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Time to Douse the Unrelenting Flames of Hate!

The carefully calibrated and cynically unleashed campaign of intolerance, hatred and prejudice engineered by right-wing majoritarian Hindutva forces boiled over in September - October, 2015 with a macabre eruption of violence in different parts of India. The string of brutal killings by mobs started with the lynching on 28th September, 2015 of Mohammad Akhlaq Saifi in Bisara village near Dadri in Western UP, close to Delhi. Rumours that Akhlaq had killed a calf and stored calf meat in his fridge was used to drive local youth into a frenzy of hatred, leading to an attack on Akhlaq's house killing him in front of his family and critically injuring his son, Danish . The protestations of Akhlaq and his family that the meat in the fridge was not beef (cow's meat) but mutton didn't make a difference as the mob's blood lust could be satiated only by killing Akhlaq for harming 'gau mata' the sacred cow. Neither the fact that forensic tests exposed the lie of the mob establishing that the stored meat was mutton and not beef nor the fact that the local BJP leader's son was involved with the mob killing was not sufficient for the ruling BJP leaders to condemn the killing. To the contrary, Mahesh Sharma, BJP Union Minister only shrugged away the horrific lynching as a mere "accident"; BJP's MLAs and MPs, including

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Tribute to Dr. R M Pal

It is with a deep sense of sorrow and sadness that we inform our readers and PUCL members about the demise on 13th October, 2015 in Mumbai of Dr. RM Pal, former Editor of PUCL Bulletin (1984-2010) and a current member of the Editorial Committee of the Bulletin. We would like to record our gratitude for the visionary zeal with which he ensured that the Bulletin became a virtual historical repository of key human rights events and news over the last 31 years. A person with intense conviction that issues of caste, community and other diversities cannot automatically vanish merely with greater economic development or politics, Dr. Pal, by personal example, pushed all those who came in touch with him to test every single human rights position they took against how it impacted in the field on the dalits, Muslims, the marginalised people. This comes through more vividly in the messages we carry in this issue in his memory. We offer our condolences to Dr. Pal's wife, Mrs. Madhuri Pal and two daughters, Ilina Nigam and Sangeeta Mall and their families.

Dr. V. Suresh, General Secretary, PUCL on behalf of the PUCL family

Dr. R.M. Pal is No More (17th July 1927 - 13th October 2015)

It is with deep sorrow that we report to you all the sad demise of Dr. R.M. Pal at 6.15 p.m. on 13th of October 2015 in his house at Thane in Mumbai. He had a heart attack a week before his demise and was on life support system. He shifted to Mumbai from Delhi to be nearer to his younger daughter Sangeeta Mall, because of his partially paralytic condition. Dr. Pal had earlier been teaching English in Delhi University and was also Principal of Rajdhani College.

Dr. Pal was a stalwart of the civil liberties movement as well as of the radical humanist movement in the country. He had been associated with the PUCL for a long time and was also President of Delhi PUCL from November 2001 to September 2005. He was also Editor of the PUCL Bulletin between March 1984 and September 2010 and was on its Editorial Board till his death. He had been member of many fact-finding teams of the PUCL and his strong editorials hitting communalism, denial of human rights to the Muslims and other minorities, women and scheduled castes/tribes and in support of the right to education will continue to be a source of inspiration to members of the PUCL and other human rights activists.

He had been very close to M.N. Roy, a great freedom fighter and intellectual, who was a strong supporter of individual freedoms and founded the radical humanist movement. In his company Dr. Pal learnt the importance of democratic values for the development of full potential of human beings. He did not only preach these values, but practiced them in his life. As a humanist he gave importance to the human beings above all other considerations of caste, country, religion, region and language. As the Editor of 'The Radical Humanist' he freely expressed his views on these issues. Through his forthright views on the issues of secularism, caste etc. he earned the appreciation of a large number of intellectuals in the country and abroad. He has written and compiled many books - the last published book on "Power to the People", a selection of the seminal writings of M.K. Gandhi, M.N. Roy and Jayaprakash Narayan with critical commentaries on them, the essentials of their intellectual development and their contribution to contemporary Indian Political Thought was a great success and is available worldwide through amazon.com.

In his demise, the civil liberties and radical humanist movement has lost a great intellectual activist leader. He is survived by his wife, Mrs. Madhuri Pal and two daughters, Iina Nigam and Sangeeta Mall.

All of us in the *People's Union for Civil Liberties* (PUCL) and the *Indian Radical Humanist Association* (IRHA) pay our highest respects to Dr. R.M. Pal and convey our deepest condolences to the bereaved family and friends.

Mahi Pal Singh, former National Secretary, PUCL and former Editor, *PUCL Bulletin*; and Editor, *The Radical Humanist*.

(Mrs. Madhuri Pal (Mob. 09323991085), can be contacted at:- 7-B, Regency Park, Edenwoods, Thane (W), Maharashtra - 400610, **Sangeeta Mall** at: 09819265109 or <sangeetamall@gmail.com>)

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Sangeet Som, Sadhvi Prachi, Sakshi Maharaj, Yogi Adityanath and Haryana Chief Minister M.L. Khattar have been making incendiary speeches defending Hindutva terrorist attacks. It took a long while for the Prime Minister Narendra Modi to even obliquely refer to the Dadri lynching that too only after President Pranab Mukherjee spoke on 7th October, 2015 that diversity, tolerance and plurality are core values of Indian civilisation which kept India united for centuries. The PM asked people to follow the President's advice, ignore

statements of communal political leaders and remain united as "Hindus and Muslims should fight against poverty and not against each other". The irony was not lost on Muslims and other minorities, for it was not they who were fighting the Hindus; the reverse is true - Hindutva forces are generally the ones attacking the minorities.

On 9th-10th October, rumours that trucks were carrying dead cows to Kashmir led to the petrol bombing of a truck at Shiv Nagar on the Jammu-Srinagar Highway, close to

Udhampur. Of the 2 youths injured in the bomb attacks, Zahid Rasool Bhat, 18, died on 18th October, 2015 while his friend Showkat Ahmad Dar sustained serious burn injuries. In this case too, police authorities found no evidence of beef or dead cows being transported.

The politics of stoking hatred through exhibition of intolerance to dissent, contrary opinions and differences is no longer verbal; the exhortation now is to silence through exhibitionist modes of violence, including physical attacks and murder. Targets are

carefully chosen and the place of the attack is also so selected to maximise the shock and media value of the attack. This is exemplified in the physical assault on an independent MLA, Engineer Rashid, in full public view within the J & K Legislature on 8th October; the ink attack on 11th October by Shiv Sainiks on Sudheendra Kulkarni in Mumbai for participating in a press meeting with former Pakistan Minister, Khurshid Mahmud Kasuri; Shiv Sena's stopping of music concert of famous Ghazal singer, Ghulam Ali in Mumbai as he is a Pakistani; ink attack on MLA, Engineer Rashid in Delhi during press meeting (19th October, 2015).

The politics of hatred, intolerance and violence has boiled over from communal issues to caste differences too. The horrific killing of 2 Dalit children in Sunpedh village of Faridabad in Haryana is only the latest in a long string of virulent and violent attacks on Dalits for challenging the dominant caste hierarchy and social order.

Romila Thapar, very eloquently summarised the threat to democracy and human rights by pointing that, "The right to discuss and dissent is objected to. Writers are being threatened with violence. We are now a society that openly displays its prejudices. Until recently, the extent of these prejudices was kept relatively hidden but now they are visible. These are prejudices that we will have to counter if we want a reasonably safe society that accommodates the freedom to speak.

As we pointed in the October issue, citizens are not remaining quiet and are fighting the scourge of communal and majoritarian hatred in their own ways. One of the most forceful expressions of opposition to the politics of hate was by noted writer, Nayantara Sahgal who returned the Sahitya Akademy awards (including cash prizes with interest) in protest

against the lynching of Mohammed Akhlaq, the killings of the rationalists and other gruesome acts of Hindutva terrorists. This was not a sudden impulsive act on the part of Nayantara Sahgal; although she was a cousin of Indira Gandhi, she did not hesitate to oppose the Emergency in 1975. During the terrible 1984 anti-Sikh riots in Delhi in which over 3000 Sikhs were killed in the wake of the assassination of Indra Gandhi, Nayantara Sahgal, as Vice-President of PUCL played a prominent role in the historic fact finding report on the 1984 Anti-Sikh riots "Who are the guilty". 35 other writers have also expressed their protest including Ashok Vajpeyi, Sachidanand and other eminent Sahitya Akademi winners and writers. We carry Nayantara Sahgal's letters in this issue.

It is very clear that Hindutva forces are emboldened because of the lack of a forthright condemnation by the Prime Minister and other senior BJP leaders and ministers, of the attacks against the minorities and Dalits by right wing Hindutva forces. Irrespective of whether these groups are part of the BJP party or allied to it or claim that they are independent, the fact is that they all take the lead from the utterances of senior BJP ministers and leaders, especially the Prime Minister himself. The inexplicable and strange silence and lack of exhibited disapproval is therefore seen by them as silently permitting them to go ahead with their divisive politics and violence. Far too many lives have been lost and substantial damage caused by the spurt in communal and majoritarian violence across the country since the BJP government took charge in May, 2014. It is time that the BJP, as a party, did not resort to 'politics of denial' and instead announce in an explicit and forthright manner that it will not condone, support or tolerate politics of hatred, divisiveness and violence. Equal responsibility also

vests upon all other political parties not to exploit politically the situation of surcharged emotions and instead announce their commitment to constitutional values of democracy, secularism, diversity, tolerance and collective well being.

On a different note, a Constitution Bench of the Supreme Court delivered a majority ruling striking down the National Judicial Appointment's Commission (NJAC) and the 99th Constitutional Amendment thereby restoring primacy to the Collegium system of appointment of judges to High Courts and the Supreme Court. The implications of the ruling are going to be profound and long lasting. We carry two articles of Rajindar Sachar and PP Rao, eminent jurists on the implications of the ruling and issues which arise from the ruling.

One of the key elements in BJP run governments, both in states as also in the centre, is the gradual corporatisation of services in the form of PPP (Public Private Partnership) projects accompanied by a sharp scaling down of social welfare provisions in women and child welfare, food security, education and health sectors. Rajasthan state with a ruling BJP-led government has taken a lead over other states in privatising services through PPP projects. There is now considerable data to study the impact of the privatisation - corporatisation process of use to people - activists, academics, researchers in other states. We carry key papers presented in the 9th State Convention of PUCL Rajasthan unit on the broader theme of 'Disappearance of the Welfare State'. We invite readers to send in responses to the articles so that there can be a broad based debate on these issues of vital importance to our people.

Editor

Condolence Letter by Justice Sachar on 20th October 2015

Dear Sangeeta,
Please accept my deep felt condolences at the demise of one my oldest friends and human right colleague your father Dr. R.M. Pal Sahib. Please convey the same to your mother also.

I used to talk to Pal Sahib on phone while he was in Mumbai regularly and sometimes through your mother when he was unable to do so.

He was a dedicated human right activist and more fiercely a follower of M.N. Roy under whom he had the privilege and good fortune to work. His fierce anger at injustice and discrimination against Dalits really

consumed him and he wrote and talked on this for decades.

I had made it my regular practice that when he was ill but still spending sometime in Delhi, to meet him and keep up our common work. Very early in 1987, we were together in PUCL when we enquired into the Meerut Killings of Muslims by the police and security forces. His analysis and deep understanding of State violence was a tremendous help in preparing the report. Those killings are at present the subject matter of appeal in the High Court and the report is a vital piece of the real facts.

He was himself a prolific writer and his books on the role of caste in our society have had tremendous impact on Dalit movement. He was kind enough to ask me to write a chapter for his book. He was normally a relaxed person but the injustice in the society made him really angry. He was a humanist, a great Champion of civil liberties and above all a great friend. I shall miss him deeply. Please convey my condolences to other members of the family also.

Yours,
Rajindar Sachar

Call of Conscience: Letter of Nayantara Sahgal Returning Sahitya Akademi Award

Nayantara Sahgal was a former Vice-President of PUCL in the eighties and was a key member of the PUCL - PUDR team which came out with the historic and path breaking documentation of the 1984 anti-Sikh Riots in Delhi, "Who are the Guilty?" ... Editor

The Unmaking of India¹

Nayantara Sahgal

In a recent lecture, India's Vice-President, Dr. Hamid Ansari, found it necessary to remind us that India's Constitution promises all Indians "liberty of thought, expression, belief, faith and worship". The right to dissent is an integral part of this Constitutional guarantee. He found it necessary to do so because India's culture of diversity and debate is now under vicious assault. Rationalists who question superstition, anyone who questions any aspect of the ugly and dangerous distortion of Hinduism known as Hindutva - whether in the intellectual or artistic sphere, or whether in terms of food habits and lifestyle - are being marginalized, persecuted, or murdered. A distinguished Kannada writer and Sahitya Akademi Award winner,

M.M. Kalburgi, and two Maharashtrians, Narendra Dhabolkar and Govind Pansare, both anti-superstition activists, have all been killed by gun-toting motor-cyclists. Other dissenters have been warned they are next in line. Most recently, a village blacksmith, Mohammed Akhlaq, was dragged out of his home in Bisada Village outside Delhi, and brutally lynched, on the supposed suspicion that beef was cooked in his home.

In all these cases, justice drags its feet. The Prime Minister remains silent about this reign of terror. We must assume he dare not alienate evil-doers who support his ideology. It is a matter of sorrow that the Sahitya Akademi remains silent. The Akademis were set up as guardians

of the creative imagination, and promoters of its finest products in art and literature, music and theatre. In protest against Kalburgi's murder, a Hindi writer, Uday Prakash, has returned his Sahitya Akademi Award. Six Kannada writers have returned their Awards to the Kannada Sahitya Parishat.

In memory of the Indians who have been murdered, in support of all Indians who uphold the right to dissent, and of all dissenters who now live in fear and uncertainty, I am returning my Sahitya Akademi Award.

Nayantara Sahgal, Dehra Dun, October 6, 2015

¹<http://indianculturalforum.in/index.php/2015/10/06/nayantara-sahgal-returns-her-sahitya-akademi-award/> @ 9th October, 2015

Letter written to President of Sahitya Akademi by Nayantara Sahgal, 12th October, 2015:

To: Shri Vishwanath Prasad Tiwari
President, Sahitya Akademi,
New Delhi
Dear Tiwariji,
I am writing to you in response to your comments about me to the

Indian Express of October 7th: "Her Award-winning book has been translated into several Indian languages. She earned all the profits. She can now return all the Award money, but what of the credibility and

goodwill she earned through the Award?"

I have considered the Award a high honour, but my "credibility" had been established decades before 1986 through my long career as a writer,

as had the "goodwill" and recognition I have received over many years in India and abroad. You have mentioned "profits". The Award in 1986 would perhaps have been Rs. 25,000, but not more than Rs. 50,000. In consultation with Ashok Vajpeyi, who has also returned his

Award, I am enclosing a cheque for one lakh rupees.

The fact that so many writers are returning their Awards or resigning from Akademi posts makes it clear how anguished we are that you have remained silent over the murder and intimidation of writers and the threat

that hangs over dissent and debate. Has the Sahitya Akademi, like Pontius Pilate, washed its hands of its responsibility to safeguard our Constitutional right to freedom of speech?

Yours sincerely,
Nayantara Sahgal,
October 12, 2015

Tribute to Dr. R.M. Pal

Say It Like It Is Raimohan Pal

(17th July 1927 to 13th October 2015)

Sangeeta*

At eighteen Raimohan Pal (R.M. Pal) left his home in Komilla in East Bengal. It was always East Bengal for him, never the later abomination of East Pakistan or Bangladesh. Partition was an abomination and he never forgave those he held responsible for it. He left home but never forgot it, or the reason why he had to leave it. It was because of us, he lamented. We, the Hindus, never learnt to treat our Muslim neighbours with respect, never let go of our caste hatreds to live with them as their equals. His school headmaster favoured him over his equally brilliant Muslim friend. How could a country that lived with this prejudice day in and day out ever be happy?

He had no time for happiness. He had no time for anything except anger, anger that his beloved land could never outlive its dreadful heritage of caste and communal strife. His was a one man crusade, to end inequality and foster peace by upholding the human rights of every single individual he met. It wasn't a matter of principle so much as personal. Everything was personal. The cobbler's right to get his son into the right school, the teacher's right to be appointed to a vacant post reserved for the scheduled castes, the maid's right to obtain alimony from her absconding husband, the hospital wardboy's right to a promotion in spite of being from the minority community. They all came to him

because he invited them. But mostly they came to him unbidden, knowing that they would never be turned away, not if there was anything he could do to turn a hostile system in their favour. He hated untouchability, raising its cruel legacy at every possible forum, attacking every apologist for it, uncaring of their stature.

As a youth, his anger and rebellion found direction under the mentorship of M N Roy, and he absorbed Roy's philosophy and then used it to channelise his own ambition. He wanted to fight the system, not the bureaucratic system of red tape and blue pencils, but the infinitely more dangerous system of entrenched caste and communal conflict that was uniquely Indian. He was a proud Radical Humanist. He became a declared atheist when he saw a refugee from East Pakistan, an old, poor and infirm woman, walking towards India and praying to God. No God could sanction such oppression and therefore there was no God. Radical Humanism gave him an intellectual framework for his views and he stuck to it till the end, reading and re-reading M N Roy's works to reinforce his own view of life.

Activism was in his blood. Not for him the cool confines of lecture halls. He wanted to be out there, where all the action was. It was only natural to join the People's Union for Civil Liberties, initially to protest against the Emergency and then to fight for

civil liberties, in Punjab, in Kashmir, voicing his views, even if they were unpopular, everywhere, in the Saturday Group in Delhi, in the CISF Training Academy in Mount Abu, within seminars of the Indian Renaissance Institute. And yet he was a popular man. He was proud to be as popular with the oppressed and dispossessed as with his friends, most of whom withstood his assault on their ways and customs because, in spite of everything, he stood by them when it mattered.

Two stints as editor, first of the PUCL Bulletin and then of the Radical Humanist, gave him the much needed platform to air his views and air them he did. Whether it was the establishment's treatment of the only Dalit president of this country, or the hypocrisy of the Hindu right wing after the Babri Masjid destruction, he was not above naming names in his editorials.

Young people flocked to him for advice. He was one of very few teachers who took his role of guru seriously. He taught English Literature in Delhi University but that didn't limit the scope of his advice. Genuine empathy and imagination powered his counselling, making it relevant for the receiver. If you had a spark, he turned it into a fire, belief in the individual his biggest contribution. His twenty year old musician grandson was as much a beneficiary of his wisdom as his graduate students.

Of late, he had been researching more and more into the anatomy of India's partition. He had left his home seven decades ago but never forgotten it. Amongst his many

unfulfilled wishes was his desire to see his birthplace once more. He knew that it, too, had become a victim of the hatred that people in the subcontinent have borne towards one

another for centuries but that didn't stop him for wishing for a better, a changed world.

Sangeeta is the daughter of Dr. R.M. Pal

Homage to Dr. R.M. Pal - The Veteran Humanist

N.D. Pancholi*

Indian Renaissance Institute is deeply grieved over the sad demise of Dr. R.M. Pal who expired at 6.15 pm Tuesday, the 13th October, 2015 at Mumbai at the age of 88. He had suffered a heart attack about two weeks ago and thereafter he could not survive. He took his last breath in the presence of his wife Madhuri Pal, and two daughters i.e. Sangeeta Mall and Ilina who were attending to him alongwith other family members.

Around the age of 19 years, he had to leave his ancestral home in 'East Bengal', now 'Bangla Desh', at the time of Partition in 1947 and the violence, sufferings and devastation which he saw made him 'atheist'. The Partition troubled him throughout his life and he never forgave those who were responsible for it. He came to Dehradun and had the rare privilege of staying with M.N. Roy and Ellen Roy at 13 Mohini Road, Dehradun during the last years of their lives. He, in his youth, imbibed the Radical Humanist philosophy direct from Roy and thereafter never deviated from it. Dr. Pal was a dedicated radical humanist. He came to Delhi and joined teaching profession in the Delhi University and retired as Principal of Rajdhani College. He devoted himself in propagating the philosophy of the 'Radical Humanism' by his writings and lectures. When publication of the Radical Humanist was brought to Delhi in 1970, as Tarkunde had shifted to Delhi, Dr. Pal proved to be important help. He was member of the editorial board and regularly attended its monthly meeting. He

became its Managing Editor in 1980 and later on also its Editor for several years. He was the Life Trustee of the Indian Renaissance Institute (IRI) founded by M.N.Roy in 1946. He helped the IRI in getting published large number of books written by Roy.

He was founder member of three important organizations i.e. the 'Indian Radical Humanist Association',-reconstituted in 1970; the 'Citizens for Democracy' -founded in April 1974 with Jayprakash Narayan as its President; and People's Union for Civil Liberties (PUCL), set up during Emergency in October, 1975 as 'People's Union for Civil Liberties and Democratic Rights (PUDR)' with Jayprakash Narayan its President and V.M. Tarkunde as Working President. Dr. R.M. Pal was very active and vocal member of these organizations which have made important contributions towards developing peoples movements in the country - especially in relating to issues of human rights, communal harmony and rights of minorities, dalits and other downtrodden, without involving in power politics. He was vehemently opposed to 'communalism' of any sort, and forcefully criticized prevailing 'casteism' among the upper cast Hindus. He has written extensively in this regard, especially on societal violations of human rights and has authored many books. He edited PUCL Bulletin for several years (1984 to 2010).

It will be worthwhile to mention here that, in addition to 'Independent India' Roy had started a quarterly journal

'Marxian Way' in 1944 which name was later changed to 'Humanist Way' in 1949, as an 'instrument of enquiry and learning' and 'really an open forum where competing stand points would come together without clashing'. Intellectual stalwarts like Philip Spratt, Laxman Shastri Joshi, K.M. Pannikar, Andre Brissaud, Dwight Macdonald, G.D. Parikh, Jules Monnerot, Bertram D. Wolfe, Dakshina Ranjan Shastri, Ruth Fischer, Aghehanand Bharti, Amlan Dutta, besides many others, contributed to this journal which had to be closed in the middle of 1952 due to financial reasons. However the articles written in this journal are a rare treasure of 'humanist thought' and attempt to show a way to a richer and more meaningful future for mankind. Dr. R.M. Pal devoted himself to bring out a selection of the articles from this treasury of 'humanist thought' which were published under the name 'Selection from THE MARXIAN WAY and THE HUMANIST WAY on behalf of the IRI. This publication is a very important contribution of Dr. R.M. Pal as the articles in it provide a deep insight into the intellectual history of the twentieth century. IRI is indebted to Dr. Pal for this valuable labour.

Passing away of Dr. R.M. Pal has left a big void in the humanist movement. He will always remain an inspiration for all those who are struggling for liberation of the deprived and downtrodden. IRI conveys its heartfelt condolences to the bereaved family.

N.D. Pancholi, Secretary, *Indian Renaissance Institute* and President, *Delhi PUCL*.

"Let's build a human rights movement in the State to fight Corporate and Hindutva attack of the People"

Jaipur, 4th October, 2015

The 9th PUCL, Rajasthan State Conference, organized in Jaipur on the theme of '*Human Rights in the era of Increasing State Tyranny and Divisive Politics*' concluded with the resolve to fight the growing attacks on the human rights of the people caused by the emergent alliance between corporate capitalism and the Hindutva ideology, which are governing most Governments in the country. Concern was expressed that the non state players in the form of mobs, led by demagogic individuals and organisations are used and a nexus is established between these non-state actors and the agencies of the State.

It was also decided that PUCL Rajasthan unit will challenge the recently passed law on vexatious litigation; oppose the 24.08.2015 Circular of the Home Department of Rajasthan Government on the non filing of FIRs against Government officials and the Union of India, Home Ministry guidelines on Jails visits on research in Jails. It is the PUCL's understanding that all these three take away the people's freedom as enshrined in the Indian Constitution. The PUCL also wants Constitutional freedom of expression in the use of internet and social media, ensuring net neutrality and right to privacy and

liberty on the internet, by both the Government, the corporate and other non state players, the latter included trolls. For this the PUCL wants proper laws to be in place.

It was decided that the PUCL would ally with other campaigns to combat the efforts of the Rajasthan Government of handing over to the private sector, the delivery of basic services like health, education, roadways, fair price shops and Anganwadis. The end of the welfare State was a violation of the Constitutional role of the Indian State. Concern was also expressed over how Government, in the name of Development, was causing displacements through its projects and plans of land acquisition and mining venture. Several participants had come from these struggle areas; not only were they facing the misery of displacement they had all been criminalised by the Rajasthan police. The PUCL resolved to fight this attack on the people.

The two day Convention which saw more than 250 members and friends of the PUCL participate from the State, was inaugurated by Prof Dilip Simeon, a Historian and commentator, on the increasing political and social violence in present times. In his address, he talked of how India was becoming

an authoritarian state, with the killing of truth. At length he deliberated how violence had become integral to state power. All dispensations were responsible for this structural violence; however, the present system of governance was the worst as RSS nationalism was extremely dangerous. He gave a call that all progressive organisations at an All India level must come together and fight this.

The two day convention also saw the new Executive take charge, with Kavita Srivastava becoming the President and Anant Bhatnagar, becoming the General Secretary. Mamta Jaitly, Bhanwar Meghwanshi, Ramesh Nandwana, Sawai Singh, Radha Kant Saxena and DL Tripathi were elected as Vice Presidents, Kailash Meena and Harkesh Bugalia elected as Joint Secretaries and P R Sharma as Treasurer, The executive committee had all the Presidents, General Secretaries, Coordinators of the districts as members along with Sri Latha Swaminathan, Rajendra Kumbaj, Mukesh Goswami, Prem Krishan Sharma amongst others.

Kavita Srivastava (President);
Anant Bhatnagar (General Secretary)

(A detailed Report is in the process of being written up and will be published in the next issue)

Paper presented in the PUCL Rajasthan State Convention, 3rd - 4th October, 2015

Welfare State under Siege: Unfolding Case of India under BJP Rule

Dr. Ashok Khandelwal

Introduction

The 17-months old Modi led BJP Union government of India has chosen a path of economic development that comprehensively undermines even the minimalist required welfare responsibility of a modern state. The change is clear:

create an aggressive, full fledged free market economy by dismantling all indicators of a welfare state.

In this note we critically examine the 'retreat of welfare state' in India in the context of the unfolding policies, programmes and budgets as also religion based politics of divide and

rule. This brief note outlines the concept and typology of welfare state, touches on arguments in favour of and against a welfare state, discusses the case of Nordic states to highlight the necessity of a welfare state given its outcomes and analyses the present government's

ideological stand, programmes and political actions to showcase the 'retreat of the welfare state'; and concludes with implications and prospects.

The Welfare State

In a market economy, the concept of a welfare state entails that the government plays an important role in protecting and promoting economic and social progress of its citizenry. Based on post second world war experiences of developed nation states, the width and depth of welfare state may be captured in four broad set of outcome indicators: viz., (i) equality of opportunity, (ii) equality in distribution of wealth, (iii) ensuring a minimum level of living and (iv) ensuring and upholding of political and civil rights to each of her citizen. A welfare state, within the limits of market economy, therefore is one that ensures that her vision, policies, programmes, laws and action lead to these four outcomes for her citizens.

The other single term used in recent times to measure the extent of welfare state is in terms of level of 'decommodification' of the lives of the people in the country. Decommodification means the extent to which the lives of the people are not determined by the market. Since essence of 'capitalism' is commodification, the concept of welfare state is actually an antithesis of 'capitalism' meaning thereby the welfare state represents decommodification part of the economy. However, the term 'decommodification' is restrictive in the sense it does not directly take into account political and civil rights. Thus any state, including an authoritarian or a fascist state, becomes a welfare state by providing health care, education, pensions etc. by the logic of decommodification.

Arguments for and against a welfare state

Like any social category, the concept of welfare state too has its advocates and adversaries. There is no unanimity on the effectiveness and

thus desirability. The evidences by the social scientists have been inconclusive. If some researchers have reported positive outcomes and emphasised the necessity of welfare measures by the state, others have provided contrasting findings and recommend no state interference in market led economy.

Types and nature of welfare states

For capital what matters is its proliferation; what is important is uninterrupted, rising production, productivity and peace and not the nature of polity; it embraces varied forms of political regimes from left to extreme right, fully liberal to fascist and authoritarian, provided its essential conditions are met.

Based on performance, the different states can broadly be classified into two categories: US Model and Nordic Model. The US model is based on aggressive or ruthless / cut-throat capitalism. The essence of this model is that everything is market determined and is based on private provisioning. The welfare role of the state is limited to extending help to sections of poor and needy in terms of cash to survive in the market economy and maintaining peace and harmony for uninterrupted commodity production. The end result of such welfare State is that there are high levels of inequality in the given society with its attendant problems and the rate of de-commodification is low.

The other Nordic model is primarily based on principle of universal welfare programmes. The people have extensive individual rights and the dependence of the individuals and families on the markets is relatively very low. The market by some analysts has even been termed as 'politics against market'. The rate of de-commodification is very high. The inequality is low.

The Nordic Model of Welfare State

The outcomes of the Nordic model of welfare state, given in Box 1, are self-explanatory and unambiguously

confirm two things. One, within a capitalist frame effective welfare state is a distinct possibility and secondly the Nordic model of a welfare state is the best suitable model to achieve the goals of human development, the ultimate purpose of any democratic state based on adult franchise.

The other important point to be noted here is that these states have been least affected by the global melt down. There have been some reduction in social spending yet the basic frame of a welfare state is intact.

Box: 1 : The Reality Check of Nordic Countries

- Comprehensive universal social security including free quality equal education, universal health care and pensions excellent social security for unemployed up to 90, 80 and 75 percent of wages. .
- Almost zero corruption: as per the 2014 Transparency International report the Nordic states of Denmark, Finland, Sweden, Norway are among the top five countries in transparency.
- High level of effective unionisation of workers. The figures for Finland and Sweden stand at 70 and 68.3% for the year 2000. Side by side there very strong process of collective bargaining. As per the 2014 International Trade Union Conf report Denmark scored perfect and other states too were highly placed.
- High levels of public spending: Sweden 56.6%; Denmark 51.7%, Finland 48.6%. Very high expenditure on education and healthcare.
- High direct tax rates: 51.1 % in Sweden, 46% in Denmark and 43.3 percent in Finland.
- Very high level of personal freedom.
- The 2013 World Happiness Report reports that the people in Nordic states are the happiest ones.

The “Retreat of Welfare State” under Modi led BJP

Government

India though not a developed country was developing as a welfare state more towards Nordic model of a welfare state despite economic reforms and adoption of LPG growth model. With high economic growth the economic inequality did increase during first decade of 21st century but there were efforts to move towards ‘inclusive growth’ by the ruling dispensation. More importantly there was space for struggle for demands related to welfare measures. The recent history is replete with struggles of the contending views representing the two extreme views at all levels of academic debates, in parliament and as well as on streets. The major ruling political party too was divided, but conceded under public pressures. As a result the programmes like SSA, MNREGA, PDS, MDM, ICDS became legal entitlement. All these programmes to some extent related to ‘decommodification’ i.e. lowered people’s dependence on the market. The civil society, freely raised questions and struggled and lobbied for increasing decommodification asking for state sponsored universal quality health care, education, food security, maternity benefits, social security, sustainable development etc. as a matter of inalienable human right guaranteed by Indian Constitution as well as accepted international instruments.

Soon after the newly elected union government led by Mr Modi took charge the shift in the welfare approach was visible at various levels. To name a few, there were attacks on MNREGA and PDS. In the name of financial inclusion the poor are being brought directly under the exploitative markets. The PDS which was insulated from the market and is a strong component of the decommodification is now being brought within the ambit of market economy through direct cash transfer. In states like Rajasthan

even schools under RTE and PHCs are being given to private players. In the budget there have been large cuts in social spending.

The Atal Pension Yojana is an eloquent testimony of the ‘retreat of welfare state’. Experts who strongly believe in market economy have termed this as ‘regressive’ scheme. The much acclaimed scheme to protect the senior citizens hailing from the most poor, deprived and vulnerable sections of the population is perhaps the worst form of state sponsored welfare measure which, in fact, favours profit-generation for companies who manage pension funds rather than the poor. The scheme provides much less than the available rate of returns to considerable extent.

Equally similar drastic changes are taking place at the institutional levels. For instance, **Niti Ayog** the new incarnation of earlier planning commission is headed by the vociferous votary of the liberal capitalist model, the US model rather than Nordic model. The debates between the Amartya Sen and Arvind Panagariya on food security bill and MNREGA, the two important welfare programmes that fall under ‘decommodification’, still fresh in minds are clear testimony to this.

The retreat is based on the articulated ideology of the government that believes that welfare measures leads to inefficiency and waste and corruption the cost of which is borne by the people. In fact government has been giving all the arguments that adversaries of welfare state have been traditionally been giving. The mantra of the government is people should be independent and manage and defend their lives by themselves.

The other important ideological rooting of retreat of welfare state by the present government lies in its religious base. Numerous studies suggest that any state which is rooted in religion, would oppose effective welfare state simply because the welfare state in the first place displaces in large measure the

need for religious faith as an anchor and emotional support; secondly the welfare state promotes collectivisation.

The writing on the wall for future of welfare state in India under BJP government is crystal clear.

Conclusions and Way Ahead

A welfare State in true sense of the term is one that ensures equitable quality education, health care and adequate social security to all its citizens without any exception, along with political and civil rights. The need of such a state for India need not be overemphasized.

The entire emphasis of the present Government of India is on ‘investment’ and ‘ease of business, nothing more and nothing less. All the agencies of the state power are geared towards promoting interest of capital in the name of development. Forgetting the very recent history of India wherein high growth led to more miseries for the people, in their ideology the panacea still lies in capitalist development in terms of GDP growth. And to achieve this objective the Government is retreating from its most important role of providing for people’s welfare.

Way Ahead

For the 17-month old government it has not been a cake walk though. Popular resistance, voices of dissent, competitive politics and court interventions has forced the government to retract on several issues directly or indirectly related to ‘retreat of the welfare’ programme. The diatribe against the MNREGA, for instance, had to be changed in support of the programme and the changes brought about in the land acquisition bill of 2013 had to be abandoned. The main task of the social workers today is to work towards generating sustained mass awareness about

- (a) The concept of welfare state along with the essential and necessary four pillars of equality of opportunity, equitable distribution of wealth, provision of basic needs for all and political and civil rights.

(b) The comparative outcomes of different types of welfare state models in existence, especially in the developed countries, needs to be publicised.

(c) Demanding that the ordinary citizen is given the right to vote for the kind of welfare state the country should follow.

¹Labour Economist, presently Commissioner of the Rajasthan High Court in the Homeless PIL petition filed by the PUCL

Rising Pace of Transfer of Public Health System to Private Operators under PPP Schemes

How would it Impact Citizen's Access to Medical Care

Narendra Gupta

Public Private Partnership (PPP) is a new method to let private sector make full use of public institutions for their private profit. Citing different kinds of reasons, there is an increasing trend to contract out public health care services in various states of India. Since there is no national policy on PPP it is being done differently in different states. Some forms of PPP are like contracting operation of mobile health services for villages, transfer of Primary Health centre (PHC) along with attached sub health centres and sometimes even Community Health centres. Another form of PPP is the insurance where no infrastructure or equipments are handed over but the patients are transferred to private health sector to which governments reimburse the cost of treatment they claim.

Some commonly used reasons to enter into PPP are that Government cannot find human resource for health to post in difficult areas and hence PHCs, SHCs etc. are offered to private entities. Similarly, it is difficult to run mobile medical units through the regular staff of the government because of cost over runs etc. Other reason cited is that of the number of patients attempting to seek care in secondary and tertiary level institutions are so many that it is very difficult to provide quality care to and therefore rope in private health sector especially the big corporate hospitals to take on the task of providing high end treatment for critically ill patients.

In this paper we examine the case of Rajasthan which has recently unveiled a massive plan of

outsourcing of public health institutions and check if it will indeed enhance access to medical care and at what cost to patients and the government.

"Run a PHC Scheme" of the Rajasthan Government

The Medical & Health department of Rajasthan has made an offer to transfer operation of primary health care services delivered through 300 PHCs to private institutions and individuals through a process of bidding. It advertised a "Request for Proposal" on 23rd July 2015 on its portal (<http://www.rajswasthya.nic.in/407%20Dt.%2023.07.2015%20Revised%20Tender.pdf>) which read that a cabinet decision has been taken to hand over 90 PHCs along with their health sub centres and village level health activities to eligible private individuals and institutions for operations under the "Run a PHC scheme".

One can apply for more than one PHC but bids have to be submitted separately for each PHC. Estimated amount for each PHC is Rs. 30.00 lacs annually and MoU for five years will be signed with the successful bidder with lowest quoted amount if other eligibility criteria are met. MoU can be extended further for another five years. Those who are eligible to apply should be a 'not for profit' agency, group of doctors with each having minimum MBBS qualification, individual MBBS doctor, private limited company etc. Experience of running government hospital or running a 10 bed hospital other than govt. hospital would have higher eligibility.

Similarly, bidders having more than

1 crore annual turnover since last three years and applying for high priority districts etc will have additional weightage in eligibility. Last date of submission of bid document was 31st August but till 29th August, the Government had not put up the list of PHCs. It issued a corrigendum on 30th August with a list of 300 PHCs instead of just 90 which was mentioned in the first advertisement. All these PHCs are distributed in 34 districts (Jaipur is divided into two districts) of Rajasthan.

Each bidder was to deposit Rs. 60,000/- along with the proposal and the successful bidder has to deposit Rs. 5 Lakhs as security deposit for each PHC. Each successful bidder has to appoint a staff of 11 persons at the PHC and one ANM at each of the sub centre attached to it which could be between 5 to 7. The staff at PHC includes a doctor, two nurses, a pharmacist, a lab technician, a LHV, an ANM, a data entry operator, 2 ward boys and a sweeper. A list of the tasks to be performed mandatorily is mentioned in the bid document along with the performance indicators with weightage for different categories of the tasks to be performed.

For instance weightage for running the outpatient department is 5% and that of in patients including deliveries is 6%. Safe motherhood which includes registration of 95% pregnant mothers in first year and 100% by the third year carries 6% weightage, 95% women receiving 4 antenatal checkups in first year and 100% by third year is assigned 10% weightage, 200 normal deliveries

annually in the first year and 300 deliveries by the third year is assigned 7% weightage and 5% is assigned to high risk cases referral. For infant care, the weightage allocated for all high risk infants screened and referred to malnutrition treatment centres is 7%, for 90% immunisation in first year and 100% immunisation by third year is given weightage of 11%. For family planning methods, total weightage is 19%. This includes 12% for 75% of the sterilisations as per minimum level of achievement and 7% for temporary methods which should be 75% of the unmet need for each method in first year and 100% after third year so that the TFR of 2.1 is achieved at the end of 4th year.

An attempt to help private medical establishments

On examination of the physical location of the 300 PHCs, it was found that a majority of the PHCs are either in or around urban areas and almost all have easy accessibility while earlier the Government announced that only PHCs located in far flung areas will be offered to private operators as Govt. finds it difficult to post health personnel there. There is a clause in the bid document about 'Additional services including diagnostic services' which the private provider can introduce at PHCs and sub centres. These additional services can be charged at rates agreed between government and private service provider beforehand. Though, it is not clearly mentioned from whom will the private operator charge but there is enough indication that it will be from the patients seeking these additional services. There is no explicit mention about what these additional services could be but we may guess that these would be services of specialists such as of paediatrics, gynaecology, ophthalmology, orthopaedics etc and diagnostics services such as ECG, ultrasound sonography, X-rays etc. These services otherwise are not part of the mandated services of a PHC as illustrated in the IPHS guidelines.

The concern is that the introduction of additional services can partially or completely distort the delivery of services from PHCs, sub centres and at village level. For instance, ultrasound sonography is not a service mandated to be provided at the level of PHC, but if the private provider installs it, begins to advise it to all pregnant women and collects charges, it will provide considerable income much to the violation of Janani Shishu Suraksha Yojana (JSSK) norms which has been launched to provide cashless maternal and neonatal health services. There is a plan to install Health ATMs at sub-centres through which patients can consult with the doctors for their ailments using tele-consultations. These health ATMS will be established through entrepreneurs who will run them by collecting charges from the patients although medicines dispensed through them would be provided free under the Free Medicines Scheme of the Rajasthan Government. There could be several such additional services to collect user fees from patients. Though not clearly stated, however it looks like that placing PHCs for bidding which are close to urban areas or within easy physical accessibility seems to have been devised to make it easier for private hospitals with inpatient facilities to get patients from these PHCs for their hospitals as the RFP is silent about the system of referral to be followed. Criteria such as those who have experience of running a 10 bed hospital and having turnover of at least 1 crore annually since last three years would have higher eligibility for bidding. These conditions further corroborate this possibility that big private hospitals would like to grab this opportunity of getting PHCs which they will turn into their satellite centres for obtaining patients.

Such practices will distort and disarray the entire concept of referral chain system of from PHCs to CHCs to district hospitals and to medical college hospitals. In the absence of any clear guidelines, it is doubtful that PHC operators would refer

patients who cannot be treated at the PHCs to higher government health facilities, but even if these exist the private operator may influence and insist on patients to seek higher medical services from privately owned hospitals by citing insubstantial elements of quality and accessibility. It is very obvious that this move of the Govt. of Rajasthan to hand over PHCs would force families to pay more than what they were earlier paying out of their pockets. It will promote unnecessary and irrational medical treatment and investigations and may initiate a process towards dismantling of public health system. The irony is that by doing this, the government itself will not be making any savings. How VHSNCs and ASHAs would function after the PHCs, sub health centres and village level health activities are transferred to private operators is not clearly stated, but certainly going to be negatively affected.

Other forms of privatization

Other daunting mode adopted by the Govt. of Rajasthan to privatise public health system are handing over of PHCs to bodies who wish to run them through their own resources. Already 30 PHCs in 12 districts have been handed over to a foundation which has been allowed to experiment with the concept called "Asset-light, user paid, affordable private primary healthcare clinics in areas with remotely located PHCs that increases choice, access and quality for underserved". Users of the services from these PHCs and subcentres ought to pay for additional services which could be medical investigations through improved tool kit, access to medical advice through tele-consultations etc. In another form of PPP, three CHCs of Jaipur district are about to be handed over to two private medical universities and one in Barmer district to a private limited health company to be operated through CSR funds. CHCs to be given are in vicinity of private medical colleges with very high footfalls. The private

medical colleges will use their own resources to manage these CHCs and use them as outpost medical facilities for their private medical college hospitals. A transfer of this kind will alter the referral system. Yet another form of privatization is introduced through launch of health insurance scheme with initial cost of Rs. 350 crores annually. About 1 crore families will be insured through smart cards under the scheme for up to Rs. 3.0 lacs in instances of critical illnesses and Rs. 30,000/- for

general illnesses. In this form of privatization, instead of transferring the infrastructure and other hardware, patients have been transferred to big private hospitals for which reimbursements would be made by the Government through an insurance company. Many corporate hospitals have been lobbying for launch of such an insurance scheme to corner public health funds in their kitty. Insurance is a business concept and works on the basis of risk pooling. Insurance companies

whether in private or public sector and the private hospitals join any insurance program only when they make substantial profit. With these moves, the Govt. of Rajasthan has thrown open all segments of public health system - primary, secondary and tertiary care to private medical sector which will enhance out of pocket expenditure and a lot more irrational medication and unnecessary surgeries.
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Politics of Privatisation and PPP in Rajasthan: What are the risks?

Dr. Nesar Ahmad

Recent policy developments in the state

The BJP government has in the last two years brought in some very interesting policy and legislative changes in Rajasthan. Let us have a look at some of the recent policy and legal changes in the state. Below is a summary of some of the recent developments:

- *First changing the central labour laws in the state to make it easier for the industries to retrench the workers, make it more difficult for the workers to unionize and removing the compulsion to implement the Factories Act for most of the industries.*
- *Then bringing a bill for not implementing the 2013 Act on land acquisition and rehabilitation and resettlement in the state and fast acquisition of land of the farmers without their consent and without the social impact assessment, which is now put on hold but can be again brought in any time. Beside, the state government has also passed its own Special Economic Zone Act.*
- *Then bringing a draft policy for introducing PPP in secondary schools and efforts to give the*

select schools to the private sector.

- *Then a decision by the cabinet to hand over 90 primary health centres (PHCs) to the private players and later handing 300 PHCs and one Community Health Centre (CHC) to the private companies.*
- *Handing the anganwadi centres to the private companies as Nandghars.*

These are some of the examples of the steps taken by the BJP government in Rajasthan, which indicate a certain policy direction. They indicate the state government's immense trust in the private sector and the intention to protect the interests of the private sector companies. This becomes even clearer when one looks at the list of the members of Chief Minister Advisory Council in the state which replaced earlier State Planning Board. The CM Advisory Council is packed with leading industrialists of the country.

The state government seems to believe that by giving all kind of waivers to the private sector (changes in the labour laws) and giving them various facilities (efforts to make the land acquisition easier) will bring lots of national and foreign

investment in the state which will ensure fast economic growth, which in turn would create employment. The upcoming Resurgent Rajasthan, in which big investors and industrialists from the country and abroad are invited, is also an effort in the same direction.

At the same time the argument given in favour of privatization of social services like health, education and anganwadi centres is that the government has not been able to run these services efficiently and the private sector can do a better job. Therefore, privatization of these services would lead to better service delivery to the masses.

Growth at what cost!

There is a need to scrutinize these arguments critically. Is it necessary to give all kind of waivers to the private sector to attract investment? Can there be economic growth only when labour rights are curtailed and farmers' lands are taken without their consent? What is benefit of the jobs created by such economic growth (if at all jobs are created) when the workers would have no job guarantee and no basic facilities and safety at the workplace? How can the negative impacts of industrialization on environment and society be checked without having the social impact assessments of the projects? Is the

fast economic growth as necessary that the government can curtail workers' and farmers' rights for it?

Does the fast economic growth actually lead to employment creation? If we look at the statistics, there has been fastest economic growth in the country during the 10 years of the United Progressive Alliance (UPA) rule led by Manmohan Singh. On an average the Indian economy grew at 7.6 % per annum during the UPA rule. However, the employment increased at slow pace of 0.5% per annum during this period, as per Economic Survey 2014-15. Not only this, the unemployment rate also remained at the level of 2% during the decade.

Is private sector really better in service delivery!

Now the other aspect of the privatization policy of the Rajasthan government that is privatization of basic social services like primary health, education and anganwadi centres should also be examined. Are the private schools and private health centres better than the government schools in providing quality services to the people? But we will also have to look at the available budget, availability of the teachers, doctors, nurses and other staff at the government health centres and schools. The government health centres suffer from vacant posts of doctors, nurses and other technical staff while there are very few teachers in the government schools in the remote areas. The status of basic infrastructure in the government health centres and schools is also quite well known. It is meaningless to compare the private and government health centres and schools without ensuring these facilities.

The budget for health and education in the country and the state, though seems to be very high, is very low compared to the gross domestic product of the country and the state.

Both at the national and state level the allocation to the education sector is slightly more than 3% of the GDP and allocation to the health sector is slightly more than 1% of the GDP. The government's commitment on various forums is to provide 6% and 3% of GDP for education and health respectively.

Most of the education budget in the state is directed towards the primary education. The budget for secondary education is very low and budget for higher education is almost negligible. This year (2015-16) the health budget in the state is Rs. 9416 (including the budget for the centrally sponsored schemes), which comes to little more than Rs. 1200 per person. It should be noted that this budget includes salaries as well which is large part of the health budget. Obviously there is not adequate budget for the social sector schemes.

Also, the private companies have this clear motive of making profit and not that of serving the people. For example the state government has allowed the private companies running the state PHCs to charge the people for those services which are not provided on the government PHCs. This policy provides the private sector with a ready market for their services and makes it beneficial for them to run the PHCs. Also the most important question is, if the private companies have to provide services to the people they can do so in addition to the government efforts. Why they must try to replace the government? They can run the schools, health centres, and crèches for workers children at free and/or affordable costs for the poor people without taking over the government run schools and PHCs on part of their corporate social responsibility.

The politics of PPP

The privatization of basic social services in the name of Public Private

Partnership will have larger political implications. There is hardly any evidence that shows positive outcome of the privatization of services in terms of increased access of the people to these services. On the other hand privatization may lead to increasing cost of these essential services for the people as also further commodification of these essential services. The commodification essentially means that the services like education and health are considered at par with any commercial service which can be provided commercially in the market.

Also the increasing privatization of the essential services and policy and legislative changes favourable for the private sector indicate the increasing role of and direct intervention by the private sector in the policy making. The CM Advisory Council is full of the big industrialists and government is listening to their suggestions and ideas. This is not necessarily in accordance with the true spirit of the electoral democracy in which people elect their government to make policies and legislations.

In conclusion, the move to privatize the basic social services and the greater emphasis on PPP and the favour provided to the private sector may not be able to achieve their stated objectives. On the other hand there is a threat that these policy and legislative changes may deprive the poor workers and farmers of their rights and can push them in further disadvantageous position, while the public sector social services available to them, in whatever form and quality, may also get far from their access. This may lead to further marginalization of the poor people in the state.

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Fair Price Shops and the PPP

Kavita Srivastava

Vasundhara Raje's favourite Mantra, the PPP, has now been initiated with the Fair Price Shops (FPS). After initiating PPP in Health, Education, Angan Wadi Centres, Roadways (low floor buses), it is now the turn of the PDS shops called the FPS. This new scheme was launched on the 20th of August with 5000 shops of the total 25,000 shops. It is important to note that FPS shops are run by private dealers and also the cooperative societies and Mahila Mandals.

Here is a short factual note on the scheme, which was prepared after talking to various people including the Principal Secretary Food Sh. Subodh Agarwal and a few DSOs and the Marketing Manager Sh. Bhagwat of the Rajasthan State Food and Civil Supplies Marketing Corporation Limited. (RSFCMC). We also visited a few shops and obtained their opinions.

Name of the Scheme: Annapurna Bhandar Yojna

What is the scheme: It is a public private partnership (PPP) scheme for providing multi-brand products of daily consumption at fair price shops (FPS). According to the Department this is a step towards modernising the Public Distribution System by providing better quality multi-brand consumer goods at competitive prices to the general public through FPS.

It consists of providing shelf space to the multi brand retailer in the FPS shops. According to the Principal Secretary food it means that only those FPS will be selected on the basis of Approachability (30 foot road par khulti hui), Space (200 sq feet) and Willingness to run it, Good image, no criminal cases of the against him. . .

Only those items can be sold by the multi brand retailer which the FPS shop is not presently selling through the PDS and the products provided by the Rajasthan State Food and Civil Supplies Marketing Corporation Ltd. (RSFCMC).

Presently the FPS is selling through the PDS at subsidised rates Cereals (White or Rice: millets not yet being supplied), **Kerosene and Sugar** (as and when available). **This is controlled through the ration card.**

It is also selling non PDS items which are under the brand name "Rajbrand" which is supplied by the Rajasthan State Food and civil supplies Marketing Corporation Ltd. which are at price less than the market, but not as subsidised as the above items. **The items are: Spices: Dhaniya (Rs. 27 for 200), Chillies (Rs. 30 for 200 gms), Haldi (Rs. 22 for 200 gms), Tea (40 Rs. 250 gms), Salt Rs 7 Rs for 1 kg).**

These are selling very well according to the reports of the various DSOs as these prices are less than the market prices in rural areas, where the local bania loots people. **You do not need Ration Cards to buy these items.**

Feed Back on the non-PDS items sold through FPS: Field activists have reported that the FPS dealer many a times bargains with the consumer making their right to get subsidised grain conditional to the buying of any of the above items. Which ofcourse the Government and all the DSOs deny.

The new PPP model will now sell items other than the above. They have listed 46 types of items with the product numbers (against these items) going upto 140. The list of the Non- PDS items which the RSFCMC shows on its website which will now be supplied by the private partner include:

Refined Peanut Oil, Refined Sesame Oil, Refined Mustard Oil, Washing Soap, Washing Powder, Bathing Soap, Powdered Edible Spice, Notebook (Stationery), Mobile Chip (Recharge Coupons), Pulses

This list has grown longer and gone up to 46 items and will consist of everything that a provision store keeps depending on its marketability. According to the Press note of the Directorate of Public Relations, these Fair Price Shops "would now have additional goods such as edible oil, ghee, pulses, jaggery, spices, different types of attas such as maida, besan, rava, pickles, sauces, personal care products such as talcum powder, hair oil, shampoo, creams, razors, toothbrushes, sanitary napkins, home care products such as Phenyl, Toilet cleaner, detergent bar, powder,

mosquito repellent, stationery products like pen, pencils, notebooks, snack products such as noodles, wafers, biscuits, chocolates in short a much wider and deeper array of goods".

Who are the Partners: Rajasthan State Food and Civil Supplies Corporation and Future Consumer Enterprise Ltd. (FCEL), signed an agreement in the presence of the Chief Minister in her Office on 20th August, 2015. The tenders were floated in February and the CM herself it seems tried to get in touch with various multi brand retailers, like Reliance (Ambanis), Metro and other. But only one group showed an interest. They will partner with 5000 shops of which

1201 are LAMPS and Krishi Vikas Sahkari Samiti and 3799 are private dealers.

The Agreement and Terms of running the show:

What are the terms of the agreement: We do not have a copy but we have been told that the present agreement is with 5000 shops. The Biyani's did an experiment in five shops in Jaipur and one in Udaipur. The Jaipur shops which are as follows: The best shop is the 1st one in the list, who has sold maximum products and they have taken stuff from the future group several times. The other shops are not doing too well. The explanation is that the city gives more choices of shops and products therefore these brands are available in other shops also. **Shop Number: 420** Sushil Kumar, Shivaji Nagar 420, (Civil Lines), Rs.2,19,000 since October, 20, 2014: Doing well. However the owner was not at all excited said that the sales are meagre, although the quality is very good, but there are many reasons why these shops do not function in a city.

1. Shop Number 403, Ashok Kumar, Saini Colony, Kartarpura, Rs. 1,12,000, (now does not keep stuff).
2. Shop Number: 499, Bharti Devi Sindhi Colony, Raja Park, Rs. 97,000 , The dealer in protest had put all the items in a corner and said that running the shop was a losing proposition.
3. Shop Number: 374 (A), Chiranji

Lal, Chitrakoot Jaipur, Dec 2014, Rs. 60,000 (not doing too well, almost shut.)

4. Shop Number: 670, Goverdhan, Bhankrota, Jaipur Dec Rs. 43,000 (almost shut and also does not keep all the items).

In Udaipur the FPS shop used for the pilot was in village Thur, close to Udaipur. It is run by the Sahkari Samiti the *Thur Gram Sewa Sahkari Samiti*, Udaipur. Since October 2014, products worth 7 to 8 lacs have been sold. Here they did their own investment and bought products and sold them.

Through our conversations with the Principal Secretary, Food and Civil Supplies and Sh. Bhagwat GM Marketing RSFCMC Ltd, the company deposited a security of 1 Crore rupees with the Government. The agreement is also about Future Group giving 1% of the total business it does to the Corporation towards Administrative charges which will include facilitation, building awareness, strengthening the shop, increasing personnel for supervision etc.

The profit of each item will be divided in a 40 / 60 % ratio between the FPS dealer and the Consumer, **which means that items will be sold at a discounted price to the consumers.** For instance there is an item sold with MRP of Rs. 10 then the FPS dealer will sell it for Rs. 9.40 with the consumer getting a discounted price of Rs. 0.60 paise

and the dealer will get Rs. 0.40 paise. The supplies will be ensured by the Future Group and the role of the RSFCMC Ltd will be that of monitoring and supervision. Particularly checking the prices end. Agreement also states that the Future Group will supply better quality consumer goods at affordable prices at the FPS as well as impart training to the dealers for use of modern techniques of retail trade and management and implement best modern retail practices, as stated by the GM marketing of the RSFCMC Ltd.

The reason why this is being done is because the CM took inspiration from the Large-sized Adivasi Multipurpose Cooperative Societies (LAMPS), store at *Tamatia* village in Dungarpur district during her visit where ration shop, small bank, *khaad-beej* and grocery products were being made available at one place.

What is our opinion

The PPP model is the new mode of privatising services. What is shocking is that the Government is desperate to even outsource governance on issues of right to life. The PDS is a conduit to the right to life. The Government is refusing to see that linking food through the PDS to overt and covert conditions will violate the basic right of the people of accessing food.

The Biyani group a multi brand retailer, can now access 5000 shops

and crores of consumers which otherwise they would not have access to. In Rajasthan under NFSA 69% of the population can access subsidised ration.. It is certain that that now Biyanis can access this huge consumer group, apart from the rest of the people who do not access the FPS which otherwise it would not have been able to. The Sahkari Samiti FPS are better shops with their entire infrastructure created by the Government. They will be putting their infrastructure for private profit.

For the FPS dealer, it means that if the goods sell then the FPS dealer will gain. Since the present deal is with the majority of the private FPS dealers in Rajasthan and they are the majority in Rajasthan they will join group of traders of retail in the village market. In order to earn their money and make their profit they may make the subsidised ration conditional to the buying of products at the shop. The profits of the Sahkari Samiti definitely will accrue to the larger group however, their numbers are few.

Most importantly the issue for fair and transparency in pricing along with quality were the biggest battles that were fought at all levels around the PDS shop. Systems of price control, quality and transparency are not yet in place, these are the tools of empowerment for the consumer which only time will tell what the experience will be.

Why we oppose 'The Gujarat Control of Terror and Organised Crime Bill, 2015'

Rohit Prajapati & Trupti Shah

The Gujarat Control of Terror and Organised Crime Bill, 2015 (**"the GUJTOC Bill"**), now awaiting for the President's assent, violates principles of civil liberties and the constitution both in spirit and its fine print.

It draws heavily from the now repealed Terrorism and Disruptive Activities (Prevention) Act (TADA) and Prevention of Terrorism Act (POTA), both of which faced criticism and were ultimately repealed because of allowing the state to violate principles of civil liberties and human rights. The present GUJTOC Bill, however, is

even worse and goes a step further in mortgaging civil liberties as compared with the repealed TADA, POTA and the Maharashtra Control of Organised Crime Act, 1999 (**"MCOCA"**). Arun George, writing for news portal, www.firspost.com rightly points out that the GUJTOC Bill is a revamped version of the Gujarat Control of Organised Crime (GUJCOC) Bill that was returned unsigned by the president on two earlier occasions.

The BJP led Gujarat government had tried and failed to get the GUJCOC Act passed since Narendra Modi took over as the chief

minister of Gujarat in 2001. Then president APJ Abdul Kalam and Pratibha Patil both rejected the bill in 2004 and 2008, respectively, after Government suggested amendments in provisions related to telephone interception and confessions made to a police officer would be admissible as evidence in court. The new Gujarat bill is veiled as a law that seeks to curb both organised crime and terrorism in the state, but as should be clear from the above, in practice, it will amount to a no-holds-barred attack on free speech; due to its vague language, the act will be a codified means for

police intimidation to crush opposition to executive policies and governmental decisions which will now be construed as a “terrorist act.” This is particularly relevant in the current climate of contentious environmental & labour policies and government/corporate land grab dividing the present government and ordinary people.

The proposed legislation is draconian and will give the government not only a means to intimidate minority communities as was seen during the POTA era, but also a means to suppress all dissenting voices, opposition mass movements, effectively crushing people’s voice against government’s anti-people policies. It will open the flood gates for state repression and state-sponsored terrorism. POTA, in its short life of a little over two years, was the legal means to register 287 cases in Gujarat – all against Muslims, barring one case; a similar pattern was observed with TADA, which was misused heavily in Punjab as well as in Gujarat to large extent.

In 2015, the opposition abstained from voting on the bill in the Gujarat state assembly, yet the GUJTOC bill made its way through brute majority and now awaits President’s assent. In brief, we are opposing this proposed act because it violates every principle of civil liberty, human rights and Indian Constitution. The most worrisome aspects of the proposed GUJTOC are:

1. Poor, deliberate ambiguous definition of legal terms. The language of the act makes no distinction between acts of terrorism, criminal activity and legitimate protest against the government anti-people policies. It defines “terrorist act” as “intention to disturb law and order, or public order, or to threaten the unity, integrity...”. Sections 2(1)(d), (e), and (f) respectively all refer to one another in a circular manner and offer little clarity. The definition of “terrorist act” in Section 2 (h)

is long winded, logically inconsistent and misleading. In effect, any opposition to anti-people amendment or new laws related to labour, environment, land acquisition, or anti-people project, could be construed as an actual act of terrorism, and a concerned citizen expressing dissent can be prosecuted. This proposed draconian law would allow for prosecution, amounting to persecution, which if successful, entails at least a five year jail term and a fine of Rs 5 lakh. As Sharib Ali, a legal activist explains, from a group of people protesting on the road against GM crops, or those sitting on a dharna asking for drinking water – all could be characterised as engaging in a “terrorist act”.

2. Sections 5 allows for special courts dedicated to prosecution under this act. The state government, with the concurrence of the Chief Justice, will be allowed to set up one or more special courts and appoint judges for exclusively trying offences under the Bill. The special courts have the powers of sessions courts but can also take cognisance of offences. Section 10 reproduces verbatim from MCOCA, stating that trials before a special court shall have precedence over trials before any other courts, and imposes a *de facto* stay on all other proceedings for the period of the trial. The Gujarat bill, introduces the provision of the Special court “taking cognisance of any offence without the accused being committed to it for trial” on the basis of a mere police report.
3. Section 14 of the proposed law allows evidence collected through the “interception of wire, electronic or oral communication” admissible in the court against accused. The first provision of the section

requires that the accused be provided with a copy of the order of the authority authorising the interception, ten days prior to the hearing where the intercept is sought to be admitted as evidence. But the second provision, partially nullifies the first provision as it gives the judge the discretion to waive the period of ten days. Thus the law effectively sanctions spying on Indian citizens by the Indian government.

4. Section 16 allows a confession that was recorded before a police official of Superintendent of Police rank to be admissible in a trial against the accused or any of the other accused in a case. This overrides Section 162 of the Code of Criminal Procedure and Sections 25 and 26 of the *Indian Evidence Act, 1872*, which specifically prohibit the use of statements made to police officers in evidence, in order to protect the rights of the accused by preventing the extraction of confessions under duress or torture by the police. This provision opens the door to violations of human rights while extracting confessions from persons detained under its provisions. Manish, legal activist and alumnus of NLSIU, Bangalore pointed out in a paper how the Bill provides some ‘safeguards’ in clauses (2) to (4), which are mostly meaningless. According to him, this section appears to be an elaborate ruse for legitimising confessions to the police, as under clause (7), an allegation of torture by the person making the confession does not invalidate the confession, but merely prompts a reference to a civil surgeon for a medical examination.
5. Section 17 contains provisions for the protection of witnesses that could lead to effectively “secret” trials that are not put in front of public scrutiny. This

provision is modelled on Section 19 of MCOCA. It empowers the special courts to hold the trial in-camera and take any measures necessary for concealing the identity and address of the witnesses. As part of this power, Clause 3(d) allows the court to make a decision that “*it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner*”. In an attempt to gag any reporting on trial proceedings, the law imposes a punishment of Rs one lakh along with a one-year prison sentence. This gag order by the court will penalize the few journalists who follow the cases in court, while leaving the initial frenzy of police stories untouched. Not to mention, snuffing out public scrutiny of the government’s case.

6. It allows for the period of investigation to be extended to 180 days so that the police have more time to keep an accused in custody. Section 20 dilutes several procedural safeguards provided to the accused under the Code of Criminal Procedure. On the lines of MCOCA and Unlawful Activities (Prevention) Act (UAPA), it increases the time for which a person may be detained in police and judicial custody, pending investigation, to 30 and 180 days respectively.
7. It prevents an accused from getting bail while in custody. Clause 20 (3) removes the option of anticipatory bail and clause 20 (4) provides for extremely restrictive conditions regarding bail, almost mandating the acquiescence of the public prosecutor. Clause 20 (5) is another controversial provision, which denies bail even if the accused had been released on bail in an offence under any other law on the date of the offence. This clause is based on Section 21(5) of

MCOCA, which was held to be unconstitutional by the Supreme Court in 2008. The Bill therefore deviates from the well-established jurisprudence of bail being a right and jail being the exception. Thus, even if no charges are made out, people detained under the provisions of the Bill will have to languish in jail.

8. Section 21 of the Bill, which is identical to Section 22 of ‘MCOCA’, is a reverse-onus clause, which shifts the burden of proof from the prosecution to the accused in certain circumstances. In doing so, it dispenses with the presumption of innocence of the accused and breaks the “golden thread” of criminal jurisprudence, requiring the prosecution to prove the guilt of the accused beyond reasonable doubt, which originated in common law but has become a settled proposition in Indian criminal jurisprudence as well.
9. The act would legally permit torture of the accused. It provides immunity to the state government officials so that no suit or prosecution can be initiated against the government for any act done in “good faith”. Section 25 caps off the draconian legislation by granting complete immunity to all state functionaries for any action taken under the provisions of the Bill. This effectively provides impunity to police officers for torture and extra-judicial methods employed in criminal investigations, under the garb of “anti-terror operations”. Thus, even in cases of false prosecutions, like the 2002 Akshardham terror attack, the victims will be left empty handed and without any recourse to justice. The Act would bend over backwards to protect those with authority while disregarding the basic civil rights of the common person

accused.

10. The proposed law leads to the possibility of filing an omnibus FIR. According to legal activists, an omnibus FIR does not name specific names, and accuses big batches of individuals allowing for specific names to be filled in later. Looking at the history of the counter Naxalite insurgency in this country, we have seen that it is common practice individuals to have their names added to the FIR many years into an ongoing trial. The trial will wait till another state’s police will take them for examination, and then another, and possibly another. And the very case will not be heard for years, leaving the fate of the accused in limbo.

Governments and the Indian State have de-facto declared a war against any opposition, and in doing so, it is a war against all such organisations and activists who have taken up the struggle to defend the cause of Justice and Human Rights on various people’s issues. Through its many vices—including the loose definition of “terrorist act,” the constitution of special courts that trump the rest of the legal system, the legally sanctioning spying and torture of citizens, low bar of evidence (i.e. police-obtained confession), lengthy custody with the prevention of bail, presumption of guilt—this act is a danger to democracy. The Government is trying to create legal mechanisms to suppress people’s movements by enacting such laws.

It is time for all movements, organisations and activists to give a united fight against such laws. It is time to show our united strength against the fascist forces.

We, the concerned citizens and activists resolve to continue our fight for Justice and Truth, to uphold the values of Human Rights, to stand up and speak-out for the oppressed against injustice of all kinds, unafraid of all consequences.

CJI Voting Statistic, System Needs to be Fine-Tuned¹

Rajindar Sachar

The much-awaited Judgment of the Supreme Court held today that the Constitution (Ninety-ninth Amendment) Act, 2014, and the National Judicial Appointments Commission Act, 2014, is unconstitutional and void and the consequence is that the collegium system existing prior to the Constitution (Ninety-ninth Amendment) Act, 2014, is declared to be operative.

The court found fault with the composition of the National Judicial Appointment Commission. The reason given was that if the inclusion of any of the members of the NJAC is held to be unconstitutional, Article 124A will be rendered nugatory in its entirety. The court's reasoning was that the membership of the Chief Justice of India, Chairperson ex officio, and (a) and (b) of Article 124A (1) do not provide an adequate representation to the judicial component in the NJAC and are insufficient to preserve the primacy of the judiciary in the matters of selection and appointment of judges to the higher judiciary.

Similarly, clause (c) of Article 124A (1) is ultra vires the provisions of the Constitution because of the inclusion of the Union Minister in charge of Law and Justice as an ex officio member of the NJAC. It also held that the inclusion of two "eminent persons" as members of the NJAC is ultra vires the provisions of the Constitution.

I must say that the judiciary itself has a lot of explanation to do for previous bad appointments. The self exculpatory effort at bad appointment is hard to sustain in view of the information given in 1959 by the Home Minister that since 1950, as many as 211 judges were appointed to the High Courts and all appointments except one "were made on the advice, with the consent and concurrence of the Chief Justice of India." And out of the 211, as many as 196 proposals which were

accepted by the government had the support of all persons who were connected with this matter.

It is conceded in the judgment that no one can claim the collegium system to be perfect. The court has, however, held that the constitutional amendment alters the basic structure of the Constitution of India. The court found objection to the situation where the decision of the Chief Justice of India is, in one sense, made to depend upon the opinion of two members of the NJAC, who may in a given case be the two eminent persons nominated to the NJAC in terms of Article 124A(1)(d) of the Constitution. These two eminent persons can actually stymie a recommendation of the NJAC for the appointment of a judge by exercising a veto conferred on each member of the NJAC by the second proviso to sub-section (2) of Section 5 of the NJAC Act, and without assigning any reason. In other words, the two "eminent persons" (or any two members of the NJAC) can stall the appointment of judges without reason. That this may not necessarily happen with any great frequency is not relevant - that such a situation can occur is disturbing. As a result of this provision, the responsibility of making an appointment of a judge effectively passes over, in part, from the President and the Chief Justice of India to the members of the NJAC with a veto being conferred on any two unspecified members without any specific justification. To make matters worse, the President cannot even seek the views of anybody (other judges or lawyers or civil society) which was permissible prior to the 99th Constitution Amendment Act and a part of Article 124(2) of the Constitution prior to its amendment. The role of the Chief Justice is reduced to a very low position because the suitability of a person for appointment as a judge even if is acceptable to a majority of the

members of the NJAC can be thumbed down by two of its other members in terms of Section 5 of the NJAC Act. These two persons might be the Law Minister (representing the President) and an eminent person or two eminent persons, neither of whom represent or purport to represent the President, the other pre-eminent constitutional authority in the appointment process under Article 124(2) of the Constitution prior to its amendment. The opinion of the Chief Justice of India had 'graded weight' or the 'greatest weight' prior to the 99th Constitution Amendment Act. But now with the passage of the 99th Constitution Amendment Act and the NJAC Act the Chief Justice of India is reduced to a mere voting statistic. Designating the Chief Justice of India as the Chairperson of the NJAC is certainly not a solace or a solution to downsizing the head of the judiciary.

The court also found valid the apprehension expressed by some learned counsel appearing for the petitioners that since no guidelines have been laid down for the nomination of the two eminent persons, there is a possibility that persons who are not really eminent may be nominated to the NJAC or that their appointment could be politically motivated.

But notwithstanding this I do not subscribe to the view that the judiciary is a holy cow and an exclusive club for which only lawyers and judges are competent to take a decision. The fear that the presence of a few lay persons would interfere with the independence of the judiciary is misplaced. As an annual report of the Judicial Commission of New South Wales (Ireland) has said caustically, "Judicial independence is not some kind of industrial benefit generously extended to judges and magistrates; it is a fundamental principle of our society's constitutional arrangements."

The court has finally directed that the result of the declaration is that the collegium system postulated by the second judges case and the third judges case gets revived. But it has also held that the procedure for appointment of judges as laid down in these decisions read with the (revised) Memorandum of Procedure definitely needs fine-tuning. It has now fixed this matter on 3rd November, 2015, to consider the introduction of appropriate measures, if any, for an improved

working of the collegium system. I may instantly give two suggestions which may be considered -- one of the most serious self-inflicted wounds by the judiciary, namely of appointing the Chief Justice of a High Court outside his parent court. The second one is that full publicity be given to the Bar Associations about those who are considered for an appointment. Objections, if any, may be invited from the public and the Bar. It should be necessary for the Chief Justices of the respective

of High Courts and the Chief Justice of India to invite comments and relevant information, if any, from the Bar Association concerned.

I hope Parliament and the state legislatures will show balance and not start an anti-judiciary crusade. This decision should be taken as a normal feature and constitutionally permissible. Courtesy: The Tribune, 17.10.2015

[1http://www.tribuneindia.com/news/comment/cji-voting-statistic-system-needs-to-be-fine-tuned/146874.html](http://www.tribuneindia.com/news/comment/cji-voting-statistic-system-needs-to-be-fine-tuned/146874.html)
@ 20.10.2015

Supreme Court Verdict on NJAC:

Restoring Collegium Not the Best Option¹

P.P. Rao

It was a historic opportunity to improve the quality of judicial appointments and ensure transparency and accountability in selections which ought to have been availed fully. Such opportunities come rarely. Instead of striking down the Constitution amendment and the NJAC Act the court could have moulded the same through judicial craftsmanship to provide for a better method of selection than the collegium system. In the first judges case (SP Gupta vs. UOI) the Supreme Court conceded the final say in the matter of selection of High Court and Supreme Court judges to the Executive. Initially the Prime Ministers were men of vision.

The Executive implicitly abided by the recommendations made by successive Chief Justices of India and the appointments made were excellent. Nobody doubted the competency or integrity of the judges appointed prior to the supersession of the three senior judges in 1973. When short-sighted Prime Ministers and Law Ministers came to power, the independence of the judiciary suffered irreparable damage. Supersession of three senior judges and the appointment of the fourth judge as the Chief Justice of India following the judgment in the famous Keshavananda Bharati case denuding Parliament of its power to

amend the basic structure of the Constitution was a blunder and an open challenge to the judiciary.

Independence of the judiciary is a basic feature of the Constitution and needs to be safeguarded jealously. Unless the judges are fearlessly independent and upright, justice cannot be even-handed. The first judges case in 1981 created a suffocating situation as the judiciary could not play an effective role in the selection of judges. After 1973 the relations between the judiciary on one side and the executive and legislature on the other were far from cordial. The Indian Bar is always vigilant and vocal. It is the lawyers who fight for justice for citizens and non-citizens alike in courts.

They became restless. Hence the second judges case, Supreme Court Advocates On Record Association vs. UOI (1993), for reconsideration of S.P. Gupta. Leading lawyers of the country persuaded a nine-member Bench to overrule the decision in the first judges case and secured primacy to the recommendations made by the CJI in consultation with his senior judges for the appointment of suitable candidates as judges. The court declared that the recommendations so made shall be binding on the executive. The role of the executive was limited to seeking reconsideration of the

recommendations by the collegium of judges in the light of the material in its possession which the collegium was bound to consider. The collegium was free to revise or reiterate its recommendations. Not only the Bar, but even the judges who declared the law had entertained the pious hope that the collegium would always choose the best candidates and secure their appointment speedily, but experience has belied the expectation. Initially, the collegium performed well but later on when short-sighted persons who could not rise above narrow considerations became members, the recommendations lacked quality. The executive became helpless to stall undesirable appointments with the result, independence of the judiciary suffered a setback. There have been instances where a candidate rejected by one collegium on account of doubts regarding integrity was picked up by the next collegium. Such appointments tend to shake the confidence of the public and the Bar in the judiciary. The collegium headed by Justice KG Balakrishnan was bent upon pushing through the elevation of Justice P.D. Dinakaran, the then Chief Justice of Karnataka High Court, to the Supreme Court, brushing aside the resolution of the Bar Association of India headed by Fali S. Nariman of

which eminent senior advocates were vice-presidents. The resolution suggested that the recommendation should be kept in abeyance till Justice Dinakaran was exonerated of the charges of corruption. He eventually resigned after receiving the show cause notice from the Judges Inquiry Committee. A judge of the Calcutta High Court, Justice Soumitra Sen, averted impeachment by Parliament by tendering his resignation at the last minute. A few High Court judges who are the products of the collegium system are facing criminal prosecution on charges of corruption. Favouritism and nepotism on the part of the collegium of the Supreme Court and the High Courts have been noticed in some cases. More deserving candidates were held back and less deserving were elevated to the Supreme Court. Therefore, restoring the collegium is not the best option. The country needs a better system than the collegium and the NJAC. The National Commission to Review the working of the Constitution of India chaired by the most highly reputed former Chief Justice of India, Justice M.N. Venkatachaliah, recommended a five-member Judicial Appointments Commission consisting of the Chief Justice of India as the Chairperson, two senior-most judges, the Law Minister and one eminent person as members. The Supreme Court instead of striking down the 99th Constitution amendment and the NJAC Act, 2014, could have moulded the same into a commission as proposed by the Chief Justice Venkatachaliah Commission by scissoring off objectionable portions in the Act like the veto given to any two members of the commission to derail the recommendations made by the NJAC and converting the 'two eminent persons' into one 'eminent person' by applying the rule of severability which permits such a surgical operation.

The Bench could have clarified that the 'eminent person' shall be one who is well equipped to select suitable candidates for superior judiciary.

The latest judgment is not bad to the extent it has struck down the impugned Constitution amendment and the Act as upholding them would have been a disaster. The decision of the court to hear separately on the measures to improve the collegium system is a silver lining in a dark cloud. The collegium system has been tried for two decades and it has proved to be opaque, unsafe and unaccountable. On several occasions, members of the collegium were perceived to be guided by personal factors and indulging in give and take, compromising on the quality of selection.

The importance given to seniority of High Court judges in the matter of elevation to the Supreme Court has not improved the quality of appointments in many cases. In the ultimate analysis the quality of appointments made reflects the quality and calibre of the selectors. Keeping the executive out of the selection process is not at all desirable. The government is a coordinate wing of the State and is the appointing authority. It is necessary to co-opt the Law Minister as a member of the collegium without a right to vote so that with his inputs the recommendations made would go through smoothly. The greatest relief today is the stalemate created due to the pendency of the case has ended. Let us wait and see what happens after the hearing on November 3, 2015.

1 <http://www.tribuneindia.com/news/comment/restoring-collegium-not-the-best-option/146873.html> @ 20.10.2015

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