim women in our country. Muslim women are still subject to the Muslim Personal Law (Shariat) Application Act, 1937 which is silent on triple talaq, nikah halala and polygamy. We need to be brought on a par with Hindu sisters and

Christian sisters who have a legal recourse. The Hindu women have the Hindu Succession Act and the Hindu Marriage Act. We are a patriarchal society and it is not as though Hindu and Christian women have attained equality. But they do not face legal discrimination the way Muslim women do.

It is the constitutional obligation of the government to enable Muslim women to obtain justice. It is not about the BJP or the government but about gender justice for Muslim women.

Kamal Faruqui, former chairperson of the Delhi Minorities Commission and founder-member of the All India Muslim Personal Law Board, writes:

Triple talaq is a Koranic injunction. But it depends on the terms drawn up in the marriage contract. The pronouncement of triple talaq is acceptable to all four schools of thought in Islam and though not desirable, it is very much a Koranic injunction. Those who criticise it do not understand the Koran. Having said that, I should also state that eventually it comes down to the nikahnama, which is a contractual obligation between the two parties. If the terms of the contract do not have provisions against triple talaq and have not been contested before being accepted, the pronouncement of talaq at one go or over the prescribed period of three months is allowed in the Koran. Don't forget that Islam is the first religion in the world to institutionalise marriage. Nikah imposes conditions, prescribes equality of women, maintenance of children and so on.

Conditions for triple talaq

But please don't assume that the Koran does not condone talaq. It has been described as one of the worst options to be exercised only under extenuating circumstances. It allows for an exit when the marriage breaks down but only under certain conditions. The talaq-e-ehsan, one form of divorce, is over a period of three months and it is only after the completion of the third month that you are no longer man and wife. The talaq-

e-bidat or triple talaq at one go allows the man to exhaust all the options at once. Again, if the nikahnama has proscribed it, then the man cannot take recourse to this divorce. Divorce is one of the worst things in the institution of marriage and allowed only in extreme situations. Even when a person goes to buy a pen, he is bound by contractual agreement. In the case of a nikah/marriage, the contract is between two parties in the presence of at least two witnesses. We are governed by the Muslim Personal Law (Shariat)

Application Act, 1937, and if the Supreme Court says this must be revisited, we will oppose it.

Many misconceptions

I also wish to clear the misconception on the number of triple talaqs practised among Muslims. We moved RTIs to find out the divorce rates among the religions in India and I can share with certitude that it is the least prevalent among Muslims. It is rare among Muslims. And those who practise it are usually the uneducated and the poor who do not know their Koran or those who are misled by others. It is also incorrect to say that triple talaq has been banned in 22 countries; it has been regulated in most of said countries. You could have concerns about why is it that a man can take recourse to uttering talaq and not the woman. Under Islam, the man shares the greater responsibility in marriage as far as maintenance of his wife and children are concerned. He has many duties to fulfil and many responsibilities too. That is why he has been given the responsibility of ending the marriage only when it breaks down. Women too have the option of khula. She will have to approach the qazi if her husband is absconding, of bad character and so on.

We will plead before the apex court to have a separate department with people who are well-versed in the Sharia laws if at all the court wishes to mediate on the matter. So far, the courts have been very careful in interpreting personal laws — which are part of the fundamental right to

religion for every citizen of the country.

Syeda Hameed, Women's rights activist, educationist, a former member of the Planning Commission, and the first woman Qazi from Lucknow, writes:

Why rake up matters that have already been settled by the SC and create discord between communities? Back in 2002, the Supreme Court had given its ruling on triple talaq in the Shamim Ara v. State of U.P. case — when Justice R.C. Lahoti and Justice P. Venkatarama Reddi said a mere pronouncement of talaq in response to a woman's plea for maintenance cannot be treated as pronouncement of talaq. In order to be valid, talaq has to be pronounced according to the Koranic injunction. Triple talaq, in fact, was banned in 2002 by the apex court and I don't recall the All India Muslim Personal Law Board and other affiliates protesting against the judgment. There was a similar judgement from the Aurangabad Bench of the Bombay High Court in the Dagdu Pathan v. Rahimbi case (2002) which struck down triple talaq. So I am perplexed why Shayara Bano, who recently filed a public interest litigation before the Supreme Court, was not advised by her lawyers that the issue had been addressed and settled in the past.

Cues in the Koran

An unnecessary controversy has been created now when all the contesting parties that are shouting had earlier kept quiet. The whole triple talaq issue is repugnant to Islam and those who say it legitimises Islam are doing a great disservice to Islam.

The whole point of talaq is to find a dignified way of getting out of a marriage that has irrevocably broken down. But it is not that simple. It is actually very difficult to get out of marriage. The Koran states the conditions which have to be observed. Triple talaq must be pronounced over three months. One per month. During the months, mediation is essential with both parties

being represented during the negotiation. This is a Koranic injunction and it is only after following these conditions that talaq is granted and once granted is irrevocable. You cannot say that you uttered the word in a drunken stupor; neither can you pronounce it over the phone or send it on email or fax it or send a text message. But I feel that the community has to look within and take the lead in reforming such reprehensible practices, or else the state will interfere with personal laws. And it has already been settled that personal law is in sync with the constitutional rights guaranteed to all citizens.

Egalitarian treatment

On the issue of polygamy, which is again being contested in court, it is conditional on so many things as spelt out in the Koran, which makes it abundantly clear that it is against human nature to give egalitarian treatment to everyone. So, the concept of four wives is simply not possible if you follow the letter and spirit of Koran. It specifies that in case there is more than one marriage, it is essential that identical treatment is given to each wife. But since this is not possible given human nature, it is best to have only one wife. The Prophet married Hazrat Khadija. She was 15 years older than him, she was a widow, and he worked for her. It was she who proposed marriage. This is the Prophet's Sunnah (practice). What example does it provide for the believers?

× × ×

Islam is going through a turbulent phase world over and this issue can be used as an excuse to create discord between communities giving rise to a communal situation. I also fear that the hardliners will raise the spectre of 'Islam in danger' through this issue. I am afraid this is not the right time to debate on matters that have been settled by the courts.

All views as told to Anuradha Raman

Courtesy thehindu.com, FEBRUARY 24, 2017

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