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TELLING NUMBERS

More poll phases in 2014, seats more evenly bunched in 2019

THE SCHEDULE for the 2019 Lok Sabha elections, declared Sunday, is more evenly distributed among its seven phases than the 2014 polls were across nine phases. Last time, two of the phases covered 122 and 117 constituencies respectively while four other phases covered less than 10 seats each, including one covering just two seats. This time, all seven phases cover between 51 and 115 seats each.

Although the 2014 polls were held over a higher number of phases, some states will have their polls more spread out in 2019. The elections in Bihar and UP were held over six phases in 2014; both those states as well as West Bengal will have polls over seven phases in 2019. Last time, West Bengal and Jammu & Kashmir had five-phase polls; this time, J&K is the only state with five phases.

SEATS ACROSS PHASES

2014				2019		
Phase	Date	Seats	States	Date	Seats	States
1st	April 7	6	2	April 11	91	20
2nd	April 9	7	5	April 18	97	13
3rd	April 10	92	14	April 23	115	4
4th	April 12	5	3	April 29	71	9
5th	April 17	122	13	May 6	51	7
6th	April 24	117	12	May 12	59	7
7th	April 30	89	9	May 19	59	8
8th	May 7	64	7	-	-	-
9th	May 12	41	3	-	-	-

STATES WITH MULTIPLE PHASES

No. of phases	2014	2019
7	-	Bihar, UP, West Bengal
6	-	Bihar, UP
5	J&K, West Bengal	J&K
4	-	Jharkhand, MP, Maharashtra, Odisha
3	Assam, Chhattisgarh, Jharkhand, MP, Maharashtra	Assam, Chhattisgarh
2	Andhra Pradesh, Odisha, Manipur, Rajasthan, Tripura	Karnataka, Manipur, Rajasthan, Tripura

THIS WORD MEANS

DAYLIGHT SAVING TIME

Why do many countries set clocks 1 hr ahead?

AT 2 am local time in most parts of the United States Sunday (Monday afternoon in India), Americans set their clocks an hour ahead. This is called daylight saving time, followed in over 70 countries on various dates, according to timeanddate.com. India does not follow daylight saving time; countries near the Equator do not experience high variations in daytime hours between seasons. In the US, where it is practised everywhere except in Hawaii and most of Arizona, it starts this year on March 10 and ends on November 3, when clocks will be set back to the original times.



the rationale being to minimise the use of artificial lighting to save fuel during World War I. But does DST actually save energy? A century ago, when DST was introduced, more daylight did mean less use of artificial light. But modern society uses so much energy-consuming appliances all day long that the amount of energy saved is negligible.

Various studies have been conducted on the benefits and disadvantages of DST. Among the biggest cons is disruption of the body clock or circadian rhythm. *USA Today* cited a study that found DST increases the risk of heart attack by 25%, while a return to original times lowers the risk by 21%. It quoted Timothy Morgenthaler, a sleep medicine researcher, as that disrupted sleep patterns might affect memory, learning, social interactions and overall cognitive performance.

The rationale behind setting clocks ahead of standard time, usually by 1 hour during springtime, is to ensure that the clocks show a later sunrise and later sunset — in effect a longer evening daytime. Individuals will wake an hour earlier than usual, complete their daily work routines an hour earlier, and have an extra hour of daylight at the end.

Timeanddate reports that it was followed by a group of Canadians on July 1, 1908, when residents of Port Arthur, Ontario, turned their clocks forward by an hour. Other locations in Canada soon followed suit. However, the idea did not catch on globally until Germany and Austria introduced DST on April 30, 1916,

AN EXPERT EXPLAINS

When SC has ruled on life & death

SC has acquitted six on death row. Judgments on the death penalty have often been inconsistent.



FAIZAN MUSTAFA

ON TUESDAY last week, the Supreme Court recalled its own 2009 order sentencing six convicts to death, and acquitted them because of glitches in the prosecution case, which involved the murder of five persons. It brought the spotlight on the varying ways in which courts have awarded and commuted the death sentence over the years.

The debate

India has the death penalty in 46 provisions under various laws. It is marked by the possibility of judicial error. As British legal philosopher H L A Hart said, "It would be a terrible thing if a man has been hanged for a crime which he has not committed; in such a case, law itself would be a murderer."

Indian Constituent Assembly member Shibban Lal Saksena, who himself had been on death row for 26 months, argued in 1949 that of 37 people hanged during that period, 7 were innocent. B R Ambedkar argued for abolition of the death penalty but the Constituent Assembly left the issue to the Supreme Court and Parliament. Eventually, Parliament and the judiciary could not abolish the death penalty; the 35th report of the Law Commission (1967) recommended retention of the provision.

The new Code of Criminal Procedure (1973) required "special reasons" to be given if death was preferred over a life sentence. Under the old CrPC (1898), reasons were to be given if the death penalty was not imposed. This requirement was removed in 1955. The 187th report of the Law Commission (2003) recommended use of a lethal injection in addition of hanging.

The court itself observed in *Santosh Kumar Bariyar* (2009) that the death penalty is imposed "arbitrarily or freakishly" and added: "There is no uniformity of precedents." Again in *Sangeet* (2013), the court acknowledged that "principled sentencing" has become "judge-centric". In *Swami Shraddhanand* (2008), the court said award of the death sentence depends on the "personal predilection of judges". In *Mohd Farooq* (2010), it held that "the precedent of death penalty... is itself crumbling under the weight of disparate interpretations."

Rulings on constitutionality

In *Jagmohan* (1972), the Supreme Court



SC has ruled variously on death penalty and commutation. Express archive

upheld the constitutionality of the death penalty, stating that Article 14 is not violated by the wide judicial discretion given to judges. But in *Ediga Anamma* (1974), the court said the question of life and death cannot be left to "ad hoc mood or individual predilection". In *Rajendra Prasad* (1979), the court rejected retribution as the purpose of punishment and said these "special reasons" should relate to the criminal, not the crime. In *Bachan Singh* (1980), the matter was referred to a Constitution Bench that upheld the constitutionality by a 4-1 majority. It said special reasons should relate to exceptional circumstances of a case in terms of both "crime" and "criminal". The court did not agree that wide discretion given to judges is arbitrary, but did say that death should be given only in "rarest of rare" cases when alternative option is unquestionably foreclosed. Justice P Bhagwati, in a minority opinion, observed that death penalty being arbitrary and discriminatory is unconstitutional.

In *Deena Dayal* (1983), the court upheld death by hanging as constitutional as it did not involve humiliation or torture. But in *Parmanand Katara* (1995), the court held hanging beyond the point of death by half an hour, as per the Punjab Jail Manual, to be unconstitutional.

Rarest of rare

In a number of cases such as *Lok Pal Singh* (1985) and *Darshan Singh* (1988), the death penalty was awarded without any reference to rarest of rare. In *Mukund* (1997) and *Farooq* (2002) it was referred but not applied.

In *Machi Singh* (1983), a three-judge Bench listed five parameters to decide whether a case falls within "rarest of rare" such as the manner of commission of crime (brutality, motive, antisocial or abhorrent nature), magnitude of crime and personality of

victim (child, woman or popular leader) etc. These categories put much emphasis on the "crime" and ignored the "criminal" and the "mitigating factors" which had been equally emphasised in *Bachan Singh*. Thus, in *Devender Pal Singh* (2002), the court said the circumstances of the crime were such that death penalty had to be imposed.

The court also brought in the controversial concept of "collective conscience" of society being so shocked that it would expect judges to award the death penalty. This was subsequently used to award death in a number of cases including those of Dhananjay Chatterjee, Afzal Guru and Yakub Memon, although the *Bachan Singh* ruling had clearly denied judges the role of spokespersons for public opinion.

In *Santosh Singh Bariyar*, the court questioned the correctness of using the public's cry for justice in determining "rarest of rare" as it is not an objective circumstance. It said a "conscience of society" test undermines the judicial discretion underlined in the *Jagmohan* case; in *Mohinder Singh* (2013), the court reiterated that this is irrelevant for the "rarest of rare" doctrine.

In *Ravi Singh alias Ram Chandra* (1996), the court said the nature of gravity of the crime, not the criminal and punishment, must meet the society's cry for justice. In *Santosh Singh Bariyar*, the Supreme Court said Ravi Singh and six other cases involving Ravi Singh were *per incuriam* i.e. wrong judgments as they were contrary to what was laid down in *Bachan Singh*.

In *Shankar Kishanrao Khade* (2013), the court questioned the death sentence to Dhananjay who was executed in 2004 because it took into account just the crime and ignored mitigating factors about the criminal. But in *Gurwail Singh* (2013) and *Mofil Khan* (2015), the court said the real test is

whether such crimes shock the conscience of the society.

Dhananjay was given death penalty at age 27 but Ramesh Bhai Rathod in 2011 got life imprisonment at 28 as the court thought reform was possible at his age. In *Purushottam Dashrath* (2015), the court again imposed the death penalty on offenders aged 26 and 20 and did not refer to *Ramesh Bhai*.

Commuted or confirmed

Modern jurisprudence acknowledges that prolonged delay in executing a death sentence can make the eventual punishment inhuman and debasing, because of uncertainty and alternating hope and despair. The court has, however, been inconsistent about the duration when execution is considered delayed.

A delay of one year in *Mohinder Singh* (1953), and a delay of 21 months in *Hardyal* (1976), were considered crucial to commute death into life imprisonment. But in *Balak Ram* (1977), even six years' delay since award of the death sentence by the trial court was not considered sufficient.

In *Bhagwan Bux Singh* (1978), two-and-a-half years were considered sufficient. In *Pashupati Singh* (1973), even though the accused was acquitted by the High Court, the Supreme Court commuted sentence on the ground of delay counting from the date of the crime. In *Ediga Anamma*, the court commuted the sentence in the brutal murder of a woman and her child, because the prospect of hanging had haunted the prisoner for over two years. In *T V Vatheeswaran* (1983), the court considered two years sufficient between the death sentence in the lower court and hearing in the Supreme Court.

In *K P Mohammed* (1984), the court indirectly disagreed with the two-year rule saying: "We do not hold or share the view that a sentence of death becomes inexecutable after the lapse of any particular number of years." A few weeks after *Vatheeswaran*, in *Sher Singh* (1983), the court overruled the two-year rule as unrealistic. In *Munawar Harun Shah* (1983), commutation was rejected despite a five-year delay. In *Smt Triveniben* (1988) the court said no fixed period can be set and delay after the conclusion of judicial process alone is to be taken into account.

In *M N Das* (2013), Das was convicted of murder and while on bail he committed another murder. He severed the victim's head and carried it to the police station holding it in one hand and the weapon in the other hand. The court thought it fit to commute the death sentence into life imprisonment, though only a few days previously the same Bench had refused commutation to Devender Pal Bhullar (whose sentence was subsequently commuted by another Bench).

How a young leader stands in Maduro's way

OM MARATHE
NEW DELHI, MARCH 10

OVER THE last two months, Venezuela has been going through a political and economic crisis with two claimants to the President's chair and the US imposing sanctions to pressure the incumbent regime. Matters reached a head last week when opposition leader Juan Guaidó, who has declared himself acting President and has the support of the West, returned home after a self-imposed exile to cheering crowds in Caracas. He is trying to force out left-wing dictator Nicolas Maduro, President since 2013, who has declared himself winner of a controversial election.

Ever since the global crude oil downturn, Venezuela has slipped into an economic crisis. Its crime rate has doubled and inflation multiplied. The West-imposed sanctions have now led to a prolonged electricity blackout. A look at the events leading to the political crisis:



Juan Guaidó in Caracas. Reuters

Rise of the leader

Guaidó, 35, was born in the beach town of Vargas, which was severely hit by flash floods in 1999. The family moved to Caracas, where Guaidó studied engineering. It was in 2006 that Guaidó emerged in politics, as one of the principal leaders campaigning for freedom of the press amid a crackdown by then President Hogo Chávez. Guaidó formed his

party, Voluntad Popular, which is today leading the fight against Maduro. This year, Guaidó's party declared him President of the National Assembly, the country's Parliament.

The 2018 presidential elections marked a watershed in Venezuela politics. Alleged irregularities led to the elections being discredited by several countries. Amid all this, Maduro assumed the presidency for a second time, leading to protests throughout the country.

With the executive and the judiciary under his control, Maduro sought to curtail the powers of the National Assembly.

The National Assembly resisted, with Guaidó questioning the government's legitimacy. On January 22, Guaidó declared himself interim President. The West was quick to recognise his claim.

On February 23, Guaidó left for Colombia, circumventing a travel ban imposed on him by Venezuela's Supreme Court. He also travelled to Brazil, Paraguay, Argentina, and Ecuador, lobbying for humanitarian aid to be sent to crisis-

hit Venezuela.

Guaidó's return to Venezuela on March 4 was marked by spectacle. Ambassadors from 12 countries, including the United States, Germany, and Spain, arrived at the airport, impeding paramilitary forces from detaining Guaidó. The fuming Maduro expelled the German Ambassador on March 6.

What next

Many believe that Guaidó's return could spell trouble for Maduro. It appears difficult for Maduro to act against Guaidó, given his position as the National Assembly's President, popularity among the masses, and the fact that 56 countries (according to a Reuters report) have now acknowledged his claim to the presidency. While the West backs Guaidó, Russia and China are supporting the government.

The Reuters report, however, quoted former US envoy Elliott Abrams as saying there are no signs that Maduro is open to negotiations to end the political impasse.

Govt representative on interest rates panel: move in NZ, debate in India

SHAJI VIKRAMAN
CHENNAI, MARCH 10

ON FRIDAY, the Reserve Bank of New Zealand announced that effective April 1, the Secretary of the Treasury (the equivalent of the Finance Ministry in India), Gabriel Makhlou, would formally take up the role of the Treasury Observer on the Reserve Bank of New Zealand's Monetary Policy Committee. The move recalls India's moves on reforms in the past.

What was recommended

In the early days of the NDA government that came to power in 2014, discussions were under way on new policies to be unveiled. In the Finance Ministry, this was centred on some of the recommendations of the Financial Sector Legislative Reforms Commission (FSLRC), which included the

formation of an independent committee to set interest rates rather than the age-old practice of the Reserve Bank of India (RBI) Governor deciding on this after consultation with colleagues.

One of the ideas discussed was about the composition of the Monetary Policy Committee (MPC): whether to have a Finance Ministry representative to oversee better coordination between the government and the RBI. A nominee of the Ministry - the Secretary, Department of Economic Affairs, who is the interface between the two - could be on the MPC, it was suggested, but without voting powers so that the independence of the interest rate setting committee would not be compromised. That idea never took off, while the decision on the final composition, in terms of the number of members and casting vote, was taken at the top, without involving many officers of the Ministry of Finance.

New Zealand & India

The move in New Zealand follows changes to the law governing the central bank there. The Treasury Observer will not have voting rights. That's not the only change in a country that is known to be a pioneer in inflation targeting. The New Zealand central bank will now have a new charter and remit and a code of conduct for members of its Monetary Policy Committee, which will kick in from April. In India, an MPC was operational in 2016 after Ujit Patel took over as Governor in September that year; he had chaired the committee which made out a case for such a framework. It will be interesting to note that the mandate of the interest rate setting committee in New Zealand is not just price stability, but also about ensuring maximum sustainable employment. In other words, India entered this realm late when others were retreating or reviewing such a framework.

In India, as final talks were under way on a monetary policy framework, there were senior officials in the government who flagged their concerns on such a formal legislative framework. They said it would lead to loss of flexibility for both the central bank and the government. That is a worry now, reflected also in the controversial conflict between the RBI and the government, leading to the Finance Ministry invoking a provision of the RBI Act to get the central bank going on a few things. One of the provocations, according to government officials then, was the breakdown in ties between Governor Patel and the Finance Ministry. Much before that, there was also a controversy featuring then Chief Economic Adviser Arvind Subramanian, when the ministry sought a meeting with the MPC a few days before a scheduled meeting, to make a case for an interest rate cut. This was rejected by the RBI then.

The ministry does not have a representative on the MPC, unlike in a few countries including the central bank in New Zealand and Bank of Japan, where the policy board deciding on interest rates has a representative who is either the Finance Minister or his delegate. This representative does not have voting rights but can express opinions and submit proposals and request the policy board to postpone a vote on proposals until the next monetary policy meeting.

Earlier, the RBI had a Technical Advisory Committee during the Y V Reddy era. It had external experts such as economists with the Governor taking the final call later. This committee had two directors from the RBI board, the rationale being that all operations were under the umbrella of the board and that it was important that there was no contradiction between the board and a committee on interest rate setting with no representation from the board.

The way forward

A former central banker reckons that a sensible course could be to invite or make the Secretary, Economic Affairs, a special invitee after the approval of the MPC. That would not be barred by law, he says, and it would help in the Finance Ministry put across its views to the committee. Raghuram Rajan, during whose period as Governor the RBI and the government entered into an agreement on a monetary policy framework, had said that a monetary policy committee would bring more minds to bear on policy setting, preserve continuity in case a member had to quit or retire, and be less subject to political pressure - which made him back the proposal. India's MPC is relatively new, but globally central banks now have the challenge of low inflation even as growth soars like in the US. A new government in India may also take a relook at the policy framework with the winds of changes blowing globally.



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EVERYONE SEEKS PEACE.
EVERYONE SEEKS A BETTER LIFE.
— NELSON MANDELA

The Indian EXPRESS

FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

The mediation trap

Framing of the arbitration in Ayodhya dispute as an attempt at reconciliation raises questions



PRATAP BHANU MEHTA

EASE THE FLOW

RBI's tight monetary policy has kept real interest rates high, impacting investment flow and job creation

BETWEEN JANUARY 2018 and January 2019, India's consumer price inflation has fallen from 5.07 per cent to 2.05 per cent, year-on-year. Yet, the State Bank of India's MCLR or marginal cost of funds-based lending rate for three years has gone up from 8.10 per cent to 8.75 per cent. It isn't the only one. Even HDFC Bank's three-year MCLR — the rate below which a bank cannot lend and supposed to reflect its average cost of deposits or borrowings for the particular maturity — has increased from 8.6 per cent to 9 per cent in the last one year. ICICI Bank, likewise, has raised its MCLR for one year from 8.2 per cent to 8.8 per cent. But it's not lending rates alone. Even yields on 10-year government of India bonds have fallen only marginally from 7.67 per cent to 7.37, despite inflation sliding so sharply.

Simply put, what we have today are very high "real" rates of interest. If businesses are borrowings at not less than 9 per cent — micro, small and medium enterprises would obviously be paying much more — when inflation, whether based on the consumer or wholesale price index, is below 3 per cent, it is something serious. During 2012-13 and 2013-14, the last two years of the UPA government, consumer price inflation averaged 9.7 per cent, whereas benchmark prime lending rates ranged at 9.75-10.25 per cent. Under the Narendra Modi government, average consumer inflation has come down to 3.6 per cent in 2017-18 and 2018-19 (till January 2019). If despite that, even the sovereign's borrowing cost is now about 7.4 per cent and banks have actually hiked lending rates, the reason for the current economic slowdown is clear. High real interest rates for a prolonged period is why investments have slowed down and very few jobs are being created. The source of it has been the RBI's tight monetary policy. That made sense in the initial years of the Modi government, when a firm commitment to low inflation and macroeconomic stability helped restore investor confidence badly dented during the loose fiscal and monetary policies of the UPA years. But the tightening has gone on for too long, which the Modi government and the RBI under a new, less orthodox governor have realised.

What can be done to bring down interest rates to reasonable "real" levels? The RBI should cut its overnight lending or "repo" rate in the next policy review meeting in April; it can even go in for a 0.5 percentage point reduction, instead of the usual 25 basis points. The central bank could also consider more open market operations to bring down bond yields across all maturities. The government, too, should slash interest rates on the Employees Provident Fund, small savings and other administered schemes.

ELUSIVE JUSTICE

Political rivalry casts a shadow on Colombo's commitment to UNHRC to probe war crimes

THE BAND-AID PLASTERED on Sri Lanka's badly broken government last December was never going to be able to hold it all back. The bad stuff has begun to seep out again, and is now all set to travel to Geneva. President Maithripala Sirisena has said his country does not want to be pressured by other countries in resolving the issues that remain from the ethnic conflict that ended in 2009, and that Sri Lanka needed "space" to settle these problems. This is no less than an about turn on a commitment given by the Sirisena government in 2015 at the United Nations Human Rights Council (UNHRC).

Prime Minister Ranil Wickremesinghe, removed by Sirisena last November and re-appointed the following month after the Supreme Court held his dismissal illegal, has come out against the President, and declared that the government will keep its commitment to the UNHRC. The President is sending his own delegation of handpicked parliamentarians to the session, which is prepping to make a separate representation when the UNHRC takes up Sri Lanka's case on March 22-23. This latest episode in a now four-year long political theatre risks making Sri Lanka a laughing stock on the global stage. Colombo rushed to set up the Office of the Missing Persons to look into the complaints by families of thousands of men and women who disappeared during the nearly four-decade-long war only last March, after being rapped severely on the knuckles for not keeping to even a fresh timeline on its UNHRC commitments. In October, it rushed a bill through parliament for setting up an Office of Reparations, after a long and polarising debate. Sri Lanka had also agreed to set up "a commission for truth, justice, reconciliation and non-recurrence" and the Wickremesinghe government submitted a concept note to the Cabinet in this regard earlier this year. But there is no word yet on the other commitment to establish "a judicial mechanism... to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable" which would include "independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality".

Both Wickremesinghe and Sirisena have made it plain that it would be better to draw a line under the accountability for war crimes question and "move on". Both have their eyes on the upcoming presidential election. For those affected by the war and hoping for justice, the wait just got longer.

THE RAM JANMABHOOMI-BABRI Masjid dispute has long been accompanied by a sense of foreboding. The dispute has been historically charged, politically divisive and communally violent, putting both the nation and the Constitution at risk. So putting the dispute into mediation under the aegis of the Supreme Court evokes a resigned weariness. For decades, the Court abdicated its role and is now openly admitting that conventional legal and constitutional tools are powerless in the face of faith. So it is placing its hopes for "reconciliation" on mediation. The keenness to take this issue off the agenda is such that all parties hope India can move past the Ayodhya moment. It is hard to grudge an attempt at "reconciliation".

But the weariness leading us to accept the mediation is also accompanied by a profound wariness of what might transpire. Before we come to the politics, it is hard not to remark on the spiritual hollowiness of this moment. What is the framing of the mediation that should be acceptable? If the mediation is about getting the parties to the title dispute agree to an outcome, this remains something like a property mediation. If the framing is of reconciliation, then the question is: Who exactly is meant to reconcile with whom? And on what terms? The very framing of this dispute as one that requires reconciliation is an admission of defeat. It is an admission that the dispute is not going to be adjudicated on the terrain of truth, justice or due process.

The framing gives into one deeply problematic premise. The premise is that this is a dispute between two communities that require reconciliation. But who are these communities? Who was feeling unreconciled to their fellow citizens in the first place? Wasn't the sense that "minorities" need to give a gesture to show their good intent already a nefarious piece of politics? Some Hindus want a temple. But what about those Hindus who think there was a temple on that site that was demolished in medieval India, but that it is still not sufficient grounds for building a temple there? What about those devotees who think that given our recent history, a just reconciliation would involve none of the traditional symbols — mosques and temples —

triumphing over the site? Instead, the site should be an expression of a common hope for the future, a true Ram Rajya, not a reminder of sectarian divisions.

What about those whose keen devotional and historical sense tells us that Ram's greatest triumph was that he did not become a totem in the games of sovereignty and power? In fact, there is a real danger, already apparent, that the cultural and spiritual sovereignty of Ram that was so creatively engineered by the brilliance of figures like Tulsidas is being overturned. In this construction, Ram is a constant, intimate presence: The Vaishnava turn that centred on "Sri Ramchandra kripalu bhajman" was an audacious piece of spiritual thinking, the beating heart of Hinduism in North India. Those who believed all this were never in the need of being reconciled. In fact, they worried that Ram was being reduced to a coarse game of majoritarianism; diminished by being aligned with a hateful and reactionary politics and rendered spiritually bankrupt by being reduced to a totem of sovereign power. If this is a reconciliation between communities, will these voices be represented? Or is the reconciliation only for those who want to monopolise Ram as a vehicle for historical revenge, whose sense of feigned insecurity requires a catharsis?

Then there is the politics of the occasion. There are three traps: Timing, personal and framing. Although ostensibly the Court has taken the issue off the agenda by giving eight weeks, it would be foolish not to see that the timing of the attempt subtly helps the BJP. While the Court has probably acted with the best intent, the timing will lend fillip to one of BJP's central claims. The claim is this: Hindu demands are taken seriously only when it is in power. The mediation may not result in much. But the underlying gesture involved in the Court claim that this is about "sentiment" has an elective affinity with BJP's politics. Sending it to mediation can be claimed as progress.

I happen to think that Sri Sri Ravi Shankar's appointment as mediator is deeply problematic. He has an openly declared position on the issue, has more or less intimi-

dated institutions arguing that violence will ensue if a temple is not built, and represents the unsavoury aspects of a modern entrepreneurial figure to whom proximity to power matters more than spiritual values.

There is a third sense in which this mediation attempt is a trap. Suppose for moment that the only two alternatives on the table are building a temple at the site (with some mosque being built somewhere else), and not building a temple. Now imagine if the mediation fails to secure a temple. Let us not put too delicate a point on this. Who do you think will be blamed? On the other hand if a temple is secured, who do you think will claim the triumph? We may not know how the issue plays out in this election. But unless there is a larger political commitment to making sure that the outcome of the mediation is not politicised one way or the other, the issue will continue to simmer.

In this sense the Court has not understood the logic of its own claim that this is about sentiment. If it is about sentiment, why should three mediators or the small groups have any more imprimatur than the Supreme Court of India? The Allahabad High Court's judgment was a case of panchayat justice. But it did shrewdly realise that putting the onus on parties to find a solution makes them possible political targets.

There have been past attempts at mediation. The fact that they were overtly political was actually their virtue, not their failing. At least they openly acknowledged there is a politics to this. If this indeed is about sentiment, then India needs a larger political settlement against communalism, against the idea that our conception of citizenship and nationhood is tied to some story about medieval India that both the Left and Right have peddled. It remains to be seen whether this mediation can turn the needle on these large issues. For India's sake, we hope the mediation can transcend the limitation of its framing, and think of a truer reconciliation, one where no community triumphs. Only India and its constitutional values does.

The writer is vice-chancellor of Ashoka University. Views are personal



IN GOOD FAITH

TAHIR MAHMOOD

"FOR GOD'S SAKE conduct God out of our national frontiers" is an appeal I have long been longing to make to fellow citizens but, conscious of the morbid religiosity prevailing in the society, have been a bit ambivalent. Kaushik Basu's article, 'About divinity' (IE, March 7), comes as a shot in the arm and his so-called third hypothesis — "there is god but he is not that powerful" — is just the fillip I needed.

The awkward question of whether God exists or not has been posing itself to mankind throughout history and nobody could ever give a decisive answer. There have always been all sorts of people in the world — firm believers, convinced unbelievers, fanatics, atheists, agnostics and nihilists. The sickening obsession with religion in general in the mid-19th century had prompted Karl Marx to call it the "opium of people". But in our time, particular religions seem to be the opium of particular people.

Modern nation states have chosen one or another religion — expressly under national constitutions or by implication in practice — as their natural and, hence, privileged faiths. This often plays havoc with followers of the other locally prevailing creeds. Paying lip-service to the belief in one omnipotent and omnipresent God, each religious community reserves God's benevolence for itself, leaving others to the mercy of their own gods who seem to be less powerful than theirs.

NO MORE OPIUM, PLEASE

It is time to thank God for services provided and jettison the concept

ing others at the mercy of their own gods who seem to be less powerful than theirs.

In my school days, I read in a Hindi textbook a passage which, still stuck in my mind, would read in English as: "On initially coming to the world, man had faced grave problems for whose solution he had given birth to God. But poor God instead of solving man's problems, himself became his biggest problem." Today, the truth of this proposition can be witnessed throughout the world. A man vs man tug of war is being played in the name of religion. Human rights, ironically believed to be enjoyed by every religion, are the biggest casualty of religious zealotry.

The evil of religious inhumanities provokes me to share the questions Epicurus had once put forth: "Is God willing to prevent evil, but not able? Then He is not omnipotent. Is He able but not willing? Then He is malevolent. Is He both able and willing? Then whence cometh evil? Is He neither able nor willing? Then why call Him God?"

I was once a firm believer in the existence and omnipotence of God. But observing what is happening in the name of religion has made me irreligious. I cannot resist now sharing the agony of a great jurist-judge of India, V R Krishna Iyer: "Religion is a terrible Satan in its decadent status when people plunge into spiritual illiteracy, miss the divine essence of the lessons of the sages,

prophets and seers and kiss the holy nonsense of 'my religion right or wrong' and 'my religionists alone to me belong'. In this vulgar barbarous degeneracy humanism dies and values of tolerance and compassion perish. In the perverse reversal of higher meanings the man on earth becomes the blind ammunition of divine rivals in the skies." (Abdul Hussain, 1975)

The learned judge's sardonic reference to "divine rivals in the skies" reminds me of how poet Vipin Jain, on seeing human miseries being inflicted in the name of religion, had once lamented: "Burning human life like coal turning into ashes, I look at these tears, miseries and crashes; who caused this world burn with such brutal flame. whom shall I question who do I blame; do I ask my God or your God or my own soul. I am confused as to who rules the world as a whole."

The late Enver Hoxha, leader of the communist regime in Albania till 1985, had once said that in a bid to avoid horrors of religious rivalry and bigotry his country had "conducted God out of its frontiers thanking Him for His provisional services". It is high time, in my opinion, for our beloved motherland to follow suit. Only that can, perhaps, retrieve our perfect religious harmony.

The writer is a professor of law and former chair of National Minorities Commission

FREEZE FRAME

E P UNNY



MARCH 11, 1979, FORTY YEARS AGO

DEAL WITH RUSSIA
THE SOVIET UNION will supply an additional 6,00,000 tonnes of crude oil to India in exchange for rice. This is the outcome of the high-level Indo-Soviet talks going on in the capital. New Delhi had asked Moscow to step up its crude supplies to India to enable the latter to meet the oil shortage caused by developments in Iran. The Soviet prime minister, in a letter to his Indian counterpart, Morarji Desai, had agreed to do so in exchange for half-a-million tonnes of wheat from India. At the talks in Delhi, PM Desai suggested that because of domestic and international commitments it was not possible for India to spare half a million tonnes of

wheat but India would be willing to give an adequate quantity of rice instead.

IRAN WOMEN PROTEST
THOUSANDS OF WOMEN walked out of their jobs to protest against the attempts to curtail their freedoms under a proposed Islamic Republic in Iran and ran into a group of religious zealots who beat and stabbed at least one of the demonstrators and injured several others. The attack by an Islamic orthodox group came as the fist-waving women marched by the British embassy near Teheran's main Ferdowsi Street. As the demonstrators dressed in blue leans and skirts made their way through, two bearded

Muslim clergymen appeared. One of the mullahs jumped atop a bus and shouted, "Let me know your complaints and I'll take them to the Ayatollah."

US-EGYPT TALKS
WINDING UP HIS talks with Egyptian President Anwar Sadat, on West Asia peace in Egypt, United States President, Jimmy Carter said that he was going to Israel with "difficult issues still to be resolved". Sadat, standing by Carter's side under sombre grey skies near the great pyramid of Giza, endorsed Carter's assessment and wished him well on his visit to Israel later in the day as a part of the continuing attempts to broker a deal.

11 THE IDEAS PAGE

WHAT THE OTHERS SAY

"As long as India and Pakistan refuse to deal with their core dispute — the future of Kashmir — they face unpredictable, possibly terrifying, consequences."
— THE NEW YORK TIMES

Men of law, not faith

SC seems to have learnt from its mistakes in Bhopal case while setting terms for Ayodhya mediation. However, it must relook at the panel



INDIRA JAISINGH

MEMORIES OF the Union Carbide case came rushing to mind when I read the order in the Ayodhya case by a five-judge bench of the Supreme Court (SC) ordering a formal mediation. There, too, a settlement was recorded, but behind the backs of the parties; a settlement in which only the Union of India and Union Carbide were parties and the victims were ignored. The settlement absolved Union Carbide of all criminal and civil liability for a paltry sum of \$450 million. Later, due to the protest of the victims, the criminal proceedings were restored and are still going on. Remember, the disaster occurred in 1984.

The SC has learnt from that mammoth mistake. This time, the affected parties participated in the proceedings. Some of them did object to the proposed mediation on the ground that these were "matters of faith" but the Court went ahead and appointed mediators.

The Court records there is lack of consensus on the need for mediation but having regard to the "nature of the dispute" feels compelled to order that "an attempt should be made to settle the dispute by mediation". The Court has not clarified under what provision of law the order has been passed but feels inspired by Section 89 of the Civil Procedure Code. The Section applies for settling of disputes "outside court" when it appears to the court that "elements of a settlement" exist. The Section visualised several modes of settlement — arbitration, conciliation, judicial settlement or mediation. If the mediation is under the Arbitration and Conciliation Act 1996, it is binding as an award. This order is clearly not under the Arbitration and Conciliation Act, which is welcome. The SC has left open the question of challenge to any possible terms of settlement under the law, indicating clearly that a settlement cannot be forced on anyone.

We must therefore assume that inspired by Section 89, the SC has directed the parties to attempt to settle the dispute, leaving both parties to contest the possible terms of the settlement and make it non-binding. We must assume that the Court has exercised its inherent powers under Order LV Rule 6 which says, "Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers to make such orders as may be necessary to meet the ends of justice or prevent abuse of the process of the court."

In doing this, the SC has behaved in a statesman-like manner, leaving its judicial role to surface later. It seems the Court was of the opinion that certain disputes are not quite easy of judicial resolution and require a "healing touch". After all, no court wants to see its own judgments violated and slandered, as with the Sabarimala judgment. Settlement by consensus is one way of settling a dispute, provided that both parties negotiate on an equal basis. In this case, unfortunately, the negotiation is taking place in the shadow of the demolition of the Babri Masjid and no responsibility had been fixed on the political party, the same party that is in power today and that spearheaded the demolition in 1992. The bargaining position is, therefore, not equal. The Court should have put in place safeguards to correct this imbalance. Keeping the proceedings confidential is not a sufficient safeguard. Keeping out political or electoral considerations would be more important.

The other order passed is to conduct the negotiation proceedings in confidence and that there ought to be no reporting of the proceedings. This is a welcome order. Political parties and chief ministers have made cynical use of the case for cheap electoral gain. If politics is all there is to the case, why go to court at all?

One disappointment comes from the mediators chosen, without meaning any disrespect to them, they could have been better chosen. The mediation needed people of national stature and those who are not "men of faith". There has also been criticism that since Sri Sri Ravi Shankar is guilty of contempt of court for refusing to pay the compensation ordered by the NGT for damage to the environment, why was he chosen? Does the Court not want men who respect the judiciary to be in such a responsible positions, virtually substituting for a judge? Why undermine your own authority? Why should "men of law" hand over responsibility to "men of faith"?

We have in the recent past seen many pictures of judges making temple visits, many of them undoubtedly must be devotees of Sri Sri Ravi Shankar, why then was he appointed a mediator? Why give room to allegations of bias once the process is over. The names of the mediators must surely be reconsidered before it is too late.

The writer is former Additional Solicitor General of India and founder of founder of The Leaflet, a legal portal

The Post-Balakot challenge

India's response to the Pulwama terrorist attack does signal a break from the past. But there is no clarity if the contours of a new approach have been drawn



VIVEK KATJU

AS THE EVENTS set in motion by the Pulwama attack wind down, one point is clear: notwithstanding the Pakistani ways present in India-Pakistan relations, India bears reiteration. The relationship between not only to India's external interests and foreign policy but also, in almost equal measure, to the country's politics and social equilibrium. That explains, perhaps, the absence of serious discussion on the Pakistani reality of the prevalence of entrenched reflexes of the political and security classes and the projection of the complex relationship as a mixture of a high decibel gladiatorial contest and a raucous *tamasha*.

All this was on display in the weeks after the Pulwama attack and distracted attention from what in the aftermath of the attack should have been the national focus — how to end Pakistan's terrorism, which has continued for almost three decades. Instead, the popular attention by itself, and intensified by the media, was on the politics over the Pulwama, the Balakot strike and the Pakistani counter. It was the grieving families of the victims of Pulwama and the capture and return of Commander Abhinandan Varthaman. It was for the nation to share the grief of the families and rejoice in Abhinandan's return and for the media to report but not at the root of the problem.

The post-Uri attack surgical strikes marked a major shift in India's response to Pakistani terror. India had then announced that it had taken the military action against Pakistan-controlled territory but had emphasised that it had targeted only terrorist launch pads. The surgical strikes were undertaken in a manner that provided Pakistan an opportunity to deny them and therefore, foreclosing the possibility of escalation though at the cost of an erosion of its nuclear overhang doctrine.

The Balakot action was designed to send a much stronger signal of the Indian resolve to not refrain from acting militarily on Pakistani sovereign territory in the wake of an unacceptable terrorist attack. At the same time, as after the surgical strikes, India went to great lengths to stress that it had only targeted a terrorist facility. Have the surgical strikes and the Balakot action set a new criterion which no government will be able to not only to India's external interests and foreign policy but also, in almost equal measure, to the country's politics and social equilibrium. That explains, perhaps, the absence of serious discussion on the Pakistani reality of the prevalence of entrenched reflexes of the political and security classes and the projection of the complex relationship as a mixture of a high decibel gladiatorial contest and a raucous *tamasha*.

What is certain is that Pakistan and the international community will have to factor in their calculations India's willingness to bring its conventional forces into play in the wake of an unacceptable terrorist attack. Till now Pakistan had sought to paralyse the possibility of an Indian conventional military force reaction after a terrorist incident through its nuclear overhang threat. Now it still have to think anew especially as the international community knows that Pakistan harbours terrorist groups that act against India with or without state involvement. It is unlikely though that Pakistan will give up the use of terror. Hence, if India wants its end, it will have to consider it as a strategic challenge and use all elements of national power in a sustained manner over a long period.

Isolated steps such as the withdrawal of the MFN status, denial of visas to sports teams and the decision to use all the waters of the Eastern Waters Treaty — even if feasible — are toothless. They may contribute to bringing down Indian anger but will be ineffective in moderating Pakistani thinking or action. Pakistan wants and emphasised again and

again by Prime Minister Imran Khan influence Pakistan to abandon terror?

The Composite Dialogue to promote cooperation, address outstanding issues and handle humanitarian concerns was begun in 1998. Soon after this author told a prominent Pakistani politician, who has always professed a commitment to India-Pakistan peace, that as the two countries had embarked on a serious and comprehensive engagement, Pakistan should give up its support of terrorist groups acting against India. His reply "Agar hum yeh band kar dein toh aap hamse baat kyon karenge"? (If we were to stop this why would you talk to us?)

Has this Pakistani premise changed during the course of the last two decades? Every time India resumed talks after a terror strike, though after a hiatus, the view expressed by the Pakistani politician has been reinforced.

India has to insist that unless terror ends, the resumption of the dialogue will be pointless. This is an entirely reasonable proposition and should be projected to the international community. It is noteworthy that except for a muted Chinese statement that sovereignty should be respected, no country has criticised the Balakot action. There is therefore a recognition that India's strategic patience is over and that Pakistani terrorist adventurism should cease. India should emphasise this point. The international desire that hostilities should end is on a different footing as is the US's intervention for this purpose. The question is if all this erodes India's policy of no involvement of third parties in India-Pakistan relations. The fact is major powers take an interest in issues of war and peace — as does India in areas where its interests get involved.

Pulwama, Balakot, the Pakistani counter, Abhinandan's quick return will undoubtedly become election issues. The BJP will seek to cash in on Prime Minister Narendra Modi's decisiveness and how Pakistan was taught a lesson. The Opposition will try to deny him this advantage. In the shrillness that will ensue, a serious consideration of India's Pakistan policy will have to await another day. But will that day ever dawn?

The writer is a former diplomat

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VIEW FROM THE NEIGHBOURHOOD

A weekly look at the public conversations shaping ideas beyond borders — in the Subcontinent. Curated by Aakash Joshi

DEALING WITH TERROR

EVERY REPORT that the JeM's claim of responsibility was established and provided the Secretary of Pakistan, asks India, Pakistan to "verify the facts" of the Pulwama case. In an article in the Pakistan daily, *Dawn* on March 7, Shaikh begins by saying that while "the armed forces of both sides remain in a state of high alert and are distrustful of each other's intentions it does seem that some back channel contacts have brought acceptable assurances and permitted the resumption of the Kartarpur Corridor."

The former foreign secretary then cuses on the attack itself and suggests the Jaish-e-Mohammad claiming responsibility was, perhaps, more a matter of convenience than of actual involvement. "It is certainly true, as a perusal of the JeM publications after Feb 19 shows, that they claimed credit but this is exactly what Qaeda and the militant Islamic State and other terrorist organisations repeat. The editorial emphasises that Pakistan edly did when attacks were carried out in their name. They even claimed attacks that had not been explicitly associated with them. Still, that was to be expected and should have been recognised as such rather than leading to an assertion in virtuality and their existence on Pakistani soil have

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become much more than a nuisance and an embarrassment. It is quite clear that none of them should have any presence here. The finance secretary's remarks need to be absorbed fully and earnest action against proscribed groups must be taken immediately to eliminate the scourge once and for all."

GOVERNANCE HIT

THE ONGOING POLITICAL drama in Sri Lanka seems to be taking its toll on governance. The March 5 editorial in *The Island* asks that politics not interfere at least with the process of approving the budget. However, there is some hope, despite the political acrimony that better minds among the political class will carry the day when it comes to the polls. "A UNF minister has proved that not all yahapalana bigwigs are impervious to reason. Minister Eran Wickramaratne is reported to have said that the conduct of polls should not be left entirely to the discretion of politicians, and the dates of all elections have to be constitutionally stipulated. This is a sensible idea which deserves to be heeded by the senior leaders of the government and the Opposition alike. There may be a constitutional provision for changing the dates

of elections, under extraordinary circumstances, to prevent the country being thrown into turmoil, but, overall, there has to be predictability where polls are concerned," the editorial points out.

JUSTICE OR VENGEANCE

THE LIFE SENTENCE to former Nepal legislator Resham Chaudhary, and 10 others, for the killing in 2015 of eight police personnel is being welcomed as justice being done. In contrast to other parts of South Asia, there has been a little clamour for the death penalty. *The Himalayan Times*' editorial on March 8, 'Poetic Justice,' notes: "The kin and kith of the fallen victims have welcomed the verdict and said justice has been done. The supporters of the accused have, however, cried foul at the verdict. The RJP-N leadership, which conspicuously withdrew its support to the government shortly after the verdict, has termed it 'shocking'. Chaudhary had contested the parliamentary election from Kailali Constituency-1 and also won in absentia with a huge margin of votes." But, despite the apparent politicisation of the case, justice has been done at it must be welcomed. The verdict also acts a deterrent to other would-be-offenders, the editorial says.

LETTER TO THE EDITOR

DIFFERENT STROKES

THIS REFERS TO the article 'A means for re-invention' (IE, March 8). The intention of forging alliances just to defeat PM Narendra Modi, is too evident to the public. The Congress sees a chance to upstage Modi because they have tasted blood in three states on the strength of Rahul Gandhi promising the moon to the blind. There is no real narrative by the Opposition to convince people about how they can be better at governance. The Opposition must chart out a decisive game plan that showcases their intentions to govern better. They must forge alliances of like-minded parties, not just convenient partners, if they are really to be taken seriously.

Bholey Bhardwaj, Mumbai

WOMEN'S IMPACT

THIS REFERS TO the article "Making the world a meaningful place" (IE, March 8). According to the World Bank, the benefits associated with girls' education include reduction of child and maternal mortality, improvement of child nutrition and health, lower fertility rates and growth in economic production. Since independence, the judiciary has proactively interpreted and amplified the ambit of legislative provisions, too, in favour of the women of our country. So, a promise from the local governments and the community itself to ensure the safety of free movement for women on international Women's Day would be most fitting for the occasion.

Sambhu Nath Chowdhury, Hooghly

This refers to the article 'Making the world a meaningful place' (IE, March 8). There is little doubt that educating girls serves the society in a much better way. There is no dearth of educational institutes for girls in our country. But the path girl students tread to get to their schools/colleges is literally strewn with thorns. Safety of girls, like facilities for their education, must be the top priority of the government. Moral

LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to editpage@expressindia.com or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

THE WINNER RECEIVES SELECT EXPRESS PUBLICATIONS

values must be imparted to boys at home.

Samiul Hassan Quadri, Bikaner

STRIKING FREE PRESS

THE GOVERNMENT IS trying to take action against a newspaper under the Official Secrets Act which had published an article in favour of the greater public good. Such an action on part of the government might be a threat to the democracy and freedom of the press. All the pivotal changes in our country are more or less the result of a journalist being brave enough to dig out the truth and present it to the public. Such an act also violates the people's right to know and takes away the democracy our freedom fighters fought and died for — considering the Official Secrets Act is a British-era rule.

Nishtha Arora, Rajpura, Punjab