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KASHMIR FOR KASHMIRIS
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Editorial, from the archives :

KASHMIR FOR KASHMIRIS

(By late Justice V.M. Tarkunde, the then Editor of 'The Radical Humanist', published in the March 1990 issue of 'The Radical Humanist' as editorial)

(Editorial Note: The Kashmir situation has been continuously tormenting the Indian Government since 1947. Dispute went to UNO and a resolution for plebiscite was moved there in 1948 wherein people of J&K are supposed to decide by way of referendum whether they would like to be within India or to go to Pakistan, and since then there have been many ups & downs but the dispute has been continuously simmering. By way of Shimla agreement of 1971, India and Pakistan both resolved to settle their disputes mutually without intervention of any third party. Till about 1988-89 i.e. for about 40 years there were no violent militant movements as that of today but thereafter large number of youth took to guns when they felt that their democratic will to elect representatives of their choice was suppressed due to large scale rigging in the 1987 State election. Despite large scale deployment of the Indian army in the Kashmir valley, the militancy refuses to subside. At present it has assumed enormously dangerous dimensions. The following article was written by late Justice Tarkunde on the eve of the visit of the team composed by PUCL, Citizens For Democracy, The Indian Radical Humanist Association and Manav Ekta Abhiyan which visited Kashmir valley in March 1990 for investigation of the allegations of human rights violations. The members of the team included Justice Tarkunde, Justice Rajindar Sachar, Balraj Puri, Inder Mohan, Ranjan Dwivedi, T.S. Ahuja and N.D. Pancholi. Though twenty seven years have passed since the article was written, the policy makers in the Government of India in particular and right wing section of the Indian society in general will be well advised to go through the issues raised in the article and try to achieve solution by way of political approach rather than relying on military force. - N.D. Pancholi)

The Kashmir situation represents one of the most complex and intractable problems faced by the Government of India. While it is not easy to find a solution of the Kashmir issue, it is clear that any attempt to solve it must be guided by the basic consideration that a people who have a distinct language, culture and religion and who constitute an overwhelming majority in the Kashmir valley cannot be retained in India by force and against their will for an indefinite period. For reasons which will be presently dealt with, a plebiscite in the near future is not a proper solution to the Kashmir problem, but a plebiscite will become inevitable if it is found that the Kashmiri people cannot be persuaded before long to voluntarily

embrace Indian nationality by a process of emotional integration.

It cannot be disputed that when the Maharaja of Kashmir decided to affiliate Jammu & Kashmir to India on certain conditions, which were later embodied in Article 370 of the Constitution, his decision had the support of the majority of the people of that State. It has been observed by knowledgeable persons who were residents of Jammu & Kashmir during those days that if the proposal of a plebiscite recommended by the United Nations and accepted by Jawahar Lal Nehru on behalf of India were implemented a decisive majority of the people of that State would have opted for India. One of the biggest

mistakes committed by Jawahar Lal Nehru was to back out of the plebiscite proposal on the wholly irrelevant ground that Pakistan in the meantime had accepted arms and entered into a military pact with the United States. The offer of plebiscite was not in the nature of a concession made, by India to Pakistan, but was recognition of the right of self-determination of the people of Jammu & Kashmir. The denial of the right of self-determination by India on irrelevant grounds led naturally to a plebiscite movement in Kashmir. It became a secessionist movement and was further strengthened by the subsequent policy of the Government of India which showed that the Government had no confidence in the people of Kashmir. This was evident from the fact that every election in Jammu & Kashmir, except the one in 1977, was rigged at the instance of the Indian Government. This convinced the people of Kashmir that India did not want them to have the democratic right of self-government. The situation was made worse by the frequent communal riots, which took place in India and in which the minority community suffered the most. This naturally strengthened the anti-Indian feeling of Kashmiri Muslims. Finally, the coalition between the National Conference and the Congress (I) under the weak leadership of Dr. Farooq Abdullah convinced the people of Kashmir that they cannot remain in India without losing their separate identity. There has thus been a growing disenchantment of the people of Kashmir from India and the position has now been reached when almost the entire population of Kashmir has become anti-Indian.

During this process of growing disenchantment, there was an interregnum when a solution of the Kashmir issue appeared to be within reach. This was when Bangladesh became separate from Pakistan and when the

Shimla Agreement was reached between Indira Gandhi and Zulffikar Ali Bhutto. The essence of the agreement was that India and Pakistan decided to respect the actual line of control between India and Pakistan in the territory of Jammu & Kashmir occupied by them and further decided that the Kashmir issue should be finally settled by mutual negotiations. In the negotiations which followed, India should have made a firm offer that the State of Jammu & Kashmir should be finally divided along the line of actual control. As far as the public knows such an offer was not made by India and the reason probably was that the Indian Government avoided the risk of the unpopularity which it might have incurred as a result of the concession. Thus a good opportunity to settle the Kashmir issue was lost.

There is a tendency in India to attribute the present disturbance in Kashmir to the machinations of Pakistan. It is very likely that Pakistan has provided military training and arms to the militants in Kashmir as well as Punjab. India had acted similarly in the past in regard to the disturbances in Bangladesh and Srilanka. Although Pakistan might have given assistance to the militants in Kashmir, it is clearly not responsible for the disaffection of the people of the valley from the Government of India. The cause of the Kashmir debacle is the initial denial of the right of self-determination and the subsequent anti-determination and the subsequent anti-democratic policies pursued by the Indian Government.

A humanist can have no doubt that the people of Kashmir should have the right of self-determination. Kashmir has been the main cause of the antagonism which has existed between India and Pakistan ever since the two countries became independent of British rule. India has been diverting a considerable part of its resources in maintaining an army in Jammu & Kashmir and in granting subsidies in various

forms to the people of that State. Two costly wars have been waged between India and Pakistan during the post-independence period. Because of mutual distrust, disproportionate military expenditure has been incurred by both the countries at the cost of resources which could have been utilized for economic betterment. An early solution of the Kashmir problem will be of great benefit to the peoples of both India and Pakistan. A grant of plebiscite to the people of the Kashmir valley is the obvious solution.

There are; however, two reasons why a plebiscite in the near future is not in the best solution of the Kashmir issue. In the first place, there has recently been an enormous growth of fundamentalism in the Muslim world and Kashmir is one of the victims of that process. Fundamentalism has also been on the increase among Hindus in India; as borne out by the activities of the Vishwa Hindu Parishad, and that also is bound to consolidate the fundamentalism of the Kashmiri Muslims. If a plebiscite takes place in the present situation, Kashmir would either opt for Pakistan or become an independent State. An independent Kashmir would be welcome if it maintains itself as a secular democratic State. In the present situation, however, Kashmir would be a theocratic State, whether it becomes a part of Pakistan or remains independent. A theocratic State will hinder the progress of the people of Kashmir for several generations.

Secondly, separation of Kashmir from the rest of India would have a very adverse affect on the already tense communal situation in the rest of India. Anti-Muslim feeling on the part of Hindu communalists would increase many fold if Kashmir secedes from India at present. Aggravation of Hindu fundamentalism will be dangerous not only to

the Muslims in India but to Hindus also because that will increase the danger of India becoming a non-secular Hindu State.

The above analysis suggests what policy should be followed by a democratic and secular India in regard to Jammu & Kashmir. In the first place, the present disturbances have to be put down but this should be done by lawful means and without recourse to the police atrocities which were evident in recent years in Punjab. The Kashmir militants should be dealt with firmly but fairly. In order to create peaceful conditions in the Kashmir valley, the Indo-Pak border should be sealed and effective steps should be taken to prevent the import of arms from that direction. Secondly, as soon as the disturbances are brought to end, steps should be taken to restore democracy to Jammu & Kashmir. It is possible that as a result of an election, a number of communalist parties will enter the legislature of the State. That should be regarded as a part of the process of normalization. Lastly, it should be declared that the people of the Kashmir valley are entitled to the right of self-determination but that a plebiscite will be possible only after the situation is normalized, democracy is restored and a few years are allowed for secular forces to assert themselves. If as a result of the plebiscite, the Kashmir valley decides to opt for India or Pakistan, neither country would have any legitimate grievance. If, as a third alternative, Kashmir becomes an independent democratic and secular state, its territorial integrity should be guaranteed by India, Pakistan and the United Nations. That would end the hostility between India and Pakistan, and Kashmir will acquire the status of the Switzerland of Asia. A humanist cannot wish for anything better.

19.02.1990

V.M.T 

Articles and Features:

Remembering Justice Tarkunde: A Crusader For The Cause Of Civil Liberties

Today is the 108th Birthday of Justice Tarkunde

Today, when the country is passing through a severe stress on the state of Human Rights in different dimensions, we remember the role and contributions of Justice Tarkunde on his 108th birthday.

After the passing away of Tarkunde on March 22, 2004, the country has faced Human Rights issues under different regimes. From time to time, the civil liberties movement has been responding to such challenges. Time has come to consider the responses of the civil liberties movement to the enormous challenges posed by different state as well as non-state agencies. The current situation portrays an abysmal shrinkage of democratic space in different parts of the country.

Kashmir seems to be the worst affected State in the context of human rights violations. The perceptions between the civil society and the Central and State Government authorities seem to be antagonistic. Each one has a different narrative with regard to most of the events taking place in the State. The Union Government feels that it is dealing with a situation of insurgency, and thus, repressive measures like the use of pellet guns and draconian laws like the Armed Forces Special Powers Act are justified. Plea for moderation and dialogue at the ground level by the democratic opinion in the country remain unheeded. While the situation in the State of J&K has attained an explosive state, the distress and turmoil in the agriculture sector has also become extremely acute. In different parts of the country, the farmers are taking to the streets in protest of the crisis in the farm sector.

Instances of farmer suicide in large scale are also indicative of the acute distress in the rural sector. The response of the State Governments in dealing with such protests is causing deep concern among

the people who hold the cause of freedom dear to their heart. The latest development of the use of pellet guns on the farmers' protests is something no civilized country can countenance.

Against this background, we remember the inspirational thoughts and role of Tarkunde and can imagine what would have been his response to the present crisis in the country. In a span of seven decades of active political life, Tarkunde's role as a political activist, a jurist and a crusader for the cause of civil liberties will certainly inspire the toiling people and the youth dedicated for the cause of social emancipation. Tarkunde's persona was imbued with exemplary enthusiasm for the cause of freedom and civil liberties.

Tarkunde had his political baptism in the freedom struggle of the country and was elected to the All India Congress Committee, in the year 1933-34. He joined the Congress Socialist Party (CSP) in the thirties and subsequently became General Secretary of the Radical Democratic Party (RDP) under the guidance of M.N. Roy,



Ashok Kumar Panda
Senior
Supreme Court Lawyer.

a great revolutionary thinker. Throughout this period, he was a full time political worker. After the Radical Democrats decided to disband their party to become a movement, Tarkunde with his previous legal background returned to active practice as a Barrister in 1949. Within a period of ten years, he was elevated to the Bombay High Court and was widely known as a judge who administered law imbued with justice and equity. After his resignation from the Bench, Tarkunde came to Delhi in 1969-70 and joined the Supreme Court Bar as a Senior Advocate.

The country, that time was witness to repeated onslaughts on the judicial independence in the form of supersession of Supreme Court Judges. Preventive Detention laws were promulgated placing democratic rights under severe strain. Political dissent and trade union rights were curtailed. Against this background, the Citizens for Democracy was formed with Jaya Prakash Narayan, M.C. Chagla and Tarkunde as the founders. But the Citizens for Democracy had its inherent weakness by making the organization a forum exclusively for the non-party people.

In June 1975, with the declaration of internal emergency, the founders of Citizens for Democracy realized that without the active participation of political activists, effective resistance to the emergency regime was not possible. Therefore, People's Union for Civil Liberties and Democratic Rights was formed in October 1976 to make the civil liberties movement broad based, where political activists belonging to different political persuasions could play an effective role in the resistance to the emergency regime.

During emergency, Tarkunde and his colleagues courageously took up the cause of political prisoners, freedom of the press and judicial independence. His defence of Kuldip Nayar, the foremost fearless journalist before

the Delhi High Court is a landmark precedent in judicial history. The bench which directed the release of Kuldip Nayar from preventive detention, consisted of Justices S. Rangarajan and R.N. Aggarwal. For their bold judgment, the Hon'ble Judges had to suffer punitive action by the executive. Justice S. Rangarajan was transferred to the Guwahati High Court and Justice R.N. Aggarwal, who later became the Chief Justice of Delhi High Court, was demoted to the post of District Judge in Delhi. This was representative of the executive arrogance to instil fear and infringe into the domain of judicial independence during emergency.

Under the chairmanship of Tarkunde, Civil Rights Committee was formed to investigate into the killings of communist revolutionaries in Andhra Pradesh in fake encounters. The committee included eminent Gandhians like Nabakrishna Chowdhury, former Chief Minister of Orissa, Kaloji Narayan Rao and eminent journalists like B.G. Vergese and Arun Shourie. The committee recorded extensive evidence and issued two reports in May and June, 1977, establishing the fact of fake encounters, and giving the details of the killing of 16 boys who were labelled as "naxalites".

In 1977, Tarkunde was appointed Chairman of the Indian Red Cross Society. In 1977-78, he also headed the Civil Rights Committee which looked into more than 80 instances of fake encounters in Punjab. The report on fake encounter in the Punjab made people aware of the killings of the communist revolutionaries in cold blood between the period 1972 and 1977. Tarkunde, Gobind Mukhoty and K.G. Kannabiran defended and secured the release of D. Nag Bhushan Patnaik, a widely respected naxalite leader, from the Supreme Court.

In 1979-80, Tarkunde took the initiative in organizing the Peoples' Union for Civil Liberties (PUCL) into a broad based civil liberties

movement. During this period, with the active cooperation of activists committed to struggles at the grass root level, PUCL emerged as an organization defending the rights of the struggling masses. Civil liberties movements with Tarkunde as its guide radicalized itself by identifying itself with various struggles in the country. Tarkunde emphasized the role of PUCL as a defender of the rights of the struggling people to organize and defend their rights.

In 1984, the Operation Blue Star and assassination of Mrs. Indira Gandhi, the then Prime Minister, culminated in the killing of thousands of Sikhs throughout the country which shocked the world community. Tarkunde with other civil liberties activists boldly came forward against the mass scale violence. A report on the Punjab situation was published bringing out large scale violation of human rights. For this publication, Amiya Rao, N.D. Pancholi and Aurobindo Ghose were arrested and the report was proscribed by the Central Government. Tarkunde remained steadfast on the face of the state assault. This period also was marked by widespread suppression of civil liberties in the Northeast.

In the later part of his life, Tarkunde devoted himself to the cause of restoration of democratic

process and human rights in Jammu and Kashmir. For his relentless championing the cause of freedom in J & K, Tarkunde invited the bitter wrath of the national chauvinists.

Simultaneously, with the struggle for human freedom, Tarkunde was espousing the cause of peace as a national policy towards China and Pakistan. He was critical of the ever-increasing defence budget. He used to often say that friendly relations with China should be the cornerstone of India's foreign policy.

The events leading to the demolition of Babri Masjid and the ensuing communal divide in the country made Tarkunde a sad person. Consistently in all his writings and speeches, he kept on emphasizing the growing threat of communal fascism as the chief danger to our secular and national fabric.

While recounting the crusading zeal of Tarkunde for the cause of freedom and civil liberties, one will always remember his sterling humane qualities which made him above all a fine human being. He was always available with a smiling face for anyone with a right cause. His legacy of struggles for human rights will continue to inspire hope in the young generations.

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‘.....Yet in the mass exodus of 90es in which 34 families of his locality left Kashmir, his (Sanjay Tickoo’s) did not. “ I still believe that by instinct Kashmiri Muslim is a secular person,” he says. That he can say this is not simply magnanimity. Behind this outlook of his lies an almost forgotten history of a robust secular tradition. And over this tradition looms large the shadow of a man who symbolized it almost perfectly one could say. That man was Prem Nath Bazaz, a committed progressive Kashmiri Pandit..’ (Prem Nath Bazaz was a committed ‘Royist’ and was Managing Editor for several years in 70s of ‘The Radical Humanist’, the journal started by M.N. Roy in 1937.)

Pandit Prem Nath Bazaz - a misunderstood and revolutionary Kashmiri Pandit

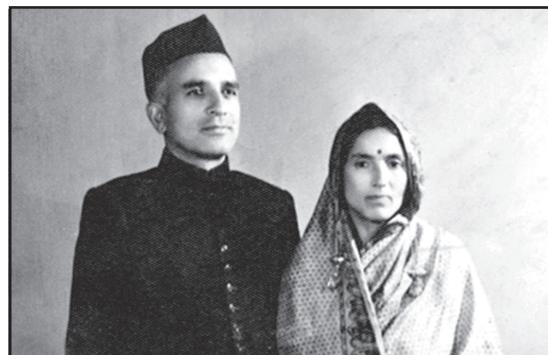
Bazaz was a Kashmiri Pandit who backed Kashmir’s right to self-determination. Revisiting his legacy to mark his 112th birth anniversary

Paramita Ghosh

Like many Kashmiri Pandits, Sanjay Tickoo, a Srinagar businessman, is imprisoned by the history of his state, the ambivalent positions of its leaders, and his own paranoia of being a member of a minority community with a dominant past. Yet, in the mass exodus of the ’90s in which 34 Pandit families of his locality left Kashmir, his didn’t. In fact, he “still believes that by instinct, the Kashmiri Muslim is a secular person”. That Tickoo can say this is not simply magnanimity. Behind this outlook of his lies an almost forgotten history of a robust secular tradition. And over this tradition looms large the shadow of a man who symbolised it; almost perfectly one could say. That man was Prem Nath Bazaz, a committed progressive Kashmiri Pandit.

The story of Bazaz’s life is intimately entwined with the modern history of that secular tradition – at times referred to, a tad offhandedly, as ‘Kashmiriyat’ – and its vicissitudes. So, to tell his story is to also recall the history of that tradition, and its forgetting.

Kashmiri Pandits have a past that is as invisible as it is visible. An influential minority in the



(L): Pandit Premnath Bazaz and his wife Badri. (Photo courtesy: Bhushan Bazaz)

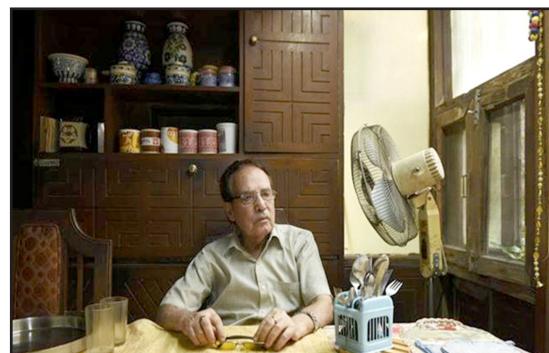
Dogra Hindu kingdom (they occupied all major jobs in the king’s administration and revenue departments), some of them were social reformers attacking orthodoxies in religion. They took active part in the politics of the day. And one of them even took the unconventional step of forging a common platform with Kashmiri Muslims to try to build a fair society.

Bazaz, a small-time government official and a writer, was the man who took that initiative to bring the Yuvak Sabha, a predominantly Kashmiri Pandit outfit in the princely state of

Jammu and Kashmir of the '30s, to a working relationship with the Muslim Conference, Kashmir's first political party, after the 1931 anti-Dogra uprising in which Muslims protesting age-old social inequalities were massacred. (22 men died in the uprising.) Bazaz was the confidant and comrade of Sheikh Abdullah, Kashmir's first mass leader, and was a champion of Kashmiris' right to self-determination, a stand unthinkable for Kashmiri Pandits today, and for most of mainland India.

Clearly, this 'Kashmiryat' was as much about politics as it was about culture. Its ground was laid through the '30s and '40s when the first cracks in the Dogra kingdom were emerging as a result of the mobilisation of Kashmiri Muslims led by Sheikh Abdullah.

Pragmatic Kashmiri Pandits like Prem Nath Bazaz (along with other Pandits such as Kashyap Bandhu, Shamlal Saraf, Jia Lal Kilam) realised the end of Dogra rule was near and set about building a common platform with Abdullah and his movement, the Muslim Conference (the predecessor of the National Conference or the NC). By working with them, people like Bazaz also came to terms with their own history of past privileges and understood the urgency of Muslims' need to ease out the monarchy.

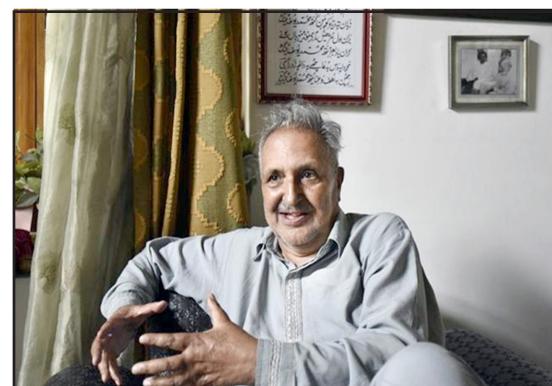


Bhushan Bazaz, Prem Nath Bazaz's son at his home in Delhi. After Sheikh Abdullah came to power in Kashmir in 1947, Bazaz was excommunicated to Delhi. (Saumya Khandelwal/HT Photo)

Kashmiri Pandits and Kashmiri Muslims share no collective socio-political project now. Its potential was finished off by the Pandit exodus of the '90s when, according to Kashmiri Muslims themselves, the "best of them left". Pandits like Tickoo, not surprisingly, remember Bazaz only as the man who turned his back on his own community. Before a fact-finding commission set up after the anti-Dogra uprising in 1931, Bazaz had upheld the reality of Muslim grievances even when that would diminish the case and privileges of his own community. After Partition in 1947 he went on to back plebiscite and independence".

Controversial from the start

For Kashmiri Muslims too, Bazaz's positions then and now, are filtered by his eventual parting of ways with the NC and personal differences with Abdullah. They say he also influenced the changing of the name of Kashmir's first mass party – from the Muslim Conference to the National Conference, a momentous event in Kashmir's history. This change of denomination, Kashmiris say, had a fallout for which Bazaz cannot escape blame.



Mohammad Yousuf Taing, biographer of Sheikh Abdullah, says Bazaz was a great intellectual. He persuaded Sheikh Abdullah to honour Bazaz as a fellow of the Kashmir Academy of Art and Culture in the '70s. (Burhaan Kinu / HT Photo)

Mehmood ur Rashid, columnist, Greater Kashmir, says the emergence of the Muslim Conference was part of a larger political awakening of Muslims in the subcontinent. “By dropping the word ‘Muslim’, the DNA of the movement was changed ’40s onwards. It’s as if the documents of the property were changed and these secular/Islamic binaries have remained at the core of Kashmir’s politics as a whole. It gives people the chance to raise the fiction of the rise in Kashmir now of Salafi Islam over Sufi Islam as if the former is bad Islam and the latter good. But the reality is that Sufis too had always questioned power. They were great diplomats, they just did it skillfully. There is more in common with both Islams than is generally known.” Bazaz, Rashid seems to suggest, should have known better than to influence Abdullah to impose a secular grid on a national liberation struggle at a time when it could have mobilised itself on the strength of the majority religion.

Without Bazaz, would Abdullah have adopted a different path? Mohammad Yousuf Taing, biographer of Abdullah, an NC man, who also knew Bazaz well, says one shouldn’t second-guess men of history. “You don’t know what is in people’s hearts. In history, you go by records,” says he, while steering the conversation to that part of the story where Bazaz was beaten up by fellow Pandits after he deposed in the fact-finding commission set up after the 1931 uprising to address public grievances.

“Bazaz said the Muslim grievances were correct. Some Pandits urinated in his mouth! He had to leave his home and move into another neighbourhood in Srinagar, at Amirakadal,” he adds. This displacement gave Bazaz a unique identity, bringing him into the vortex of the state’s politics. It gave him a new audience. And he came to be seen as a man of interest in the eyes of both Kashmir’s and India’s nationalists

around the time of the buildup to India’s independence.



Jawaharlal Nehru addressing a meeting in Srinagar in 1947 with Sheikh Abdullah (L) by his side. (HT Photo)

NC old-timers, however, slip in that “Bazaz was writing letters to Nehru and Gandhi.” The suggestion is that he was a Congress informant, a perception that contradicted his public statements of conducting Kashmir and India’s respective freedom struggles “independent” of the other. The diaries maintained by his son Bhushan in Delhi, Bazaz, however, show how Bazaz saw this. Sometimes, he also refers to himself in the third person! He was clearly self-conscious of his role in history-making and saw himself criss-crossing both worlds — he saw himself as the man who “cleared many misunderstandings” about Abdullah, that the anti-Dogra uprising was not a communal one, and that he had vouched for the secular credentials of Abdullah to Nehru.

“Nehru also offered father one of the two general secretaryships of the States People’s Conference that the former headed. He declined saying he had work in Kashmir,” says Bhushan.

The ‘idea’ of Bazaz

Like all years, this year too, Kashmir commemorated the 86th anniversary of Martyrs

Day, on July 13, the date of the massacre of Kashmiris in the anti-Dogra uprising. Coincidentally, Bazaz's 112th birthday also falls on the same date. Bazaz's invisibility in official or popular memory is tied to an existential question that is relevant in Kashmir even today. It can be asked by one Muslim to another should they differ on the mode of the struggle, or simply while making sense of the conflict. It can be posed by a Pandit to a fellow Pandit not living in the Valley or by a Muslim to a Pandit, or vice-versa.

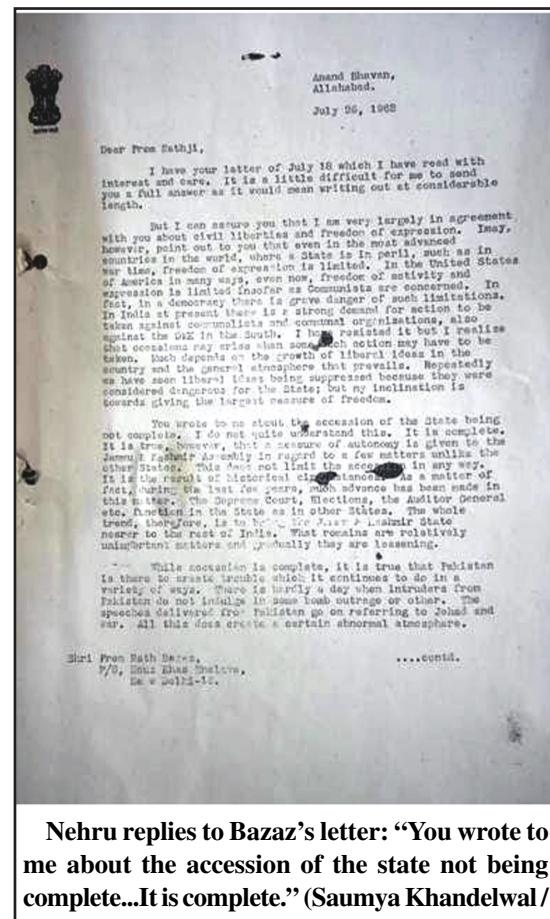
And that question is simply this: If you are one of us, why are you with them? Or, since you are one of them, can you really be one of us? Ideas of a catholic politics – one that is open to all, and open for negotiation – like Bazaz's, are suspect at all times. People like him are always out of place.

Tickoo fleshes out what he understands by 'us' and 'them': "It is not the Jamaat or Hurriyat that branded us Hindus/Indians in the Kashmiri Muslims' eyes. It was the RSS. And its activities in the Valley. Television too." Dr Sameer Kaul, a Pandit who is with the NC, says even in the time of Bazaz and Abdullah, Pandits "didn't have the numbers but we had say....That has been lost over the years as Pandits responding to changes in the Valley clung to religion and allowed the tragedy of the exodus to shape their lives."

On the move

Bazaz wasn't a man to be put off by roadblocks, personal or political. He joined organisations, left them, and put up others. A follower of the Communist-turned-Radical Humanist MN Roy after he left the NC in the '40s, he built his politics and a milieu of like-minded people around his journals. Most got him into trouble. (Bazaz's daily, *Vitasta*, started in 1932, was, in fact, Kashmir's first newspaper.) Abdullah was unhappy with him for giving space

to his opponents like Mirwaiz Yusuf Shah (the great-grand uncle of the present Mirwaiz, Umer Farooq) in Hamdard, the paper they jointly edited in the '30s. When Abdullah was jailed by the Congress government in the '50s, Bazaz, despite his fallout with the NC leader, published a booklet in his defence, *Sheikh Abdullah- What is his crime?*



Nehru replies to Bazaz's letter: "You wrote to me about the accession of the state not being complete...It is complete." (Saumya Khandelwal/ HT Photo)

Flowing against the current – Bazaz simply didn't know what that meant. In the '60s, he was shooting off letters to Prime Minister Jawaharlal Nehru saying the "Accession of Kashmir to India was not complete". His differences with Abdullah and his exile in Delhi – he was forbidden from entering Kashmir by the NC government for raising the issue of self-

determination at periods inconvenient for the NC leader who himself vacillated on the issue – however changed Bazaz. He was “now willing” he wrote to Nehru, to work with Kashmiri Muslims to wean them to a position for Autonomy. But he kept raising the issue on Kashmir’s right to self-determination from time to time. On this point he would not budge.

The flip-flops of most Kashmiri leaders - Bazaz, Sheikh and the Mirwaiz included - is the story of a common Kashmiri under pressure to define his politics within and outside Kashmir, says academic Abir Bazaz of Haryana’s Ashoka University. “The pressure of politics forces a leader’s hand.... One wrong move and the movement suffers for years...or you can be made completely irrelevant. It can turn giants into dwarfs.”

Dual Identities

Prem Nath Bazaz till the last remained a student of history. Like Rughonath Vaishnavi, another pro-freedom Kashmiri Pandit, Bazaz read the political awakening of Kashmiri Muslims as part of the community’s assertion in the subcontinent. He saw this assertion as a matter of right and their affiliation with Pakistan, and even their consideration of Pakistan as a post-colonial possibility, as natural.

A Kashmiri who considered his regional identity to be on a par with his religious identity,

Bazaz’s conception of a single society was one in which neither of the two communities would dominate the other, says Rashid. “The Kashmiri Pandit should not feel like an alien and the Kashmiri Muslim should not be a hegemon.”

It was from such a standpoint that Pakistan - or a Muslim-dominated discourse - did not seem an incompatible option to Bazaz, says Hurriyat Conference leader Mirwaiz Umer Farooq, who retains strong family ties with the Bazaz family even now. ‘Post-Plebiscite’, should Kashmir choose Pakistan, Bazaz never made clear if he would join it, but he stood for the right of Kashmiris to exercise that choice. “His views were that if Kashmir was to remain with India it should be out of choice not compulsion and that the democratic institutions should be allowed to run,” says the Mirwaiz. “India needs to ask itself whether it has increased that capability or shrunk it.”

Bazaz and Sheikh’s story shows that it was not inevitable that a Kashmiri Pandit would take an unambiguous pro-India position while a Kashmiri Muslim would take a pro-Pakistani one.

His achievement is that he represented the possibility of thinking a new politics across positions, points out Abir Bazaz. The question is: does Kashmir, in its most fraught period, need him now?

Courtesy **Hindustan Times**, Jul 16, 2017 

The Radical Humanist on Website

‘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

Can Mehbooba Mufti build on the Justice Nazki compensation order?

To bind a person to a jeep and parade him over a distance to make an example out of him for deterring stone-pelters violates Article 147 and would constitute a grave breach of the Geneva Convention.

Ravi Nair

The horrific attack on the Amarnath Yatra earlier this week has rightly stunned both Jammu & Kashmir as well as the entire country. But on the same day, July 10, 2017, Justice Bilal Nazki, Chairperson of the Jammu & Kashmir State Human Rights Commission (SHRC) delivered a reasoned order relating to the case of Mr Farooq Ahmad Dar, who was used as a human shield by Major Nitin Leetul Gogoi of the Army. The order is of great import.

Ordering compensation of Rs 10 lakh to be paid to Mr Dar for the “mental and physical injuries and scars”, Justice Nazki relied on Prem Shankar Shukla v. Delhi Administration and Article 21 of the Indian Constitution. (Indian Express, June 17, 2017).

Justice Nazki retired as Chief Justice of Odisha in 2009. In the early 1990s, in the face of militant threats he worked as the advocate general of Jammu and Kashmir. He later became a judge of the Jammu and Kashmir High Court. Transferred to the Andhra Pradesh High Court in 1997, he went on to the Bombay High Court in January 2008.

In 1991, when he was an advocate practising in the J& K High Court, Mr. Nazki was kidnapped by militants. The militants shot him while he was trying to escape. Despite five bullet injuries, Mr. Nazki ran six kms and survived to tell the tale. Unlike other J& K judges who had whispering campaigns initiated against them, he can hardly be accused of any sympathy with Kashmiri militants. His fierce adherence to the rule of law underlies his judicial performance.

In the present case, Justice Nazki steered away from issuing notice to the Army. It would have been futile, anyway, for the Army routinely ignores such notices.

The first two Chairpersons of the National Human Rights Commission, Justice Ranganath Misra and Justice M. N. Venkatachalliah, were conscious of fostering accountability for rights violations committed by armed forces personnel.

The NHRC determined in its 1996-97 Annual Report that an amendment to the Protection of Human Rights Act (PHRA) was required with respect to enquiries into allegations of rights violations by armed forces personnel. Section 19 of the PHRA requires that in cases of alleged abuses by armed forces personnel, the NHRC must make a recommendation to the Central Government whether or not to proceed with an enquiry into the complaint.

Section 19 of the PHRA requires only that the Central Government provide a report to the NHRC on the action taken on its recommendation and that the NHRC must publish it. As the NHRC then correctly indicated, the protected status afforded to the armed forces by the PHRA diminishes the credibility of the NHRC and its goal of protecting and promoting human rights.

The ball is now in the State Government’s court. It has to comply with the J&K SHRC order within six weeks.

In view of the serious allegations made against the armed forces in this case, the initiative by the J&K police in filing the FIR is

welcome but must be pursued so as to ensure accountability of the armed forces to civilian authority.

Past experience has shown that the efforts of the police in such cases have been stymied by the armed forces. In the present case, with the inquiry still pending, the Army Chief stated that the Major would face no action even if found guilty and even awarded him with the Chief of Army Staff's commendation card.

There is, however, an alternative. The State Government can file charges against the accused under Section 3 of the Geneva Conventions Act, 1960, in addition to those already filed.

Section 3 provides that "[i]f any person within or without India commits or attempts to commit, or abets or procures the commission by any other person of, a grave breach of any of the Conventions he shall be punished,—

(a) Where the offence involves the wilful killing of a person protected by any of the Conventions,

with death or with imprisonment for life; and

(b) in any other case, with imprisonment for a term which may extend to fourteen years....

(c) For the purposes of this Section,—.....

(d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention."

According to Article 147, grave breaches, among other things, include 'inhuman treatment', 'wilfully causing great suffering' and 'unlawful confinement of a protected person.' To bind a person to a jeep and parade him over a distance to make an example out of him for deterring stone pelters violates Article 147 and

would constitute a grave breach of the Geneva Convention.

Section 17 of the Geneva Conventions Act, which confers upon the government the authority to make a complaint in case of an offence under the Act, provides that "[n]o court shall take cognizance of any offence under this Act except on complaint by the Government or of such officer of the Government as the Central Government may, by notification in the Official Gazette, specify."

While the Geneva Conventions Act itself does not define 'government,' both the Army Act, 1950, as well as the Code of Criminal Procedure, 1973, provide that 'words and expressions used but not defined' therein and defined in the Indian Penal Code, 1860, shall be deemed to have the meanings assigned to them in that Code. Section 17 of the Indian Penal Code states: "The word Government denotes the Central Government or the Government of a State."

It would appear from the statements made by ministers in the Central Government that the Central Government does not intend to investigate these grave breaches of the Geneva Convention; rather, it approves of them. A complaint by the State Government in this respect would have a salutary effect in ensuring that functionaries are held accountable to the elected authority of the State. The Union Government's specious reasoning against the application of humanitarian law domestically would be rightly shown the door.

Kashmiris of all hues stood up against the terrorists who carried out the Amarnath Yatra attack. Let us now stand up with the Kashmiris.

Ravi Nair is the Executive Director of the South Asia Human Rights Documentation Centre. 

[Estimates vary but some of them tell us that at the lowest about 200,000 and the highest about 2,000,000 human beings were butchered in the process. The Government of India claimed that 33,000 Hindu and Sikh women had been abducted. The Government of Pakistan claimed that 50,000 Muslim women had been abducted.

Life stood divided, death stood partitioned. Refugees seethed in rage.

On this anniversary, we should remember that 1947 was one part independence, one part dismemberment, one part triumph, one part tragedy. Unimaginable, indescribable tragedy.

...

The great American thinker Thomas Jefferson said: "We may consider each generation as a distinct nation." A new generation of Indians, a new distinct nation, is marking the 70th anniversary of our independence in an idiom and with a vocabulary which has nothing to do with the freedom struggle. It is making 'the differently disposed', both outside and within the Hindu fold, its target. And its equally active counterpart in Pakistan, going for 'the other' both within and beyond Islam, is not its adversary but its twin. Their religion is not Hinduism or Islam, it is Separateness.

On the 70th anniversary of independence and partition we must resist a second partitioning of India, of its versatile ethos, through an invisible surgery, performed by the knife of discord moving under the numbing anaesthesia of fear.]

The anniversary of a divide

Fear, like an invisible fume that you do not see, surrounds us. And it can ignite in our face

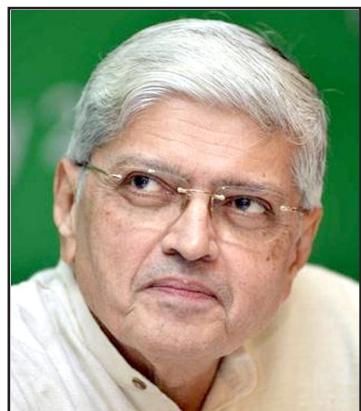
This year, the 70th anniversary of India's independence is also the 70th anniversary of India's partitioning. The division was not neat. It was a giant, bloody mess. Uprooted from their homes, some 14.5 million human beings, Hindu, Sikh, Muslim, left the new Pakistan for India, or India for the new Pakistan.

They left in terror, travelled trembling, and 'arrived' traumatised to a ramshackle refuge. A new and powerful word moved from the small print of the English lexicon to everyday Indian speech: refugee. The very rich and the ridiculously poor were refugees together. One had left a manor, another a hut. Both begged together for food, shelter, medicines, clothes —

and dignity. All these took time coming. The only immediate relief was that the claws of abduction, loot and death were no longer upon them.

Rejoicing and mourning

Estimates vary but some of them tell us that at the lowest about 200,000 and the highest about 2,000,000



Gopalkrishna Gandhi

human beings were butchered in the process. The Government of India claimed that 33,000 Hindu and Sikh women had been abducted. The Government of Pakistan claimed that

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On this anniversary, we should remember that 1947 was one part independence, one part dismemberment, one part triumph, one part tragedy. Unimaginable, indescribable tragedy.

“Tomorrow we will be free from bondage to the British,” said Gandhi in Calcutta on the eve of the new dawn. “But from midnight tonight Hindustan will be broken into two pieces. So tomorrow will be both a day of rejoicing and of mourning.” There was much celebration in the city, great camaraderie.

The euphoria was short-lived. Sixteen days into Independence, on August 31, at about 10 at night, a fuming mob of Hindu youths came to where he was staying in the Muslim quarter of Beliaghata, looking for his Muslim hosts to attack and perhaps kill them. It was Gandhi’s day of silence.

He was unwell, tired and preparing to leave the next morning for Noakhali, by now in East Pakistan, to assuage Hindu families traumatised by the murderous attacks on them. The youths started breaking things, hurling stones at lamps and window panes.

They ran into the rooms looking for their ‘targets’. “What is all this?” Gandhi asked the rampaging crowd, breaking his silence and walking into the mob. “Kill me, kill me, I say. Why don’t you kill me?” A posse of military police arrived and dispersed the crowd. But riots flared in the city. The next day, Gandhi cancelled his Noakhali visit and went on a fast.

“For how many days?” Abha Gandhi asked.

“Until peace is established I shall take nothing but water.” By the fourth day of the fast, Calcutta was quiet again. Later that night some of the riot-instigators came and surrendered their weapons — rifles, cartridges, bombs.

In Delhi shortly thereafter, he saw the same mayhem again. Another fast ensued, another calm. In his prayer meeting on January 20, 1948, as he spoke, a small bomb — they later called it a gun-cotton slab — detonated. There was some commotion. “*Suno, suno* (listen, listen),” he said to the congregation, “*kuchh nahin hua hai* (nothing has happened)... *agar sach kuchh ho jae to kya karoge* (if something were to really happen, what will you do)?” And then asking the gathering to stay calm, he got his associates to begin singing the Ramdhun. All India Radio has recorded the entire sequence, with the sound of the explosion distinctly audible.

The ‘bomber’ was 25-year-old Madanlal Pahwa, a refugee from West Punjab. He was spotted by a woman, appropriately named Sulochana (the good-eyed), and a police team soon arrived and took the young man into custody. When asked later if he thought Pahwa’s was just “the harmless prank of an irresponsible youth”, Gandhi said it was not.

“Don’t you see there is a terrible and widespread conspiracy behind it?” He was right, Pahwa was integral to the conspiracy which was to hit its target 10 days later. That was the temper of the nation 70 years ago. Hate, brutality, violence both sudden and also calculated. It was the season of vengeance, of retribution. It was the season of dank suspicion, of hooded conspiracies.

So, does the 70th anniversary of the birth of independent India which is the 70th anniversary of the death of undivided India as well, admit of any celebration?

Of course it does, for ridding ourselves of the

yoke of colonialism was unquestionably a triumph. Seeing the imperial power out of our lives was a matter of rejoicing. Watching Jawaharlal Nehru unfurl the Tricolour on the Red Fort was “very heaven”.

We must and will celebrate that and more — the advance of India on the path of economic self-reliance and prosperity, electoral democracy and the rule of law. But we cannot afford to forget the price at which that independence came. Not just because it was a heavy levy but because we are paying that cess even today. And it may be called the Two Nations Theory Cess.

The Two Nations theory had two celebrated articulators: Vinayak Damodar Savarkar of the Hindu Mahasabha and Mohammed Ali Jinnah of the Muslim League. Their perspectives were different, their purposes divergent. Savarkar believed Hindus and Muslims were two nations living in their distinctness within an unharmonised India but he did not want a division. Jinnah believed Hindus and Muslims were two separate nations that needed to be in two separate nation states.

The Muslim League’s advocacy of the Two Nations theory reached its purpose by the formation of Pakistan 70 years ago. What of the counter goal of a Hindu Rashtra?

Bedrock position

For some three generations over the last 70 years, India has been a plural society with a secular government committed to the idea that religion has no business with government and government has no interest in religion.

Has that bedrock position been officially reversed? No, it has not. But it stands undermined.

Those connected historically and culturally to the idea of a Hindu Rashtra are, today, promulgating their passionately-held philosophy

in different ways, dispersed incidents, apparently unconnected, in ways that make a Muslim feel fearful, a Christian feel as light as a leaf that can be blown off by a single majoritarian breath, a liberal feel vulnerable, a dissident feel targeted. They serve to make the cattle-trader afraid, the non-vegetarian at his meal declare it is not, please, Sir, not beef. They go to make the journalist feel hesitant, the farmer feel betrayed, the Dalit and the tribal feel insecure. Above all, anyone hurt by administrative wrongdoing or dismayed by state policy feel afraid to say so for: if you are against the government, you are against the nation.

Fear is abroad, like an invisible fume that you do not see but know that it surrounds you. And know, too, that it can ignite in your face.

The great American thinker Thomas Jefferson said: “We may consider each generation as a distinct nation.” A new generation of Indians, a new distinct nation, is marking the 70th anniversary of our independence in an idiom and with a vocabulary which has nothing to do with the freedom struggle. It is making ‘the differently disposed’, both outside and within the Hindu fold, its target. And its equally active counterpart in Pakistan, going for ‘the other’ both within and beyond Islam, is not its adversary but its twin. Their religion is not Hinduism or Islam, it is Separateness.

On the 70th anniversary of independence and partition we must resist a second partitioning of India, of its versatile ethos, through an invisible surgery, performed by the knife of discord moving under the numbing anaesthesia of fear.

Courtesy **The Hindu**, JUNE 16, 2017

Gopalkrishna Gandhi is a former administrator, diplomat and Governor. 

Historical Chronology of Jammu and Kashmir State: The Accession

When the Indian Independence Act was passed by the British Parliament, British power was transferred to the people of India as far as British India was concerned and Britain put an end to paramountcy, leaving it to the Princes to arrive at such arrangements as they thought proper with the Governments of India and Pakistan. It is necessary to record all this in some detail to refute Pakistan's allegation that Kashmir's accession to India by the Maharaja was not legal. At the time of Partition, Pakistan was a new State which came into existence, but the present Government of India was the successor government to the Government of the United Kingdom. It was provided that it was open to every princely State to accede either to India or to Pakistan.

There was no question whatsoever of taking into account the religious complexion of the population of any Princely States. Whether a Princely State should accede to India or Pakistan was left to the choice of the ruler of that State. Pakistan's proposition that the State of Jammu and Kashmir, by reason of its large Muslim majority and of the fact that Pakistan came into existence as a Muslim State, should naturally form part of Pakistan, is not tenable. This is wholly wrong in view of the legal and constitutional position.

The British Government had made it quite clear that partition was only of British India and that this principle did not apply to those States such as Kashmir and several hundred others, which were ruled by Indian Princes. The British Government's announcements of 3 June, 1947 said: *"His Majesty's Government wish to make it clear that the decisions announced (about partition) relate only to British India and that their policy towards Indian States*

contained in the Cabinet Mission Memorandum of 12 May, 1946, remains unchanged."

The provision for accession made in the Government of India Act of 1935, as adapted under the Independence Act of 1947, says: *"An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified the acceptance of an Instrument of accession executed by the Ruler thereof."* None of the provisions of these Acts which created the Dominions of India and Pakistan can be questioned by India, Pakistan or the United Kingdom which were parties to the agreement.

In fact, the accession was also supported by the National Conference, the largest political party in Kashmir. To quote Sheikh Abdullah who was then leader of the National Conference.

"When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation: asking for help from a friendly neighbor. The representatives of the National Conference, therefore, flew to Delhi to seek help from the Government of India but the absence of any constitutional ties between our State and India made it impossible for her to render any effective assistance in meeting the aggression...since people's representatives themselves sought an alliance, the Government of India showed readiness to accept it. Legally, the Instrument of Accession had to be signed by the ruler of the State. This the Maharaja did."

22 October 1947: Pakistan violates the Standstill Agreement by preventing essential supplies to the State, then hoards of armed

Pakistani tribesman entered Kashmir.

When the Maharaja of Kashmir executed the Instrument of Accession to India on 26 October 1947 and Lord Mountbatten, the then Governor General of India, accepted the Instrument, the whole of Jammu and Kashmir became an integral part of India, legally and constitutionally. The instrument of accession, it is no different than the one signed by over 500 other rulers.

27 October 1947: The first Indian forces arrived in Kashmir to defend against Pakistani troops.

1 January 1948: India under Nehru declares a unilateral cease-fire and under Article 35 of the U.N. Charter, India files a complaint with the U.N. Security Council. Pakistan still controls 2/5 of the State.

It is necessary to note that India was the complainant before the Security Council, and that India complained of aggression by Pakistan. On January 15, 1948, the Foreign Minister of Pakistan again emphatically denied that the Pakistan Government was giving aid and assistance to the invaders or had committed any act of aggression against India. In India's view, this categorical denial by Pakistan of being behind the tribal raid is the most important and significant aspect of the whole Kashmir issue. It is significant that, at that stage, Pakistan never tried to justify its presence in Kashmir or to claim any right to be there.

The State's accession to India has never been challenged by the UN Commission for India and Pakistan or the Security Council. As early as 4 February, 1948, the US Representative in the Security Council declared: "*External sovereignty of Jammu and Kashmir is no longer under the control of the Maharaja. With the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India and that is*

how India happens to be here as a petitioner."

13 August 1948: UNCIP (The U.N. Security Council in its resolution establishes the United Nations Commission for India and Pakistan) adopts a resolution on Kashmir accepted by both India and Pakistan. Pakistan is blamed for the invasion of Kashmir and is instructed to withdraw its forces from Kashmir.

The agreement on the ceasefire which was proclaimed on 1 January, came into effect from 5 January 1949.

5 January 1949: Almost a year after Nehru's offer of plebiscite, the UNCIP passes a resolution that states that, "The question of accession of the state of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of free and impartial plebiscite". However, Pakistan has yet to comply with the earlier resolution and withdraw from the State. Also, Pakistan is now busy changing the demographic composition of the State.

The legal adviser to the UN Commission came to the conclusion that the State's accession was legal and could not be questioned. This fact was further recognized by the UN Commission in its report submitted to the UN in defining its resolutions of 13 August, 1948, and 5 January, 1949. Both these resolutions were accepted by India and Pakistan.

February 1954: Under the leadership of Bakshi Ghulam Mohammad DEMOCRATICALLY ELECTED Constituent Assembly of the State of Jammu and Kashmir ratified the State's accession to India.

30 March 1965: Article 249 of Indian Constitution extended to Jammu and Kashmir whereby the center could legislate on any matter enumerated in state list (just like in any other State in the Union). Designations like Prime Minister and President of the State are replace

by Chief Minister and Governor.

24-25 February 1975: Following an accord signed by Prime Minister Indira Gandhi and Sheikh Abdullah on February 24, 1975, Jammu and Kashmir is made a “Constituent Unit” of India on February 25, 1975. Through this accord Indian Parliament reaffirms its right to legislate on any matter concerning the territory of the State.

The State’s accession to India has never been challenged by the UN Commission for India and Pakistan or the Security Council. As early as 4

February, 1948, the US Representative in the Security Council declared: “*External sovereignty of Jammu and Kashmir is no longer under the control of the Maharaja. With the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India and that is how India happens to be here as a petitioner.*”

(Excerpts from the book, Converted Kashmir - Memorial of Mistakes, by Narendrer Sehgal.) 

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[An ideological void marks the farmers' protests, just as it marked the earlier "reservation" demands of peasant castes. The multiple groups that have jumped into forming the coordination committee in Maharashtra, for instance, are both incapable of and disinterested in taking a holistic view of agrarian distress. These include freshly anti-BJP faces (like Raju Shetti), simplistically pro-agriculture crusaders or confused anti-developmentalist. Such a crowd is not likely to present a robust critique of the present dispensation that governs India's political economy.

*And yet, protests, such as the ones unfolding in Maharashtra or Madhya Pradesh, clearly indicate the deep void the present policy and governance regime is causing. The current protests, for the first time, are likely to stir the Modi government out of its PR-driven complacency. For the first time in three years, the battle between imaginary *acche din* and lived reality on the ground is being waged out in the open. This development holds three possibilities.]*

If the fury fragments

Farmers' protests threaten the BJP's rise. But local character, lack of ideological vision limit their potential.

It is to the BJP's advantage that the agitation has not been initiated by any political party, but by diffuse groups of farmers — both in Maharashtra and in Madhya Pradesh, the agitation has not had a prominent face. (Source: PTI)

The protests by farmers in Maharashtra and Madhya Pradesh should not be seen in isolation. Besides the political economy of these protests, the implications for competitive politics are going to be complex. In order to appreciate these implications, the farmers' protests need to be situated in the larger backdrop — despite the seeming stability of the Narendra Modi regime, the past three years have been marked by one protest after another. In contrast to claims that we are moving towards a "new India", the regime is marked by tensions that have dotted the glorious *acche din* of the last three years.

Even if we leave out the protests by sections of the intelligentsia over freedom of expression — the ordinary voters did not appreciate or care about this broader question — India has witnessed many sporadic eruptions of popular protests in the last three years. Beginning with

the students' protests in Hyderabad University and later at JNU, we have witnessed a series of street protests — the agitations by the Jats of Haryana, the Patels from Gujarat, the Marathas from Maharashtra, over reservations. The protests by Dalits in Gujarat, and more recently, in Uttar Pradesh too demanded serious attention.

Earlier this year, Tamil Nadu was on the boil over the issue of Jallikattu. For the past few weeks, most issues have been eclipsed as the farmers' protests erupted in many parts of the country.

These protests are disparate. They cannot be said to be linked by any common factor; they are not directed against the Modi government as such. It is noteworthy that almost all these protests took shape entirely outside the party domain — they were neither organised, nor sustained by the non-BJP parties. True, once the protests erupted, non-BJP parties made efforts to jump into the fray and take them under their wings. But these efforts have not been successful.

This has been for two reasons: One, the non-

BJP parties are still far away from forging an all-India coalition against the BJP. They don't have an anchor — the Congress, which would claim to be the main contender to having an all-India presence, has singularly failed to build a larger coalition or to mobilise public protests systematically by itself.

Second, the BJP has been able to contain these protests at state-level itself because of the very nature of most of these protests, and also because of the BJP's management skills. Hardik Patel did seek to unite the "peasant castes"; Kanhaiya Kumar traveled across the country and addressed students and the youth; Jignesh Mewani was made out to be the new hero of the angry Dalits; but each time, the issue got localised.

In a sense, the BJP has benefitted from a feature of Indian politics that took shape through the nineties; the states have been the main theatre of politics, and while the BJP wants to brush this feature aside to benefit from Modi's larger-than-life national image, at the same time, it is also the beneficiary of this factor.

During the past three years, each of the protests got localised at the state level. When the Patel agitation erupted, it was the failure of the Gujarat government. In the case of the Jat agitation, the Haryana government was responsible for handling it — the heat never reached Delhi, it stopped at state capitals.

More importantly, a national narrative of popular disenchantment did not emerge from these isolated protests, while, on the other hand, the BJP's nationalist rhetoric, its theme of development and Modi's singularly successful salesmanship have all ensured that the narrative of an ascendant BJP has become all-India in its reach and impact.

The farmers' agitations emerged in this backdrop. Like the caste question (for both peasant castes and Dalits), the agrarian question has the potential of becoming all-India in its scope. For the time being, the BJP is desperately

trying to localise the protests. It is to the BJP's advantage that the agitation has not been initiated by any political party, but by diffuse groups of farmers — both in Maharashtra and in Madhya Pradesh, the agitation has not had a prominent face. Even the focus on the simplistic demand of loan waivers is easy to handle because there is no organised machinery to advance more systematic protests against the larger issues facing the economy.

An ideological void marks the farmers' protests, just as it marked the earlier "reservation" demands of peasant castes. The multiple groups that have jumped into forming the coordination committee in Maharashtra, for instance, are both incapable of and disinterested in taking a holistic view of agrarian distress. These include freshly anti-BJP faces (like Raju Shetti), simplistically pro-agriculture crusaders or confused anti-developmentalists. Such a crowd is not likely to present a robust critique of the present dispensation that governs India's political economy.

And yet, protests, such as the ones unfolding in Maharashtra or Madhya Pradesh, clearly indicate the deep void the present policy and governance regime is causing. The current protests, for the first time, are likely to stir the Modi government out of its PR-driven complacency. For the first time in three years, the battle between imaginary *acche din* and lived reality on the ground is being waged out in the open. This development holds three possibilities.

First, the present moment has handed the Congress an opportunity on a platter. Concrete and objective issues have taken a political shape and all that the Congress needs to do is to take the side of the frustrated masses. Indeed, the possibility of this happening is bleak, for the simple reason that the local Congress machinery is no less despised by the protesting masses than they despise the insensitivity of the newly ensconced elite propped up by the BJP. Also, the Congress does not have the organisational

skill and leadership ability to turn this moment into a critical move away from its current political wilderness.

Two, the dispersed protests can produce new actors who weave the reality of rural suffering with urban disappointments, and produce a fresh critique — however, such new actors will suffer from the absence of wider organisational networks across states and across social sections. One of the consistently pro-farmer movements, with the potential to also imagine larger policy perspectives, is the Swaraj Abhiyan. But it is too weak and distant from the political battlefield. As such, no threat is likely to emerge for either the BJP, or the ongoing

myopic policies of growth.

Three, and perhaps much more likely, as has happened in the past three years, the issues will be deflected through media blitzes and localisation. Should that happen, the dissatisfaction would only become deeper, but invisible momentarily, and that invisibility would cause damage to the ability of competitive politics to respond to popular expectations. It can only corrode democratic possibilities further.

Courtesy indianexpress.com, June 19, 2017

The writer taught political science at Savitribai Phule Pune University and is chief editor of 'Studies in Indian Politics' 

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Rooted in rigidity

Sankara Narayanan

The RSS commitment to selfless service to India rests on the transformation of the country into a ‘Hindu Rashtra’ in line with its rigid ideology.

During the Quit India Movement, Golwalkar cautioned the members of the Sangh against frittering away their time and energy in fighting the British. He advised them to keep their powder dry to fight the real enemies within, namely the Muslims and Christians.

The Rashtriya Swayamsevak Sangh (RSS) was founded to serve India selflessly in Sep 1925. But it initially focussed on moulding character through Hindu discipline, uniting the Hindu community and forming a ‘Hindu Rashtra’. The RSS often claims it is purely a cultural, service-oriented, non-political and disciplined organisation. At times it also claims it is not against the minority communities. The reality is entirely different.

Though it claims to be the sole organisation promoting the wellbeing of Hindus, its real aim is to promote the interest of the dominating castes in general and Brahmins in particular. The Sangh does not believe in India’s freedom struggle, democracy, the Constitution, secularism, rule of law, rational thinking, scientific temper, modern education, or gender equality.

In the Thirties and Forties of the last century RSS claimed that democracy was a western concept inappropriate for India. In those days, members of the RSS were all praise for Adolf Hitler. In their view, Indian Muslims and Christians deserved to be treated the same way that Hitler treated Jews in Germany.

Madhav Sadashiv Golwalkar, the second chief and ideological Guru of RSS wrote in his book ‘We or our nationhood defined’ (1947):

“Germany has also shown how well nigh impossible it is for races and cultures having differences going to the root, to be assimilated into one united whole, a good lesson for us in Hindustan to learn and profit by.”

He goes on to write, **“The non-Hindus in Hindustan must adopt the Hindu culture and language, must learn to respect and hold in reverence Hindu religion, must entertain no ideas but those of the glorification of the Hindu race and culture i. e. they must not only give up their attitude of intolerance and ungratefulness towards this land and its age-old traditions but must also cultivate the positive attitude of love and devotion instead - in a word, they must cease to be foreigners, or may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment - not even citizen’s rights.”** In other words, Golwalkar wanted to see millions of Indians treated as non-citizens.

In his second book “Bunch of Thoughts” brought out in 1966, Golwalkar discusses India’s internal security problem and identifies three internal threats to it: Muslims, Christians and Communists.

During the Quit India Movement, Golwalkar cautioned the members of the Sangh against frittering away their time and energy in fighting the British. He advised them to keep their powder dry to fight the real enemies within, namely the Muslims and Christians.

Golwalkar also extolled the varna system, which he said was “vilified as jati pratha (a rigid caste system)”. “The Sudra too was important for he served society through his workmanship,” he says and goes on to shrewdly assert that through his workmanship the Sudra was fulfilling

an important social need.

‘Bunch of Thoughts’ also includes Golwalkar’s thoughts about the need for primacy of Hindi as the link language “until such time as Sanskrit is adopted as our national language”. Making Sanskrit the national language meant supremacy for a handful of people from a particular caste over the others.

The RSS was unhappy when the Constituent Assembly of India had finalised the Constitution. Its mouthpiece, ‘Organiser’, in an editorial Nov 30, 1949, stated: “Manu’s Laws were written long before Lycurgus of Sparta or Solon of Persia. To this day his laws as enunciated in the Manusmriti excite the admiration of the world and elicit spontaneous obedience and conformity. But to our constitutional pundits that means nothing.”

Golwalkar even called for a review of the Constitution and sought that the concept of “unitary state should be written into the new Constitution.” **In effect he wanted to abolish state legislatures and state ministries, which meant centralisation of power.**

The Tricolour too, was never accepted by the RSS as the national flag. It swore by the saffron flag, which it asserted was the flag of Hindu Rashtra.

‘Organiser’ in another editorial published August 14, 1947 said: “The people who have come to power by the kick of fate may give in our hands the Tricolour but it [will] never be

respected and owned by Hindus. The word three is in itself an evil, and a flag having three colours will certainly produce a very bad psychological effect and is injurious to a country.”

Golwalkar considered socialism a totally alien concept. He repeatedly stated that all ‘isms’, including socialism and democracy, should be rejected and that Indian society should be founded on Indian culture.

Sangh’s Pariwar believes in the one leader principle and Golwalkar maintained that the leader creates a mindset, which is totally disciplined and people accept whatever the leader tells them.

RSS specialises in moulding young minds in such a way that they are rendered incapable of responding to other ideas. It aims to not only to enter into every aspect of a person’s life but also to control it. Dattopant Thengdi, a Sangh ideologue and trade union leader, wrote in a newspaper that the RSS intended to have the entire society under its sway, and that it would leave no aspect of a person’s life untouched; it would establish its hegemony in every department of life.

Thengdi, of course, was saying nothing new. Similar views have been repeatedly asserted by Golwalkar in ‘We or Our Nationhood Defined’, as well as ‘Bunch of Thoughts’. Organisations that are totalitarian do not allow space for freedom. They embody the essence of fascism.

Courtesy **OrissaPost**, July 12, 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.”

Retired Bureaucrats Warn of ‘Growing Authoritarianism, Majoritarianism’ in India

An Open Letter by 65 ex-officials

In an open letter 65 senior retired officials from different Central services – including the 91-year old Har Mander Singh, a 1953 batch IAS officer – urge all public authorities and constitutional bodies to take heed. The full text of the open letter is reproduced below.

We are a group of retired officers of All India and Central services of different batches, who have worked with the Central and state governments in the course of our careers. We should make it clear that as a group, we have no affiliation with any political party but believe in the credo of impartiality, neutrality and commitment to the Indian constitution. A sense of deep disquiet at what has been happening in India has prompted us to write this open letter to chronicle our reservations and misgivings about recent developments in the body politic. What has gone wrong?

It appears as if there is a growing climate of religious intolerance that is aimed primarily at Muslims. In Uttar Pradesh, in the run-up to the elections, an odious and frankly communal comparison was made between the relative number of burial grounds and cremation grounds. The question was also asked as to whether electricity was being supplied equally to different communities during their religious festivals. All this without any basis in fact or evidence. The banning of slaughter-houses targets the minorities and affects their livelihoods as well. Such intolerance breeds violence in a communally charged atmosphere – even to the extent of a local leader in UP provoking an attack upon the residence of a superintendent of police,

whose family was terrorised.

Vigilantism has become widespread. An Akhlaq is killed on the basis of a suspicion that the meat he has is beef and a Pehlu Khan is lynched while transporting to his place two cows he had bought and for which he had the necessary papers. Nomadic shepherds are attacked in Jammu and Kashmir on some suspicion as they practice their age-old occupation of moving from one place to another along with their cattle and belongings.

Gau-rakshaks function with impunity and seem to be doing so with the tacit complicity or active encouragement of state machinery. Punitive action against the perpetrators of violence does not take place promptly but cruelly, the victims have FIRs registered against them. The behaviour of vigilantes – who act as if they are prosecutor, judge and executioner rolled into one – flies in the face of law and jurisprudence. These actions undermine the rule of law and the Indian constitution since only the state – through its various organs and institutions – has the power to enforce the law.

Vigilantism has become popular as ‘anti-Romeo’ squads threaten young couples who go out together, hold hands and are perhaps in love with each other. A thinly-veiled effort to prevent a Hindu-Muslim relationship or marriage, there is no justification in law to harass these couples, particularly when there is no complaint from the woman of being ill-treated.

Student groups and faculty members on campuses like Hyderabad and JNU, who raise troubling questions about equality, social justice and freedom, are subject to attack by the

administration, with a supportive government to back them. In Jodhpur, a planned lecture by a renowned academic was cancelled under pressure and the faculty that organised the event subjected to disciplinary action. What happened in Jodhpur has happened at other institutions as well. Argumentation and discussion about different perspectives – the life-blood not only of institutions of learning but of democracy itself – are being throttled. Disagreement and dissent are considered seditious and anti-national. Such attitudes have a chilling impact on free speech and thought.

Several reputed NGOs and civil society organisations are being charged with violating the provisions of the Foreign Contribution (Regulation) Act and the Income Tax Act. While we agree that genuine violators should be identified and penalised, we note with dismay that several of the targeted groups are those who have taken stands against government policies, expressed dissent or supported communities in cases against the state.

We are also seeing an ugly trend of trolling, threats and online intimidation of activists, journalists, writers and intellectuals who disagree with the dominant ideology. How does this square with free speech?

There is a growing hyper-nationalism that reduces any critique to a binary: if you are not with the government, you are anti-national. Those in authority should not be questioned – that is the clear message.

In the face of a rising authoritarianism and majoritarianism, which do not allow for reasoned debate, discussion and dissent, we appeal to all public authorities, public institutions and constitutional bodies to take heed of these disturbing trends and take corrective action. We have to reclaim and defend the spirit of the Constitution of India, as envisaged by the founding fathers.

1. Vivek Agnihotri, IAS (Retd.), former Secretary General, Rajya Sabha
2. S. Ailawadi, IAS (Retd.), former Chairman, Electricity Regulatory Commission
3. P. Ambrose, IAS (Retd.), Additional Secretary, Ministry of Shipping and Transport, GoI.
4. Ishrat Aziz, IFS (Retd.), former Ambassador to Brazil
5. Balachandran, IAS (Retd.), former Additional Chief Secretary, Govt. of West Bengal
6. Balachandran, IPS (Retd.), former Director General of Police and Chairman, Tamil Nadu Police Housing Corporation, Govt. of Tamil Nadu
7. Balagopal, IAS (Retd.), former Resident Representative, UNICEF, North Korea
8. Sundar Burra, IAS (Retd.), former Secretary, Govt. of Maharashtra
9. Chandramohan, IAS (Retd.), former Principal Secretary, Urban Development and Transport, Govt. of NCT of Delhi
10. Kalyani Chaudhuri, IAS (Retd.), former Additional Chief Secretary, Govt. of West Bengal
11. Anna Dani, IAS (Retd.), former Additional Chief Secretary, Govt. of Maharashtra
12. Vibha Puri Das, IAS (Retd.), former Secretary, Ministry of Tribal Affairs, GoI
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14. Keshav Desiraju, IAS (Retd.), former Health Secretary, GoI
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18. Hirak Ghosh, IAS (Retd.), former Principal Secretary, Govt. of West Bengal	33. Lalit Mathur, IAS (Retd.), former Director General, National Institute of Rural Development, GoI
19. Meena Gupta, IAS (Retd.), former Secretary, Ministry of Environment and Forests, GoI	34. Sonalini Mirchandani, IFS (Resigned)
20. Ravi Vira Gupta, IAS (Retd.), former Deputy Governor, Reserve Bank of India	35. Sunil Mitra, IAS (Retd.), former Secretary, Ministry of Finance, GoI
21. Wajahat Habibullah, IAS (Retd.), former Secretary, GoI, and Chief Information Commissioner	36. Deb Mukharji, IFS (Retd.), former Ambassador to Nepal
22. Deepa Hari, IRS (Resigned)	37. Ruchira Mukerjee, P&T Finance Accounts Service (Retd.), former Adviser, Telecom Commission, GoI
23. Vivek Harinarain, IAS (Retd.)	38. Anup Mukerji, IAS (Retd.), former Chief Secretary, Govt. of Bihar
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46. R. Raghunandan, IAS (Retd.), former Joint Secretary, Ministry of Panchayati Raj, GoI

47. K. Raghupathy, IAS (Retd.), former Chairman, Staff Selection Commission, GoI

48. Babu Rajeev, IAS (Retd.), former Secretary, GoI

49. Ramani, IAS (Retd.), former Director General, YASHADA, Govt. of Maharashtra

50. Julio Rebeiro, IPS (Retd.), former Adviser to Governor of Punjab and Ambassador to Romania Sayeed Rizvi, IAS (Retd.), former Joint Secretary, Ministry of Environment and Forests, GoI

51. Aruna Roy, IAS (Resigned)

52. Manab Roy, IAS (Retd.), former Additional Chief Secretary, Govt. of West Bengal

53. Umrao Salodia, IAS (Retd.), former Chairman, Rajasthan State Roadways Transport Corporation, Govt. of Rajasthan

54. Deepak Sanan, IAS (Retd.), former Principal Adviser (AR) to the Chief Minister of the Govt. of Himachal Pradesh

55. A.S. Sarma, IAS, (Retd.), former Secretary, Department of Economic Affairs, Ministry of Finance, GoI

56. N.C.Saxena, IAS (Retd.), former Secretary, Planning Commission, GoI

57. Selvaraj, IRS, former Chief Commissioner, Income Tax, Chennai, GoI

58. Ardhendu Sen, IAS (Retd.), former Chief Secretary, Govt. of West Bengal

59. Rahul Sharma, IPS (Retd.), Govt. of Gujarat

60. Raju Sharma, IAS (Retd.), former Member, Board of Revenue, Govt. of Uttar Pradesh

61. Har Mander Singh, IAS (Retd.), former Director General, ESI Corporation, GoI

62. Jawhar Sircar, IAS (Retd.), former Secretary, Ministry of Culture, GoI, and CEO, Prasar Bharati

63. Sudershan K. Sudhakar, IAS (Retd.), former Secretary, Govt. of Punjab

64. Geetha Thoopal, IRAS (Retd.), former General Manager, Metro Railway, Kolkata

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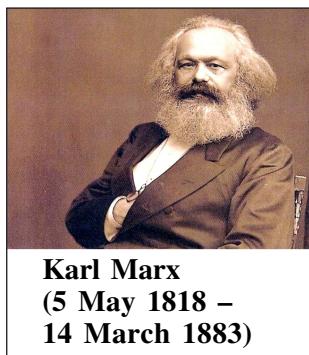
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Please send your digital passport size photograph and your brief resume if it is being sent for the first time to the RH.

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

Marx did not understand the importance of Human Rights



Marxists were in power for a very long time, human rights activists were regarded with suspicion by the ruling party. “They are the paid agents of CIA,” was their usual refrain. On the other hand, the rights activists who were mostly from ultra-left groups had little respect for civil rights or the relative autonomy of the individual. As Stalinists or fervent Maoists you could not expect them to be very sincere about it. Actually, it was the last refuge of the frustrated revolutionaries of 70s. There was also a psychological reason - they hated and envied the ruling Marxists who were enjoying the loaves and fishes of power. For them civil rights activism was a disguised politics to annoy the ruling party and nothing more. These upper caste middle class activists very seldom showed any concern for the rights of the Dalits, women or farmers who were under constant attacks. They were not at all bothered about its theoretical aspects. It served them as a stick to beat the ruling Left with.

The concept of civil rights does not square with Marxism and much less with communist regimes. Almost all communist regimes/governments have rather a lurid record of human rights. Lenin, Stalin, Mao, Pol Pot, Honekar - to name only a few, are guilty of horrible rights violations on a massive scale stretching for decades. Actually they systematically destroyed whatever little of rights were enjoyed by people in the pre-revolutionary dispensations. Lenin’s Russia was a graveyard

Marxists usually don’t speak of human rights; when they do, you can be sure it’s for some other reason. It’s true as much in India as elsewhere. In my native Bengal where

Bhaskar Sur

of freedoms and far more insecure a place than the Tsarist Russia. Even communist parties who have never been in power, have the same cynical attitude to the rights of others. It doesn’t count when it comes to their ‘cause’ of which they have a lethal sense of certainty.

I have often wondered why Marxists who promise to take us from the realm of necessity to freedom, have been such enemies of freedoms that our rights, however imperfectly, guarantee. The root can be traced back to Marx himself. Karl Marx responded to the proclamation of rights in the constitutions of Pennsylvania and New Hemisphere as well as earlier French Rights of Man, with derision. For him these rights stressed the individual’s egoistic impulses rather than providing emancipation from religion, property and law. Marx had a vision of a political community of future in which all the needs would be amply supplied and which would resolve all social conflicts based on class. Therefore, there would be no need for such rights or their enforcement. He even goes to the length to suggest that such rights actually diminish and curtail our social existence: “the sphere in which man acts as a communal being is degraded to a level below the sphere in which he acts as a partial being.” In a democratic society we can move from the political to social, and then on to the economic equality. But Marx was dismissive about the prospect of democracy which men like Mill or Tocqueville were passionately discussing. Marx pinned his faith on “the dictatorship of the proletariat” which in actual practice is ruthless naked dictatorship. Marx was a great sociologist, a talented economist but a poor political thinker. It is his inability to value human rights and see the great possibility of democracy that makes his politics so obsolete and useless in any functioning democracy like ours. 

Justice Desai Endowment Lecture:

CONSTITUTIONALISM, SOCIAL JUSTICE AND BLACK ECONOMY

BY
Justice (Retd.) B. Sudershan Reddy
Supreme Court of India

....Continued from the last issue.

A glance at what India was emerging out of, and the problems it confronted at the time of independence and the framing of the Constitution would underline the necessity of the structure carved out by the Constitutional pledges and mandate. For nearly fifty years prior to Independence, India's GDP had grown at less than 1% per annum, and in no year in that period did it exceed 1%. In the decade immediately preceding 1947, India's GDP grew at -3.5% per annum. India's economic surplus had been drained out by the imperial forces, and an essentially feudal structure implied that whatever little surplus was being generated was being enjoyed mostly by the indolent few. We slipped from the second largest economy, with a global product share of over 15% to less than 1% under the British rule. Our ancient crafts, and village industries were in shambles. A huge numbers of our artisans and skilled labourers were transformed into rural labourers, unskilled and producing opium.¹

Add to the above, our own problems that have plagued our societies for centuries. Of casteism, that divided the society and imposed horrific hardships on the lowered castes, of rampant illiteracy and ignorance, again largely due to casteist restrictions on knowledge acquisition, and absolute poverty rates were well over 75%. Of communalism that divided us on religious basis. From middle of 1800s India faced a succession of famines – one more devastating than the other, one every 7-8 years. Some were large enough to alter the demographic course

itself and none which killed fewer than a few millions. Our per capita income was, in inflation adjusted 1973 rupee terms, Rs.7.20 per annum, while poverty ceiling was estimated at Rs 23 per annum! Many from our elite segments had willingly collaborated with the colonialists in denuding this country, for the sake of continuance of their domination. We were enslaved as a nation by a foreign power, and we had also managed to enslave and/or deprive most of our populace to serve a few of us.

The above is of course a rather quick and a very rough image of what India was reduced to, and what most Indians were subject to at the time of independence. Whenever I listen to or read Panditji's speech after he took oath as independent India's first Prime Minister, and as the first sentence rolls through my mind, "Long years ago, we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially", I am reminded that our Constitution is a continuing rededication to the task of liberating our people from the effects of not just the colonial past, but also the traits in our culture that hierarchizes and deprives. The words of Seamus Heaney, of course written well after India's independence, and written in the context of dismantling of apartheid in South Africa, sums up the moral and emotional foundations for a constitutional project of rebuilding a nation of pluralities into a just nation state:



*“History says, Don’t hope
On this side of the grave,
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up
And hope and history rhyme.2”*

In order to ensure that hope of justice is translated into reality, so that history begins recording the righting of wrongs and instantiation of a just society, we also need to be ever conscious of the risk of core national purposes being side-tracked, and the nation-state’s endeavours subverted for the benefit of the few. In this regard we necessarily need to pay heed to Dr. Ambedkar’s warning, at the ratification of the Constitution, that though we have instantiated a democracy based on notions of political equality, the continuation of systemic, deep and widespread inequalities, and unconscionable deprivation and oppression as a consequent result of graded inequalities in the social and economic contexts, will likely destroy the foundations of democracy. His prognosis was that the contradictions, if allowed to persist for long, will destroy the project of establishing, sustaining and nurturing a constitutional democracy in which social justice in all walks of life would be established.

It pays to cite extensively from that speech, because I believe Dr. Ambedkar’s understanding of the tension between political economies that guarantee only empty political freedoms and the demands for social justice was one of the finest expositions in the annals of scholarship in this area. He said:

“On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to

my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

*If we wish to maintain democracy not merely in form, but also in fact, what must we do? **The first thing in my judgement we***

must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not “to lay their liberties at the feet of even a great man, or to trust him with power which enable him to subvert their institutions”. There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality by which we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and

economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.”

What the above meant, as India emerged after centuries of colonial oppression, was that the State necessarily had to take a lead role in building a democratic polity and an executive apparatus that would ensure the rule of law, and also undertake the affirmative obligation of ensuring that at least some measure of resources are diverted for uplifting the people from the vicious cycle of ignorance, poverty and exploitation that they were stuck in. They needed to be protected from potential plunderers and exploiters within, and also invest in building up their capacities so that the masses could themselves be given the skills, resources and space to be able to use the machinery of the state in protecting their fundamental rights. And it needed to be done urgently, and it is this urgency that Dr. Ambedkar spoke so eloquently of when he talked about the dangers of the democratic experiment failing if the situation of graded inequality in economic and social spheres continued.

So, how did we do? How did we construct our tryst with destiny?

As a political democracy, we have certainly thrived. So far. At the time of framing the Constitution, many respected scholars from across the Globe ridiculed the idea that democracy could take root here. Especially,

because of illiteracy and poverty, it was assumed that universal adult franchise would be a failure. Yet, we must largely admit that it is the poor, and those who have little, particularly in the rural areas, who vote in large numbers. They are the true believers and saviours of democracy in India. Yet, very little gets written about the fact that it is the poor voting in large numbers have repeatedly voted out of power autocrats powers, and corrupt and the inept regimes.

This was no mean accomplishment. After all, having a say in the political process and about who gets to hold the reins of the state is a key feature of being an equal citizen (at least at some level). It meant that they could exercise some measure of control over what is deemed to be the main purposes of the nation-state itself were, even if the realization of those goals were to be in some indeterminate distant future. Political freedom is itself a form of development, or rather one element of development, because it assures human beings an important measure/element of their human dignity.

However, when we come to evaluating how well we did, as a people and as a nation, in the social and economic sphere, we are immediately confronted with significant under-achievements. Writing a bit over a decade ago, Amartya Sen in his book the Argumentative India assessed it as “measurable underachievement and not necessarily one of immeasurable failure” – a characteristically muted academic criticism. However, a decade later, in Uncertain Glory, a book he co-authored with Jean Dreze his tone had changed to one of urgency. We are an increasingly younger nation, and instead of hoping to reap the windfall gains of the demographic dividend we seem to be staring at the sand that drops ever so faster into the bottom half of the developmental hourglass. The question that ought to be uppermost in our minds

Families of dedicated lawyers are known to often chaff and grumble that the profession takes over lives and leaves little for the family. Let me assure them that their sacrifices have made the profession better. And the lives of many thousands of citizens of India better. Thank you for your forbearance during the life of Justice Desai and for helping organizing his memorial lectures.

There is yet another reason as to why I must thank the organizers. As I have repeatedly maintained when I was a judge and continue to do so as a common citizen after demitting office, it is always an honour to be asked to deliver lectures at platforms that further reasoned and reasonable debate and public discourse. In the theatre of democracy, and even as spaces for reasoned and reasonable debates shrink under the onslaught of politically and culturally organized gangs and when most major media outlets seem nothing more than cheap mouthpieces for this or the other political party, such events are of vital importance. And they cast a heavy burden on the organizers, the speakers as well as the audience. This would be so, because over and above any substantive discussions we might have, the fact that discussions are being kept alive should be viewed as a willingness to shoulder a civic responsibility. It is imperative that in a constitutional democracy, the freedom and the fearlessness to speak, appreciate, analyze and criticise the powers that be are both sustained and nurtured. Hence it is heartening to see the Karnataka State Law University, its Vice Chancellor, faculty and the students are taking on such responsibilities with vigour. And I thank you all, for doing that.

I have strived to be a humble servant of our Constitution and the values that it seeks to promote and instantiate in our social-economic and political theatres of individual and collective action. The contributions of my seniors in this

profession, such as Justice Desai, and the fervour of youngsters has helped me remain that humble servant. So my acceptance of this invitation is an expression of that humility.

The organizers have asked me to speak about the constitutional implications of the Black Economy. It is with some unease that I agreed to speak on this topic. That is so because of the fact that I, as a judge of the Supreme Court of India, authored what has come to be known as the “Black Money Case”. There are certain traditions and norms that guide us as judges – both when we serve and after demitting office. They place restraints on us as to how and in what manner may we speak about issues that we had formerly delivered an opinion on. One of the primary concerns is about not attempting to further add any gloss to the decision itself, for: (a) the decision was of the Supreme Court, and not a personal one; and (b) it is for the Supreme Court (i.e., other judges and benches) to interpret that opinion. The judgement should speak for itself. So, the care that one needs to exercise on that count will substantially restrict the range of issues I would be speaking on.

Secondly, the topic itself covers a very, very vast field. Hence, in the course of 30-40 minutes one could at best only hope to paint a hazy picture in the broadest of brush strokes. Furthermore, the topic also traverses many areas that could be deemed to be legitimately controversial. And many more areas that maybe needlessly made controversial. These limitations, of course cannot be treated as fatal to our project of furthering reasoned and reasonable public discourse. If my lecture today can fuel further debate and disseminate a more nuanced, reasoned and reasonable debate about the issues that emerge under the topic on hand, I believe it would have served my responsibility as a citizen beholden to the Constitution of India.

The topic for today's lecture is

Constitutionalism, Social Justice and Black Money. As I said earlier, the area is very vast – hence I will have to restrict myself to broadest of brush strokes of a small set of issues to highlight the nature of constitutional debate, and the balance that one needs to strike to achieve the values of modern constitutionalism. Yet, towards the ending I will argue that not being able to propose a definitive end result, *ex ante* as it were, does not imply that the project of Indian constitutionalism is itself flawed. Rather, it is a reflection of the fact that, while the specific consequences are not always in sight, an anxious fealty to the larger value premises of the Constitution necessarily need to guide us.

Let me start with what ought to be an unexceptional premise, but which unfortunately we seem to have lost along the way. That fealty to the Constitutional values is required of all the stakeholders and not just the Constitutional courts alone. While the Courts are needed to resolve a genuine dispute of law, or to find minimal action as being normatively needed by the State when abdication of responsibility towards a citizen or a group of citizens is of such magnitude and of an egregious nature, the Constitution places an obligation on all the major players to ensure that constitutional values are adhered to.

This point needs to be made explicit, because of late there seems to be a tendency to assume that as long as a law, and the action by the state that law mandates or gives rise to have not been examined by a constitutional court and its vires or constitutionality not ascertained the other stakeholders have no responsibility to assess the legality of their actions on the touchstone of Constitutional values. I was aghast recently, when I heard on television one prominent politician telling the anchor of a TV channel that he does not want to hear about how the decision by his party could be contrary to the

Constitutional provisions. At first the politician blustered on about the law not being contrary to the Constitution, and when he realized that he was actually wrong he went on to claim that all of that does not matter as the people will support their move. The claim implicitly was that popular support itself is sufficient to make any kind of action lawful and moral. While we could all be spouting about Kenneth Arrow's insight, that barring a referendum on each issue, no one can ever know whether a majority/plurality of the populace actually supported one amongst the many issues on which the individuals votes get cast on, there is a far simpler and preliminary reason to be aghast: it seems many of the powers that be have begun to assume that we are a majoritarian democracy and not a constitutional democracy.

The collapse of the distinction between the two, and incidence of such transgressions in an increasing number of arenas and assertions – rights of the minorities, re-subjugation of Dalits, safety of women, and high arenas of executive and even legislative action – point to the limits of constitutionalism. Yet, that only further underlines the importance of constitutionalism to protect the citizens from the vagaries and rapacity of the elites and the powers that dance not to the benefit of all the people, but to the interests of the few.

Modern constitutionalism is a product of a long historical debate of how to restrain collective power vested in a small group of people – restraining them against the collectives of people as a whole or against particular groups of them. The second facet of the debates, about vesting of collective power in rulers or institutional arrangements, revolves around what the scope of the work of the State needs to be. As we look at historical developments, we should not expect that when an idea, especially regarding liberty or justice, is first formulated it would be visualized as being universal in

coverage. Who were expected to be covered by the permissive structure of a liberty or enjoy the benefit of the uplifting blanket of justice would depend on who were thought of as lesser or greater, who was deemed to be worthy or unworthy, who was deemed to be an insider or an outsider and who was deemed to be a freeman or a slave – these were all matters of intense contestation, and the scope of coverage expanded over long spans of time covering many centuries. However, a progressive idea applicable to some necessarily raises questions about its non-applicability in the case of others. The intrinsic nature of liberties and principles of justice is that they are often founded on a core morality that speaks to essential aspects of humanity of all. The strength of a particular normative formulation would then depend on the robustness of its logic regarding the extent of its applicability. Extension of rights and principles of justice to groups hitherto excluded have occurred for multiple reasons, including but not limited to: (1) diffusion and spread of ideas, along with their adaptation; (2) spread on account of dominant cultures, both at the international level and also at the level of individual nations, whether involving colonialism or not; (3) adaptation of values and normative structures as a part of modernization of state and society; (4) struggles, both peaceful and violent, for inclusion by hitherto excluded groups, or by entire populations seeking new rights or measures of justice, etc.

Thus, one of the primordial modes of characterizing constitutionalism would be the degree to which the State has been enabled and/or achieved extension of equal rights: (a) to periodically vote in or vote out governments, beginning with restricted franchise to a model of universal adult franchise, along with a vertically and a horizontally divided branches of government; (b) equality before the law and equal (and effective) protections of the law (including but not limited to protection from

economic forces, natural forces and foreseeing the potential risks and protecting the populace from them) and benefits of armed forces – both civil and armed; (c) the nature and kinds of freedoms conceived, their distributions across groups within the jurisdiction; (d) the nature of fundamental rights assured or guaranteed, and coverage across the entire populace and/or groups; and (e) nature and principles of justice that are conceived and extended to the populace, and distributed across groups. But any which way we understand it, because of the relentless pressure from populaces in each nation for extension of values implicit in each of the organizing categories as listed by me above, all of them or some combinations of them, central normative theme of the debates in and about constitutionalism, and its progress, has been around the question of equality - equality conceived as both procedural and substantive., in actuality and as an ontological assumption and a normative imperative.

What level and kind of equality, along with liberties and policies for substantive justice, do constitutions of modern democracies envisage in the modern world? It would be useful to begin this analysis from a conception of the state as a “nightwatchman”, providing defence and possibly policing coupled with a legal system to protect property and enforce contracts. At the other end of the spectrum are collectivized communist models, with alleged intra-party democracy.¹

The first model is often associated with Friedrich Hayek². It is unfortunate that more often than not, our homegrown neo-liberal elites chant Hayek’s name to propose a complete evisceration of any and all roles of the State in the market. While Hayek’s orientation was generally informed by a suspicion of any form of coercive regulation of markets by the State, he recognized that in addition to the role of a night watchman, the State would be needed to

regulate activities that destroy nature (protection of environment), activities that will endanger health (as for instance spurious and unverified drugs, or broadly speaking against fraud in markets and in favour of laws against deception) and efforts to provide a security net against hunger and bad health (as minimal charity in societies that have enough or can afford). The obvious problems associated with this model would be about what happens when there are no substantive improvements in the lives of those already poor, and competing with those with much. Could such a state of affair undergird a stable social and political structure? Why couldn't the elites capture governmental machinery, in the name of greater liberties for themselves, eliminate any and all forms of regulation and suppress even the political freedoms of the poor? Who is to prevent the destruction of nature, and engendering of all sorts of externalities that destroy the political freedoms and liberties – including right to life – of the many? And if all that matters are the choices made by individuals – as those are to be considered to be the sole measure of goodness, then if the poor and the ones who have lost form a collective to topple the state controlled by elite, why shouldn't such an event also be treated as a natural expression of choice? For the youngsters here, I would recommend the works G.A. Cohen, particularly his “On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy”, and “Rescuing Justice and Equality” to read and absorb the debates about what ought to be the purpose of the State.

The second model is akin to the collectivized communist models in which groups of bureaucrats decide not just what gets produced but also how it gets produced, prescription of what is acceptable culture and is not, and distribution not according to what one “deserves” but according to what one

needs (also to be determined by a bureaucrat). The obvious problems associated with this would about the destruction of freedoms and liberties, as individuals and being subjected to the whims and caprice of those deciding on behalf of the collective. Because vast powers are vested in small numbers of experts, and the coercive machinery of the State is in their hands, they could take wrong decisions (even if intentions were genuine). And this could happen, even if we assume that they are genuinely concerned about the welfare of the populace, because they do not take into account all the information available, and being used to centralized decision making process in which only small coteries are permitted they do not have any feedback loops of criticism and helpful critique. Moreover, the temptation to bureaucratize all (**Footnotes**)¹

I am deliberately avoiding the “anarcho-capitalist” model, because we have seen no modern society built on alleged principles which advocate such complete absence of the State and any kind of collective action that even protection against child kidnapping is seen as detrimental to individual liberty.

² Friedrich Hayek, “Road to Serfdom” and “The Constitution of Liberty”.

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² Friedrich Hayek, “Road to Serfdom” and “The Constitution of Liberty”.

decisions by inflexible rules is an all too tempting factor for the bureaucrat. For instance, it is speculated that China could have industrialized in the 12th century itself, but the Chinese bureaucrats, comprised of the upper

caste/upper class elites, decided that they knew everything that was all there to know, and prescribed specific ideals beyond which there was nothing to seek. And, if sought, the seeker to be punished. And China declined to become a colony where a vast majority of its people were made to be addicted to the opium being sent there by the British. For the students here, I would recommend that they also read Frank Dikötter's "The Tragedy of Liberation" that describes the horrific consequences, in which five million civilians were driven to their deaths by Mao and his unilateral decision to drag scores of millions of peasants away from agriculture to cottage industry. It is such experiences in governance that have informed modern constitutionalism to always be wary of the one policy as being the solution for all evils.

For India, neither of these models in their purer form were deemed to be ideal for us. At the

time of independence, in our Constituent Assembly debates, and in the early years of our Republic there was a significant debate amongst our founding fathers. It was about whether we would choose to adopt an evolutionary path to social justice, in which progressively we would eliminate conditions that kept us poor and living in a socially unjust society. The other option explored was the revolutionary path, in which all property and wealth would be taken over by the State or a more egalitarian structure be established through a massive redistribution of resources. The violence implicit in the latter options did not appeal to our founding fathers. And this was not just on account of some inherent incapacity for violence, as some chest thumping nationalists seem to think today, but because history seemed to support the idea that violence for equality only ends up promoting one set of new elites in the place of the old. 

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Students' and Researchers' Section: Mob Lynching in India

Prachetas Ashok

- A paper presented by-

Prachetas has presented a well documented research paper on 'Mob Lynching in India' during his summer internship with PUCL (Delhi). He has narrated several incidents like lynching of District Magistrate of Gopalganj (Bihar), 1994; Khairalanji massacre of Dalits (2006) in Bhandara District of Maharashtra; Dadri(UP) of 2015; Dimapur (Nagaland) lynching of a Muslim prisoner in jail 2015; Lynching of Pehlu Khan in Alwar and of Jafar Khan in Pratapgarh (both in Rajasthan) 2017; of Junaid Khan in Ballabgarh (Haryana), 2017; of Mohd. Ayub Pandit , Dy. Suptd. of Police, Srinagar (J&K) 2017. He has also discussed the relative Indian laws which can be used to control and prevent the menace of lynching. Some excerpts from his paper: -

Abstract

Mob Lynching in India is increasing day by day and we find that it is difficult for the common man to lead a peaceful life in such a scenario. The various provisions available in our Penal system if implemented by the government agencies will help us to restrict all unwarranted acts of violence. With the 42nd amendment of the Indian constitution, Preamble was added with the word 'Secular' but the real sense of secularism is lagging in our society of different beliefs. The recent cases of mob lynching provide proof that people of India need to take better steps to solve such issues rather than taking law into their own hands. As each individual is entitled to a trial, and law is equal and same for everyone, the public cannot decide whether anyone is guilty or not(eventually resorting to lynching). This can be overcome by creating proper awareness and making sure that civilians follow the rule and regulations. The paper discusses these issues and leaves it on to the reader to think and find a solution.

Conclusion

Though cases of lynch mobs have existed from a long time but since the lynching of Mohammed Akhlaq in Dadri on the night of September 28, 2015, incidents of such vigilante groups on Minority like Muslims and Dalits have increased drastically - in Daltonganj in JharKhand, Una in Gujarat, Mandsaur in Madhya Pradesh, Sonepat in Haryana, Reasi in Jammu and Kashmir, Chittorgarh and Alwar in Rajasthan and recently even in the nation's capital itself, Delhi. Ashok Swain, Professor of Peace and Conflict Research at Uppsala University, Sweden observes that "the regularity of such crime in India is not due to lawlessness but because the authorities refuse to provide protection when needed.

A lynching then becomes majority's way of telling the minority population that the law cannot protect them.

The laws and regulations in India are strong enough if used and implemented properly. Moreover, the Police force should be made strong enough to encounter the problems and protect the public. Another major way of preventing lynching in the name of cows would be by not passing 'The Cow Protection Bill, 2017' (Bill No. VI of 2017) which has an objective 'to ban the slaughter of cows and to provide for deterrent punishment including death penalty for slaughter of cow and for matters connected'.

The civilians should also understand that taking law into hands is not a right way of solving problem as such acts will leave no difference between them and the terrorists. By doing this they not only threaten the minority groups but also question the dignity, secularity and integrity of the entire nation."

Prachetas Ashok is a student of BA LLB (Hons), Manipal University, Jaipur. 

Under Modi rule: How the saffron brigade is manifesting its ugly face

Right-wing activists vow to avenge attack on Amarnath Yatra pilgrims

Activists of the Bajrang Dal and Vishva Hindu Parishad on Wednesday took to the streets of Agra to protest against the July 10 attack on Amarnath Yatra pilgrims. The right-wing activists brandished weapons, including swords and pistols, and promised to take the law into their own hands if the Centre did not avenge the killing of seven pilgrims in the next 15 days, ANI reported. (Dated 13 July 2017)

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Man accused of carrying beef was beaten up by a gang of four

A man accused of carrying beef was beaten up by a gang of four in Maharashtra's Nagpur district on Wednesday, ANI reported. Four men were detained on Thursday for questioning in connection with the case.

The news agency tweeted a video of the incident, where the man is seen being dragged, kicked and assaulted by the group of men. (Dated 13 July 2017)

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Amartya slams censors for bid to 'silence' him

Amartya Sen, Nobel laureate and author of 'The Argumentative Indian', led the chorus of angry voices that questioned the censor board's intent in demanding the wipeout of words like 'cow', 'Gujarat', 'Hindu India', and 'Hindutva view of India' from a documentary film revolving around conversations between Sen and Kaushik Basu, Chief Economic Adviser in UPA-2. Sen wondered if the CBFC acted in the interest of the nation or in the interest of the government. "I think this incident offers a fairly clear answer," he said. Sen remarked the CBFC's actions were a reflection of the au-

thoritarian regime that currently ruled the country. (Times of India, 13 July 2017)

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Woman police officer in U.P. who arrested BJP leaders, transferred

Shrestha Thakur, the woman police officer in Bulandshahr district of Uttar Pradesh who took on local BJP leaders for violating traffic rules last week, was transferred to Behraich district on Saturday.

Ms. Thakur, the circle officer of Syana in Bulandshahr, had arrested five BJP leaders on charges of obstructing a government servant from discharging duty. The video of Ms. Thakur chiding the BJP leaders for allegedly breaking traffic rules and demanding relaxation, had gone viral, earning her praise for doing her duty amid pressure from the ruling party.

Though Ms. Thakur was transferred outside Bulandshahr, along with four other police officers, local BJP leaders boasted to the local media that Ms. Thakur's transfer came after they had gone to Lucknow to complain against the cop as she had "demoralised" the local party cadres.

Mukesh Bhardwaj, the Bulandshahr president of the BJP told the local media that 11 MLAs of the district and its vicinity and the local MP, had gone and met Chief Minister Adityanath last week demanding action against Ms. Thakur.

This is not the first time that police officers who took action against BJP leaders are being transferred, although as part of transfer of other police officers. The Agra and Saharanpur SSPs who took on the 'hooliganism' of BJP and RSS workers in their respective work areas in April, were also transferred after representations from the party. (The Hindu, 2 July 2017)

The Bharatiya Janata Party is at it again

With the purpose of spreading communal frenzy



During communal riots in Baduria, West Bengal last week, the photo shown above was widely circulated and the text read 'It portrays Hindu women being molested during the riot.' The image is actually a scene from a Bhojpuri movie released in 2014.

BJP leader posts scene from Bhojpuri film, says this is 'plight of Hindus' in West Bengal

Haryana BJP leader Vijeta Malik was caught spreading fake news on social media as she shared a picture of a woman being undressed as a crowd watched on, reports [India Today](#). The picture was actually a scene from the Bhojpuri movie *Aurat Khilona Nahi*, which starred BJP MP and party's Delhi unit president Manoj Tiwari. The post has now been deleted. (Firstpost, 8 July 2017)

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