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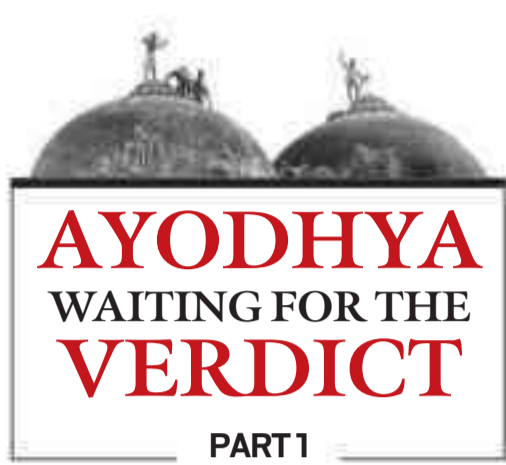
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SIMPLY PUT QUESTION & ANSWER

Issues in Ayodhya title suit

In its upcoming verdict on the Ayodhya dispute, the Supreme Court will decide on the 2010 ruling of the Allahabad High Court that had directed a three-way partition of the disputed land. What were the questions the High Court had examined, leading to the appeals in the Supreme Court?



APURVA VISHWANATH & KAUNAIN SHERIFF M
NEW DELHI, NOVEMBER 5

THE SUPREME Court's verdict in the Ram Janmabhoomi-Babri Masjid dispute is expected soon. It will be on appeals against a verdict by a three-judge Bench of the Allahabad High Court in 2010. Justice Sibghat Ullah Khan, Justice Sudhir Agarwal and Justice Dharam Veer Sharma had held that the three parties — Bhagwan Ramlalla Virajman, Nirmohi Akhara and Uttar Pradesh Sunni Central Waqf Board — were in joint possession of the disputed 2.77 acres of land in Ayodhya in the absence of a better title, and had directed a three-way partition.

In doing so, the Allahabad High Court had broadly dealt with eight significant issues that involve over 30 questions in connection with the civil suit. A look at how the High Court had ruled on these eight issues, which are central to the appeal in the Supreme Court:

Is the claim made by the Hindu side in 1989, particularly by the deity Ramlalla Virajman, time-barred?

While the law of limitation extinguishes a party's right to property if they do not file a claim within six years, all three judges on the Allahabad Bench agreed that the suit filed on behalf of Ram Lalla is not barred by limitation. They agreed that even if the suits were time-barred, the Code of Civil Procedure requires that the court pronounce judgment on all issues, irrespective of its finding on a preliminary issue. The two suits filed by Nirmohi Akhara and Sunni Waqf Board were held to be time-barred.

Does a suit filed in 1885 settle the question of land possession?

In 1885, Mahant Raghubar Das had filed a suit seeking permission to build a temple in the Ram Chabutara area. Mohammad Ashgar, who claimed to be the Mutawali of the Babri mosque, opposed the suit. While he did object to demarcation of the land by a few inches, he did not raise substantial objections. The suit was dismissed; the court was of the opinion that granting permission to build a temple would amount to laying the foundation of a riot between the two communities.

On behalf of Ram Lalla, the argument was that the 1885 suit operated as *res judicata* — or a settled point of law which cannot be adjudicated again. In 2010, Justice Khan held that the order had been essentially a *status quo* order and did not decide on any legal issues, and hence cannot bind the Muslim side. Justice Sharma held that since the Mahant and the Mutawali could not be said to have contested on behalf of all parties who have an interest in the dispute, it cannot be binding on the parties.

When was the structure built, by whom, and who was in possession of the land?

The Hindu side argued that it was always

in possession of the land, and was displaced only in 1949 when the premises were sealed and attached by the district magistrate of Faizabad. They argued that a mosque was built by emperor Babur. The Muslim side argued that the mosque was built in 1528 by Babur's commander Mir Baqi, who dedicated it as Sunni waqf property, and that they were in possession since then.

Justice Khan and Justice Agarwal held that there is no conclusive evidence to support either claim. Justice Khan relied on a 1786 account by Joseph Tiefenthaler, a European geographer, to say that the structure was built before 1786 but that there is no reliable historical evidence to conclude that it was built in 1528. Justice Sharma held that the structure was built by Mir Baqi at Babur's command but it cannot be held conclusively that this was in 1528.

Was the mosque built on the site of an ancient Hindu temple?

The three judges had different views on this. Justice Khan held that no temple was demolished for building the mosque, but that it was constructed over the ruins of temples that had been lying there for a very long time, and that some of that material was used in the construction. He held that Hindus earlier believed that in a very large area of the disputed premises is a very small part that is believed to be the birthplace of Lord Ram, and subsequently Hindus started identifying the disputed premises as the exact birthplace, or as a place wherein the exact birthplace was situated. Justice Khan held that Ram Chabutara and Sita Rasoi were in existence before 1855, and Hindu worshippers offered prayers there. This formed the basis of the court's decision to grant joint possession of the land.

Justice Agarwal held that the building was not exclusively used by members of the Muslim community, and that, after 1856-57, the outer courtyard was exclusively used by Hindus while the inner courtyard was visited for worship by members of both communities.

Justice Sharma conclusively held that the masjid was built on the ruins of a Hindu temple. He relied on Archaeological Survey of India (ASI) findings that 265 inscriptions found on December 6, 1992, after demolition of the structure, and other architectural remains leave no room for doubt that the inscription is written in the Devanagari script of the 11th and 12th centuries. He also relied on the report and testimony of Dr Rakesh Tiwari, former director-general of the ASI, that an old temple had been demolished and the masjid was constructed there.

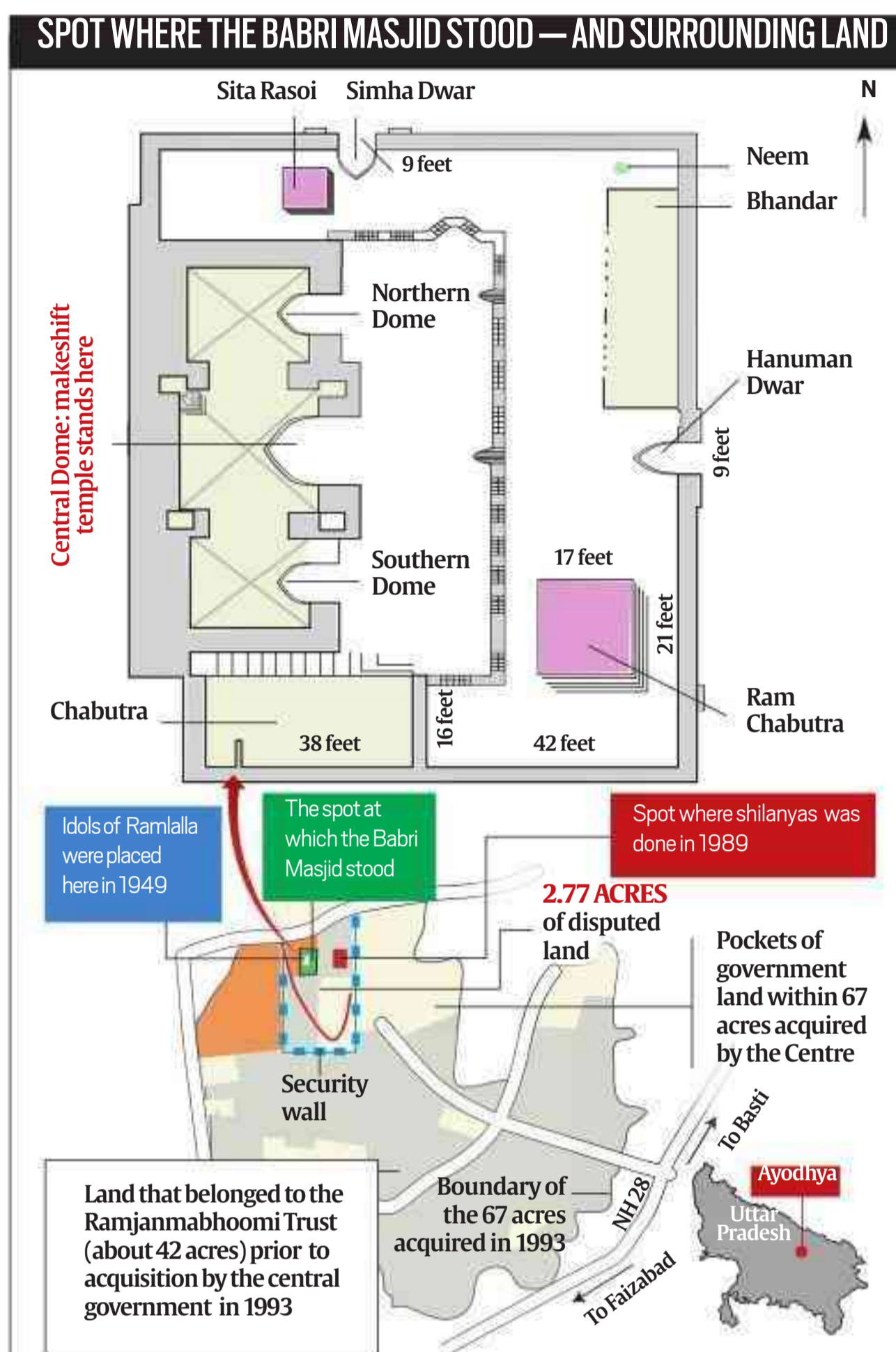
Were idols and objects of worship placed on the night of December 22-23, 1949, or were these already there?

Justice Khan and Justice Sharma agreed that these were placed on the pulpit inside the mosque for the first time that night, while Justice Agarwal held that it cannot be proved that these were placed that exact day. Justice Agarwal cited evidence that even before December 22, 1949, there were idols and objects of worship at Ram Chabutara, on the outer courtyard.

Did the outer courtyard include Ram Chabutara, Bhandar and Sita Rasoi? Were these demolished in 1992?

Based on maps of 1885 and 1950, all three judges agreed that these structures existed on the outer courtyard. The parties agreed that these were demolished on December 6, 1992.

Justice Khan referred to Tiefenthaler, the geographer who had visited the area between



IN THE COURTS, 1885 TO 2019

1885-86 The sub-judge and district judge of Faizabad dismiss a suit by Mahant Raghubar Das seeking to build a temple on the land in Ayodhya (on the courtyard where the Ram Chabutara stands) adjoining the Babri mosque.

1949 On December 22-23 that year, idols of Lord Ram and other objects of worship appear under the central dome of the Babri Masjid.

1950 Two suits are filed before the Faizabad district court by Gopal Visharad (Suit 1) seeking permanent mandatory injunction restraining Muslims from removing idols of Lord Ram.

1959 Nirmohi Akhara files a suit (Suit 3) against Baboo Priya Ram Dutt for possession of the entire property (both inner and outer courtyards) arguing that they were dispossessed of the property in 1949 after the property was entrusted to Dutt, the receiver appointed by the government.

1961 The UP Sunni Central Waqf Board, and 9 Muslims of Ayodhya file a suit (Suit 4) against Gopal Visharad (plaintiff of the first suit), Mahant of Nirmohi Akhara, and 22 others seeking a declaration of the title.

1986 District Judge of Faizabad orders removal of barriers, locks and brick-grill wall for Hindus to worship the idols.

1989 Bhagwan Sri Ramlalla Virajman at Sri Ram Janam Bhoomi Ayodhya, Asthan Sri Ram Janam Bhoomi, Ayodhya file a title suit (Suit 5) represented by "next friend" Deoki Nandan Agarwala, a former judge of the Allahabad High Court.

2010 Allahabad High Court holds that the three parties—Bhagwan Ramlalla Virajman, Nirmohi Akhara and UP Sunni Central Waqf Board—are in joint possession of the disputed 2.77 acres of land in the absence of a better title, and direct a three-way partition.

1766 and 1771 and had noted the existence of Ram Chabutara. Justice Khan held that it must have been there before that time. Its existence is noticed in several subsequent gazetteers' reports etc. On the other hand it is inconceivable, Justice Khan held, that at the time of construction of the mosque, a worshipping place of Hindus would have been either permitted to remain inside the boundary wall or permitted to be constructed. He held that the only thing that can be said is that it came into existence before Tiefenthaler's visit but after construction of the mosque.

Who had possession and title of the property?

Justice Agarwal held that the inner courtyard did not remain in possession of any of the parties exclusively. On the outer courtyard, he held that the right of prayer had been perfected by Hindus, having continued exclusively for more than a century; however, this would not apply to the inner courtyard.

Justice Sharma held that on the basis of revenue waqf records, it was not proved that Muslims remained in exclusive possession of the property. He said there were several figures of Hindu gods and goddesses on the pillars inside the mosque, which show that the property was open and not in exclusive possession of Muslims. He said Muslims cannot claim adverse possession against the property because it was an open place and everybody was visiting it, including Muslims. He concluded that Hindus have proved that they were worshipping even after the structure was constructed, and that they were in exclusive possession of the outer courtyard.

Justice Khan held that while Muslims have not been able to prove that the land belonged to Babur under whose orders the mosque was constructed, Hindus have not been able to prove that there was any existing temple at the place where the mosque was built after demolishing the temple. He concluded that both parties were/are joint title-holders in possession of the disputed premises.

Is the Babri Masjid a valid mosque?

Justice Agarwal held that for the last more than two-and-a-half centuries and at least about 200 years before the present dispute arose in 1950, the building has always been known as a "mosque". He observed that whenever Hindu parties contested a case, they have throughout called it a mosque and there has not been any change to this stand until at least 1950.

Justice Sharma said that on historical account, it was established that the mosque was built after demolishing a temple. He concluded that the recovery of 265 artifacts fully establish that damaged parts of the old Hindu temple in the form of building material were reused in construction of the mosque, against the tenets of Islam.

Justice Khan held that it cannot be said that the mosque was not a valid mosque having been constructed over the land of someone else. He concluded that while use of the material of the ruined temple cannot be said to be desirable, it is not such that it renders the mosque to be not a mosque in the eyes of the law.

Drawing of site is indicative and not to scale. Drawing of plot (not to scale) where Babri Masjid stood is based on a plan prepared in 1950 in the court of Civil Judge, Faizabad, and reproduced in the order of the Allahabad High Court.

TOMORROW
HOW THE TWO SIDES CONTESTED THE HIGH COURT VERDICT IN THE SUPREME COURT

BJP and Sena in Maharashtra: history of a difficult relationship

VISHWAS WAGHMODE
MUMBAI, NOVEMBER 5

TWELVE DAYS after the BJP and Shiv Sena together won 161 seats in the 288-member Maharashtra Assembly, the pre-poll allies have not been able to form their government, as the Sena has made demands that the BJP has found difficult to accommodate.

Despite being partners for the major part of three decades, the relationship between the parties has been under almost constant strain — this is because the ideological affinity that brings them together also pits them against each other in a contest for broadly the same political space.

Thirty years ago

Ahead of the Lok Sabha elections of 1989, the Sena and BJP forged their first pre-poll alliance on the Hindutva platform. For the BJP, the key interlocutor was Pramod Mahajan, who had good equations with Sena founder Bal Thackeray. The BJP did not have a presence in Maharashtra at the time, and hoped to piggyback on the regional ally; the Sena wanted to harness the BJP's Hindutva appeal for gains in what was then a Congress stronghold.

As the national party, the BJP contested

more seats in the Lok Sabha election (1989), and agreed to leave the bigger share for the Sena in the Assembly polls the following year. Of the 183 seats the Sena contested, it won 52; the BJP won 42 of its 104. Manohar Joshi became Leader of Opposition but was soon challenged by Chhagan Bhujbal of his own party; in 1991, Bhujbal joined the Congress, and the post went to the BJP.

Bickering in power

The saffron allies leveraged the December 1992 demolition of the Babri Masjid and the March 1993 Bombay blasts in a communally charged, polarising campaign against the Congress in the Assembly election of 1995. The Sena won 73 seats and the BJP 65 — and in accordance with Bal Thackeray's formula that the ally with the higher number of seats would have its Chief Minister, Joshi got the top job and Gopinath Munde of the BJP became his deputy and Home Minister.

The two parties quarrelled frequently over policy — and the alliance was shaken after Raj Thackeray, then the Sena's rising star and Thackeray's political heir apparent, came under a cloud in the Ramesh Kini case of 1996. (Raj Thackeray, accused in the alleged conspiracy to drive Kini to suicide, was later acquitted.)

Tensions out of power

The allies fought the Assembly elections of 1999 together, but each tried to defeat the other's candidates so that it could win more seats than its ally and claim the chief ministership. The Sena ended up with 69 MLAs against the BJP's 56, and believed that the remaining numbers could be made up subsequently. But the BJP was not keen, and there was talk that Munde wanted to become Chief Minister.

The allies negotiated unsuccessfully for 23 days, at the end of which Sharad Pawar's NCP, which had broken away from the Congress months earlier, formed a coalition government with the Congress with Vilasrao Deshmukh as Chief Minister. During the long

spell in the Opposition that followed, the Sena and BJP could not agree on many issues — and the permanent state of tension was captured in Mahajan's ambition to see a "shat-pratishat" (100%) BJP in Maharashtra, and Thackeray's retort that "Kamalabai was blooming in the state only because of Shiv Sena".

Even so, the parties decided to get back together for the Assembly elections of 2004 — and the Sena won 62 seats; BJP 54. In 2005, Narayan Rane, a former Chief Minister of the Sena-BJP government, walked over to the Congress from the Sena along with a dozen MLAs, and the BJP made an unsuccessful bid for the post of Leader of Opposition.

In 2009, as the Congress-NCP stormed back to power, the saffron tally dropped

sharply. But for the first time in 20 years, the BJP's 46 seats were two more than the Sena's tally in the Assembly — and the BJP had the post of Leader of Opposition.

Change in the balance

In 2002, when Atal Bihari Vajpayee asked for "raj dharma" to be followed in Gujarat, Thackeray had backed the then Chief Minister of the state: "Modi gaya toh Gujarat gaya," the Sena supremo had said. It is ironical that it was the rise of the new "Hindu Hriday Samrat" in Narendra Modi that tilted the balance in the Maharashtra alliance decisively towards the BJP.

Emboldened by the Modi wave in the Lok Sabha elections of 2014, the BJP sought to drive a hard seat-sharing bargain for the Assembly polls — which ended with the parties going on their own for the first time in 25 years. As the Congress and NCP too had split, multicorner election battles followed. The Sena won 63 seats, the BJP 122, and Devendra Fadnis became Chief Minister. After sitting in the Opposition for some time, the Sena joined the government and was given 12 mostly insignificant portfolios.

Compelled to play second fiddle in the alliance, the Sena repeatedly attacked the BJP even while it was part of governments at both the Centre and the state — on demon-

stratification, Rafale, and the implementation of farm loan waivers in Maharashtra. Uddhav Thackeray said that the Sena had "wasted" a quarter century with the BJP, and the parties contested the BMC elections of 2017 separately amid a lot of bitterness.

Sena's unexpected prize

As the Lok Sabha elections of 2019 approached, both parties felt a need to get back together. In February, Fadnis announced that there would be equal sharing of "post and responsibilities" in the state government, among other things. The results, however, underlined the enduring strength of Modi's appeal — and the Sena accepted a smaller share of seats in the Assembly polls, while the BJP dropped hints about eyeing a majority on its own.

But the Assembly results were very different. The BJP's tally fell to 105 from the 122 it won in 2014, and the Sena, despite coming down from 63 to 56 itself, was suddenly back in a position to call the shots. With the BJP now dependent on the Sena, Uddhav said on the day of the results that he wanted a 50-50 powersharing formula — including the CM post, as had been decided before the Lok Sabha elections.

The term of the current Assembly ends on November 9.



The Indian EXPRESS

FOUNDED BY
RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

LOST OPPORTUNITY

Government should have used its formidable political capital to blunt the opposition to RCEP, push its way through

AFTER MONTHS OF uncertainty, India has chosen to hold back from joining the Regional Comprehensive Economic Partnership (RCEP) trade agreement, turning its back on one of the most dynamic regions in the world. Certain segments which lobbied against the deal might be relieved at the outcome, but the loss to the economy far exceeds the short-term perceived benefits of staying out of the pact. While the political rhetoric continues to centre around free trade, the government's action signals a distinct shift towards a protectionist stance.

Much of the domestic opposition to joining the RCEP is rooted in the fear that the influx of cheap Chinese products, non-tariff barriers which tend to restrict market access, and cheaper dairy products from New Zealand would worsen the already ballooning trade deficit and dent the domestic industry. To be fair, these are legitimate concerns. There are reasonable arguments to be made that certain sectors, agriculture in particular, would need safeguards. Though the details of these negotiations are not yet known, the Indian side should have made greater effort to convince other countries for carve-outs for certain sectors, and for allowing a gradual phasing out of tariffs to ease domestic fears. New Delhi should have used this as an opportunity to push through contentious but necessary reforms that would boost competitiveness. But, by deciding not to join, it has succumbed to the protectionist impulses that have guided much of its recent trade moves. While it is possible that the deeper than expected slowdown in the economy may have tilted the balance in favour of not joining, a certain policy incoherence marks this government's approach. On the one hand, it wants India to become a manufacturing hub. Yet, staying out of the RCEP reduces opportunities for trading with these countries, which together account for roughly a third of global trade. Manufacturing today requires greater integration with global supply chains. Signing the agreement would have signalled an embrace of freer trade, which could have aided in the shift of companies out of China to India. But the move has complicated India's course to integrate into global value chains. With this, India has also ceded space to China to have greater say in the region.

Ultimately, it was a political call. In the presence of stiff opposition, Prime Minister Narendra Modi should have marshalled his formidable political capital amassed by winning two consecutive elections, and with enhanced majority, to seal the deal. As a persuasive communicator, Modi, with the backing of 303 MPs in the Lok Sabha, could have made a convincing argument to people on the long-term benefits flowing from this deal. The failure to do so, bowing to the pressure of various interest groups, shows that parliamentary strength alone is not sufficient to push through contentious but necessary reform.

SHAMING THE LAW

The violence between lawyers, police in Delhi undermines basic norms of civic order

WHAT BEGAN REPORTEDLY as a dispute over parking between a constable of the 3rd Battalion of the Delhi Police and an advocate at Tis Hazari court has turned into an unprecedented and shameful face-off that undermines the entire justice system in the national capital. After the violent clash at Tis Hazari on Saturday, where eight advocates and 20 policemen were injured, the striking lawyers have allegedly assaulted two litigants and a policeman outside the Saket district court. Another constable was thrashed, allegedly, outside the Karkardooma court. There have also been other reports of assaults on journalists, citizens and police by lawyers. Now, as a cycle of threats, protests and counter-protests continues, amid appeals from top police officials to maintain calm, there is little for the citizen to take away in terms of a silver lining.

That lawyers, as officers of the court — or even just as citizens — have an ethical duty to maintain basic standards of legality and public decency, should not be something that needs to be stated explicitly. Yet, it must be. As recently as 2016, lawyers attacked journalists at the Patiala House court during the then JNU student leader Kanhaiya Kumar's hearing on charges of sedition. Kumar too was assaulted at the same time. These incidents are just some examples from the many across the country where lawyers have openly flouted the law, resorted to violence and violated the spirit of the Constitution.

The criminal justice system in India is an intimidating beast. The police and the legal fraternity have a responsibility to make it less so, to be available to and accessible for ordinary people. As of now, that is certainly not the case in the capital. Those meant to uphold the rule of law are breaking it in the most crass manner possible, those who are meant to ensure order are bringing chaos to the streets. The fact that the root of the violence, and the face-off, is something as petty as a parking spot only shows what little regard officers of the law have for their own professions. The way forward is straightforward: Those who have indulged in violence, whether donning khaki or a black coat, must be brought to book. The protesting policemen who feel that the government and senior leadership of the force has little regard for those of their colleagues that have been injured must be reassured. And then, perhaps, we can see something that resembles the rule of law in Delhi.

GOLD RUSH

If Ghosh science is right, it should be raining precious metal in India. But it isn't. Further research is urgently required

THE BENGALI COMMUNITY, already drunk with joy for its third Nobel prize, could be looking at a fourth and a fifth, for state BJP president Dilip Ghosh. One in physiology or medicine, for discovering gold in the milk of Indian cows, a modern Kamadhenu fable for the age of Mammun. And another in economics, when he explains why, if gold is flowing like milk, its price keeps going up, up and away.

Ghosh has a reputation for off-the-cuff remarks, but this time, it wasn't just a throw-away line, but a line of reasoning. At a public meeting in Bardhaman, Ghosh observed that Indian cows have humps, which their imported cousins lack. The differential anatomy is crucial, because the hump contains a swarna nari (golden nerve). It is the alchemic big brother of chlorophyll, synthesising gold from sunlight. It is the Philosopher's Stone that Nicholas Flamel and Paracelsus sought fruitlessly. It was lurking far from their ken, within the Indian cow.

Unlike inauthentic Western savants, we have always known this. The clue is hidden in the legendary joke essay that all Indian schoolchildren must write, detailing the properties of the cow. "The cow is a useful animal," they are understood to expound. "The cow has four legs, two horns and one tail." Traditionally, the essay stops there for lack of imagination. But now, the missing link in the riddle has fallen into place. It is revealed that the Indian cow also has one hump. A very crucial hump which secretes gold into the cow's milk. This must be the source of the tantalising riches of the East, which Europeans braved the seas to seek. They did not find the source. But now we have, and we shall doubtless replenish the colonial loot of centuries, and return to the Golden Age. Come, it is milking time.

Getting off the RCEP bus

Signing the agreement would have given more substance to India's Act East policy



V S SESHADRI

AFTER SEVEN LONG years of negotiations, India has decided not to join the Regional Comprehensive Economic Partnership (RCEP). The final statement after the RCEP summit in Bangkok has left the matter somewhat open. It says that all RCEP countries will work towards resolving the significant outstanding issues that India has with the agreement. But Prime Minister Narendra Modi's statement leaves no room for rethinking or further negotiation.

Two key reasons have been cited for India's decision. One, the current international context has been seen as unhelpful. The China-US trade war and the challenges of the multilateral trading system brought added pressure for quickly concluding the RCEP negotiations. This shifted the focus somewhat from crafting an agreement that worked for all. Second, the RCEP final package was seen as lacking balance and fairness. India, it appears, was not able to get several of its key concerns addressed. These, reportedly, are related to possible surge in imports, particularly from China, addressing non-tariff barriers, protection to certain sectors in agriculture, dealing with possible circumvention of the rules of origin, and securing better access in the services sectors.

What has not been mentioned but may also have contributed to the decision was the economic slowdown and a sombre mood within the country that *inter alia* has seen exports stagnating. There has also been opposition to the RCEP in recent weeks from several quarters in the country. Politically, while the RCEP received no mention in the election manifestos of the 2019 elections, they have risen to a fever pitch in the last few weeks.

This writer had argued for India to join the RCEP but for negotiating hard to get a favourable outcome. An opportunity of this nature comes rarely. This writer had also proposed in a detailed RCEP study he led for the CII that India should try and get a more back-loaded agreement for tariff commitments so that it gained space of a few years — by 2025. This would have enabled India to become competitive. After all no RCEP member runs as high a trade deficit with most members of the grouping.

The CII study had also outlined elements

of a time-bound action plan till 2025 — and beyond. India should have had such an action plan in place to be RCEP ready. Such an action plan would have had a higher rate of success if there was external pressure — for example from the RCEP — to reform within a fixed timeframe.

Twenty years ago India gave up its quantitative restrictions on imports after we lost a case in WTO. There were fears that the country will be flooded with imports. At the commerce ministry, a "war room" was set up in the Commerce Ministry to monitor imports. Import surges were contained. Liberalisation helped in industry restructuring. A reform of our export incentive schemes is now underway after losing another WTO dispute. Mobilising public and political support for difficult reforms is never easy. Sooner or later we have to fall in line with international practices and not get isolated.

It does appear that India negotiated hard in the RCEP meet. Other countries were, in the end, unwilling to be accommodative of India's concerns. A more flexible stand by them would have enabled India to grow rapidly and the country could have been a larger market for all members of the grouping to benefit from. We have, therefore, decided to disembark from the RCEP bus.

India was no doubt economically, from the beginning, an outlier of sorts in the RCEP since all other countries (barring Cambodia, Laos and Myanmar which, in any case, are least developed countries and would have got a soft treatment) are members of the APEC and are participants in its various initiatives. In particular, the trade and investment facilitation action plans of the APEC have seen transformational results. Peer pressure among others significantly helped these economies in reducing transaction costs and improving their position on indices such as logistics or in ease of doing business. Even their negotiators are far more familiar with each other's policies and practices. The APEC annually holds over 300 technical meetings that have helped changing mindsets. For this very reason, a closer association such as through the RCEP could have been of help to India in playing catch up with countries which are members of the group. It could

have also promoted formation of supply chains and facilitated participation in mutual recognition agreements.

One hopes that India's decision to not join the RCEP will not detract the country from mounting a focussed effort in enhancing its competitiveness and expanding its export base. India's burgeoning imports demand no less.

It will also be essential to regulate imports in conformity with domestic and international standards, an aspect that has received inadequate attention. Not being part of the RCEP does not mean we will not get targeted by exports from the group's members which are now likely to attract more investments. Vigilant monitoring will be required to avoid circumvention.

The WTO has now become unreliable for securing and enhancing the country's market access. We therefore need to explore other means for this purpose. Bringing the ongoing trade negotiations with the US, our largest export destination, to a successful conclusion should be a priority.

On free trade agreements (FTAs), we have focussed far more on the East. We do not have a single FTA with countries in the West. Based on the RCEP negotiation experience, a realistic yet meaningful FTA strategy needs to be formulated for the next five years. Further, getting more from the existing FTAs is critical; for this, the ongoing reviews need to be fully utilised. Mobilising stakeholder support for signing more FTAs will be difficult if we cannot get the existing FTAs to work for us better.

Joining the RCEP would have given more substance to our Act East policy. The economic pillar of this policy has remained weak compared to those pertaining to political ties, strategic and security aspects and people to people relations. Opting out of the RCEP implies there is need for greater exertion now on strengthening connectivity, trade and investment bilaterally. Concepts like Indo-Pacific will otherwise lose traction for us.

The writer, a former Indian ambassador to Myanmar, is currently vice chairman, Research and Information System for Developing Countries



HARSIMRAT KAUR BADAL

THIS IS A very momentous occasion in the history of not only the brave and patriotic Sikh community, but also of the two neighbouring countries, India and Pakistan: The collective repositories of the unique vision of Guru Nanak Dev ji. Befittingly, the 550th Parkash Utsav of the Guru is being celebrated as a global event.

Coinciding with the occasion is the historic decision of the government of India, headed by Prime Minister Narendra Modi, to open and build a corridor of access between Dera Baba Nanak in India and Kartarpur Sahib in Pakistan. These twin border towns, situated about five km from each other on either side of the Indo-Pak international border, have a unique place in the life of the great Guru, as he spent the last 18 years of his life in this region, working hard as an ordinary farmer.

The government of India's decision to open up and expeditiously operationalise the Kartarpur Sahib corridor — responded to after initial reservations by the government of Pakistan, holds out great hope for the people of the two countries who have remained in a sort of time warp since the tragic Partition of 1947. The Indian government's decision is a brave and visionary step that can transcend history and help over 150 crore people here to break free of that time warp — and, in doing so, end the cycle of fratricidal hatred.

We must remember that the two neigh-

CORRIDOR OF HOPE

Guru Nanak offers a path to the Subcontinent to transcend post-Partition bitterness

bouring countries with a combined population of over 150 crores account for roughly one-fifth of the total humanity. What happens to them impacts the destiny of the world in a significant way. Accordingly, India believes that the two countries must learn to work together bearing in mind mutual interests that are focused on the welfare of people in the subcontinent.

India has taken substantial initiatives to promote economic and cultural cooperation with every country in the region. And, successive governments in New Delhi have gone out of the way to accommodate Islamabad in particular, as is borne out by the unilateral advantage of the "Most Favoured Nation" (MNS) status conferred on Pakistan, without any reciprocal gesture from Islamabad. We believe that the governments in the two countries must begin to think of the dreams and aspirations of over a billion-and-half people from both sides of the border as a single and shared constructive force.

Guru Nanak Dev Patshah, whose followers cut across communities and countries, provides the necessary moral and emotional impetus for translation of these dreams into material welfare of the people. The Parkash Utsav and the corridor access have opened up new windows through which the winds of change and goodwill have started coming in.

Guru Nanak Dev ji is unique in that he is

revered by people and communities who may otherwise have remained in reciprocal hostility. As these words aptly sum up: "Nanak Shah Faqir, Hindu da Guru, Mulim da peer." It is his extraordinary spiritual status, which has now cracked an impossible Indo-Pak code and created an opportunity for 150 crore people in the Subcontinent, and many others elsewhere, to start a fresh era of friendship, goodwill and cooperation. Simply put, this translates into a collective fight against poverty, illiteracy and unemployment in the two countries through shared dreams, common objectives and joint efforts in that direction. But for this, an atmosphere of mutual trust must be created in which there is no place for elements like non-state actors indulging in indiscriminate killing of innocents in the name of religion.

However, this is no time for incriminations. We owe this special occasion to our great Guru whom people in the Subcontinent hold in high regard and shared reverence. We hope that we can transcend the bitter legacy of our past and walk through a new corridor of hope towards a future of prosperity.

The future generations will judge us by how well we seize this opportunity.

The writer is Union Minister, Food Processing Industries



NOVEMBER 6, 1979, FORTY YEARS AGO

JANATA MANIFESTO

THE JANATA PARTY manifesto promises structural changes to ensure rural development and distribution of 5.5 million acre of surplus land within five years. The recommendations of the Rajkrishna committee report to speed up land distribution, which was accepted by the Janata Party government, would be immediately implemented. All cultivating tenants and share croppers would be given a title deed conferring ownership of the land on them within five years.

TURMOIL IN TEHERAN

URGED ON BY Ruhollah Khomeini, Iranian protesters seized two US consulates, an

American cultural centre and the British embassy in Teheran, and continued to hold the US embassy and more than 50 hostages. Khomeini called on the student militants to act against "the great satan, America", in order to force it to extradite the deposed Shah, hospitalised in New York for cancer treatment, back to Iran for trial, Radio Teheran reported. He also demanded that Britain hand over the former prime minister, Shahpour Bakhtiar, now living in exile in Britain.

BANGLADESH FIRINGS

THE BANGLADESH RIFLES opened two more rounds of fire on Indian cultivators at Belonia in Tripura South district, according to police.

With this the Bangladesh Rifles had so far fired 38 rounds from across the border in the past four days. There was no casualty in the firing. The Border Security Force did not return the fire. The BSF has intensified its patrolling in the border areas.

AKALA-JANATA PACT

THE AKALI DAL is now likely to forge an electoral front with the Janata Party, instead of the Lok Dal and Left parties, following the near isolation of the party president, Jagdev Singh Talwandi, in the poll panel headed by his heir-apparent Sant Harchand Singh Longowal. The panel is due to meet at Gurdwara Fatehgarh Sahib (Sirhind).

15 THE IDEAS PAGE

Raise the bar

Justice Bobde is an experienced judge and his approach is unbiased, non-political and justice oriented. As the new CJI, his task is to restate the independence of the Supreme Court



DUSHYANT DAVE

THE APPOINTMENT OF Justice Sharad Arvind Bobde as the Chief Justice of India (CJI) gives fresh hope to all the stakeholders in the administration of justice. It comes at a time when the Supreme Court's standing amongst the people has greatly eroded. The Supreme Court has not only stopped being the protector of the fundamental and other constitutional rights, but has also failed to act as the guardian of the rule of law. Its role must be judged in the context of politically sensitive cases involving citizens, opposition parties, activists and executive actions in day-to-day governance. In these areas, the Court has virtually deferred to the executive instead of stepping in to restore constitutional rights and values in letter and spirit. The Court's performance in routine matters, of course, is outstanding. But the independence of the judiciary is judged only on the touchstone of its decisions given in politically-sensitive matters.

The single-most important reason for this is the power of the CJI to constitute benches and allocate cases as the master of the roster. The judgment of its Constitution Bench in *Campaign for Judicial Accountability and Reforms versus Union of India & Anr.*, delivered on November 10, 2017, has created a piquant situation resulting in exercise of absolute power by the CJI. So, a new but questionable jurisprudence has developed, especially on the review of administrative actions on account of sealed and covered hearings without affidavits by governments, bias and recusal amongst others.

Consequently, the outstanding work done by other judges is overshadowed. Lawyers and litigants are virtually helpless in either preventing or correcting this erosion. The Bar Association, far from being the watchdog, has been complicit in this unfortunate exercise by chief justices.

An independent and strong judiciary is a basic feature of the Constitution. Yet, the Court has allowed itself to be weakened. Perhaps, B R Ambedkar was right in saying that although the CJI is a very eminent, person, "the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have..." Justice Bobde has a tough road ahead to prove Ambedkar wrong.

During the Constituent Assembly debates, member after member yearned for an independent judiciary but were apprehensive. Ambedkar's response was: "...I quite agree that the point raised is of greatest importance, there can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself, and the question is how these two objects could be secured...and I have said that the relation between the executive and judiciary are so separate and distinct that the executive has hardly any chance of influencing the judiciary."

These fears were perhaps not unjustified. Perhaps the Constituent Assembly was conscious of a future India, which would have a naturally soft approach of the Court towards executive actions, as in *ADM Jabalpur* the rule of Indira Gandhi. In recent times, decisions in the Birla Sahara case, CBI director's case and Rafale amongst others, have caused immense discomfiture among those who love and respect the Court. The Restatement of Values of Judicial Life (as adopted by the Full Bench of the Supreme Court on May 7, 1997) states that justice must not be merely done but also must be seen to be done. The behaviour and conduct of members of the higher



C R Sasikumar

judiciary must re-affirm people's faith in the impartiality of the judiciary. And that "every judge must at all times be conscious that he is under the public gaze".

Judges must remember words of Justice H R Khanna in his powerful dissent in *ADM Jabalpur*: "What is at stake is the rule of law. If it could be the boast of a great English judge that the air of England is too pure for a slave to breathe, can we also not say with justifiable pride that this sacred land shall not suffer eclipse of the Rule of Law and that the Constitution and laws of India do not permit life and liberty to be at the mercy of absolute power of executive, a power against which there can be no redress... The question is whether the laws speaking through the authority of courts shall be rendered mute because of such threats."

Justice Bobde is an experienced judge and his approach is unbiased, non-political and justice oriented. He is courteous, hears all and has judge-like qualities. His approach towards Article 21 is refreshing as one can see it in summary dismissal of SLPs in *R.S. @ Ramabhai Bhagora v. CBI* and connected matters against the judgment of Bombay High Court (04.05.2017), reversing the acquittal of many accused in Gujarat riot case. Similarly, his judgment in *Mubin Shaikh v. State of Maharashtra* reversing the order of bail to the accused in a killing of young Muslim youth is positive when he disapproved the observations of the High Court that, "the fault of deceased was only that he belonged to another religion. I consider this factor in favour of applicant/accused...", by reminding the judiciary that "we have no doubt that a Court

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fully conscious of the plural composition of the country while called upon to deal with rights of various communities, cannot make such observations which may appear to be coloured with a bias for or against a community..." Bobde's bench again declined bail to Sajjan Kumar convicted by Delhi High Court in an anti-Sikh riot case while admitting his appeal for hearing.

But one hopes that he will function as the master of the roster in an independent and objective manner. The Court comprises of outstanding and independent judges and each of them is capable of handling even politically-sensitive matters. So, there is no reason to assign them to a particular bench only. If this trend is reversed, Justice Bobde would have achieved a lot in re-stating the independence of the Supreme Court.

However, his photograph with P K Mishra, Principal Secretary to the Prime Minister, on the day of the issuance of his warrant, was dismaying. Perhaps Justice Bobde did not realise that he would be splashed on the front pages of newspapers across the country with Mishra so as to suggest proximity between him and the prime minister. This was surely avoidable because the same May 7, 1997 document says: "A judge should practise a degree of aloofness consistent with the dignity of his office."

Hopefully, the chief justice designate will dispel any wrong message sent to the judiciary and the nation in time to follow with his decisions and actions.

The writer is a senior advocate at Supreme Court of India

WHAT THE OTHERS SAY

"Jeremy Corbyn's plans are required to repair the damage caused by a system that is being run in favour of privileged individuals whose market and political power allows them to extract cash from everyone else." — THE GUARDIAN

The Maulana's march

Fazlur Rehman's dharna in Islamabad is creating a situation that exposes the faultlines in Pakistan army, politics



TILAK DEVASHER

ISLAMABAD IS, AT the time of writing, witnessing the third major dharna in recent years — that by Maulana Fazlur Rehman and his faction of the Jamiat-Ulema-e-Islam (JUI-F). The Maulana is pitching for Imran Khan's resignation and fresh elections. In 2014, it was Imran Khan's dharna and in 2017 it was that of the Barelvi Tehreek-e-Labbaik Pakistan (TLP). While the latter two did not achieve any lasting results, the jury is out on what the Maulana will accomplish. However, by all accounts, the crowd at the Maulana's dharna, which started as the "Azadi March" from Karachi on October 27 and reached Islamabad on October 31 is massive, far surpassing the previous two. It is the first major challenge to Imran Khan's leadership.

The July 2018 elections that catapulted Imran Khan to power represented political engineering on part of the army to install a "selected" PM who would toe their line. In turn, they empowered him with the façade of harmonious civil-military relations. This was a luxury that few previous political governments enjoyed. Imran Khan thus had everything going for him. What he lacked was the capacity for governance, let alone good governance. Consequently, his performance, especially in tackling the abysmal economic situation during the last 15 months, has been disappointing. This has fuelled public anger. Additionally, his single-minded focus to go after the opposition has polarised Pakistan's polity. This has created the space for the Maulana to mobilise the people, gather the opposition under his umbrella and punch above his electoral weight.

An interesting element of the situation is what is being whispered in Islamabad: The covert support that the Maulana is supposed to have received from sections of the Pakistan army. These sections are unhappy with the three-year extension given to the current army chief, General Qamar Javed Bajwa, though a formal presidential notification to this effect is awaited. It is believed that due to Bajwa's extension, over 20 lieutenant generals will retire over the next three years some of whom would have been contenders for the army chief's post but have lost out due to the extension.

The astute Maulana has clearly sensed an opportunity to advance his political fortunes that were badly mauled in the last elections and also to settle scores with Imran Khan, with whom he has a running feud. The secret of his power is the Deobandi madrasas spread all over the country and especially in Khyber Pakhtunkhwa (KP), giving the dharna a distinctly Pashtun flavor. Consequently, this dharna, unlike Imran Khan's, consists largely of madrasa students and the religiously inclined-sections of the lower mid-

dle and working classes. They face the brunt of the economic downturn and are religiously charged too — a potent cocktail.

The government is handicapped since the Maulana is following the precedent set by Imran Khan himself in 2014 when he tried to dislodge Nawaz Sharif and sat in the Red Zone for 126 days. Hence it does not really have a narrative to challenge the Maulana with.

The march has come at a particularly bad time for the Pakistan government for several reasons. For one thing, the Financial Action Task Force (FATF) wants it to take action on the 27-point action plan by February 2020 while the IMF wants implementation of the tough benchmarks that include a substantial increase in taxation. None of these would be possible in the surcharged political atmosphere. It also comes amid Nawaz Sharif's critical illness. Should something happen to him, the blame for mishandling his medical treatment will fall squarely on the government.

The government seems to have three options: Tire out the crowd by doing nothing and hope they will thin out; engage with them or use force to disperse them. The last option rather than defusing the situation would make it fraught. Engaging with the Maulana despite his single-point agenda of the PM's resignation coupled with tiring out the protestors seems to be the option the government is looking at presently.

Given the crowds he has mobilised, the Maulana has certainly come to occupy centre-stage, and got the endorsement, though reluctant, of mainstream political parties. He is playing his cards guardedly based on the fast developing situation. He has slowly upped the ante like initially giving Imran Khan 48 hours to resign — the deadline ended on November 27 evening — extending the deadline by a day, converting the march into a dharna, calling for an All Party Conference (APC) to decide next steps and so on. These steps could include lockdowns, blocking of highways and resignations from assemblies.

The Maulana has, however, been handicapped due to the reluctance of the mainstream parties — the PML(N) and the PPP — to whole-heartedly support the Azadi March, and especially the dharna. The poor participation of the PML(N) in the Azadi March in Lahore, their bastion, was especially noteworthy. Both parties are against creating a confrontational situation that could allow the army to step in.

While the potential for a confrontation exists in case the protestors try and march into the Red Zone, the Maulana is among the most seasoned and pragmatic leaders in Pakistan and adept in making backroom deals. Extending the resignation deadline and calling for an APC are signals of flexibility that the government would likely capitalise on in the coming days to try and defuse the situation.

The army, with its own power politics over General Bajwa's extension would, no doubt be watching the developing situation carefully.

The writer is Member, National Security Advisory Board. Views are personal

LETTERS TO THE EDITOR

OTHER POLLUTERS

THIS REFERS TO the editorial, 'Everyone's problem' (IE, November 5). The alarming air pollution in North India is a shameful example of the collective failure of the system. Stubble burning is often seen as the sole cause of air pollution. And even the Supreme Court has blamed farmers for it. But studies have shown that smoke resulting from the burning of straw or other biomass accounts for only about 12 per cent of Delhi's pollution while dust and soil particles contribute the largest share (23 per cent) to toxic particles dissolving in the air. Emissions from tailpipes of vehicles and industrial emissions are the other main contributors to Delhi's pollution. Strict action should be taken against such polluters as well, and not just farmers.

Shakti Singh, Karnal

FIRES AND FARMERS

THIS REFERS TO the article, 'Let's pay the price of clean air' by Anand Prakash (IE, November 5). Stubble burning has been causing smog and pollution every year in recent memory, and no one has taken a serious initiative to check it. The governments of Punjab and Haryana have been mute spectators. The Delhi CM has been crying hoarse to check stubble burning but his pleas fall on deaf ears. Blaming farmers alone is not the answer. Marginal farmers are not in a position to dispose off the crop residue on their own, as the machinery to cut it

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.

and the transportation for its disposal are very expensive. The ball is in the government's court.

RDSingh, Ambala

BUSINESS ETHICS

THIS REFERS TO the article, 'The challenge for Indian business' (IE, November 4). Indian businesses are often perceived as a contributor to the unjust social order. They must contribute to changing this image vis-a-vis the society. They must focus on providing clean water and basic amenities to the people in collaboration with the government. The emphasis must be on social security. The business model of Devi Shetty's Narayana Health could be a model.

Sauro Dasgupta, Kolkata

Compiled by Deeptiman Tiwary

VIEW FROM THE RIGHT

LESSONS FROM VICTORY

THE SANGH PARIVAR has urged the BJP to take lessons from its underwhelming performance in the Maharashtra and Haryana elections, and asked it to ponder over the efficacy of admitting turncoats into the party fold. In the latest issue of *Organiser*, the English mouthpiece of the RSS, an editorial has acknowledged the less-than-satisfactory performance of the BJP in the two elections: "What difference these election results have made is the way people have conveyed subtle messages to every party. Though the Bharatiya Janata Party (BJP) led Governments have retained powers in both the states, these results are not as per the expectations," the editorial said. Hinting at reasons behind the party's performance in Maharashtra, the editorial further said, "Why did BJP fail to retain the Lok Sabha kind of domination? Were alliance and absorbing stalwarts from Congress and Nationalist Congress Party (NCP) strategic blunders? Why was the party

not able to address the issue of rebellion or sabotage by the ally? These and many more questions need some scrutiny. After BJP (26.7 per cent), it was the independents (18.6 per cent) who have secured the second position in terms of vote share, and this should be a matter of concern for the BJP."

It also acknowledged the good showing by Congress and the NCP and, particularly, praised Sharad Pawar. "The strength of Sharad Pawar's politics limited to 15-17 per cent vote and 50-60 seats, which he had shown for the last forty years. That he could show the same in Narendra-Devendra era is a remarkable achievement which younger politicians should study," the editorial said.

It concluded by saying that the ushering of a new political culture, of a developmental discourse, may still be a distant project: "As a nation, despite claims of dismantling caste politics, replacing it with the developmental discourse and drastic reduction in corruption, are we really heading towards a new political culture or are we just continuing the old politics of winnability by all means in a new form, is a point to ponder."

JIHADI MINDSET

IN AN OPINION article on the murder of Hindu Samaj Party leader Kamlesh Tiwari in Lucknow last month, Delhi-based lawyer

Prashant Patel Umrao has argued in *Organiser* that "it exposes the clear and present danger of rising jihadi mindset of Muslims in Bharat".

Detailing how Tiwari's murder was planned and executed, Patel has said, "All religions and human systems are infected by fundamentalists but it would be humongously wrong to not accept that Islam has it more rampantly."

He then takes on liberals and AIMIM leader Asaduddin Owaisi, saying, "And the warriors of free speech lobby don't even condemn such brutal killings. The messiahs of Indian Muslims like Asaduddin al-Owaisi indirectly support such killings when they say, 'Even though Muslims constitute 96 per cent of Pakistan's population, they continue to behave like minority, therefore needing the State's patronage of Islam and a highly regressive blasphemy law. We are instilling a similar fear in our Hindus'. Such statements largely influence the radically charged Islamic minds. This is the irony."

He also criticised the Jamiat Ulema-e-Hind for providing legal aid to the accused arrested in the murder case. "The Muslim Council has said that it is willing to bear all the legal costs to defend the five accused in the Kamlesh Tiwari murder case... Providing help to masterminds of organised murder is downright disgusting and shameful. But the

so-called intellectual lobby and jamat-e-fiberal won't utter a single word over this shamelessness and injustice."

RECOVERING ECONOMY

QUOTING TRADE FIGURES of consumer goods over the Diwali season, the latest issue of *Panchjanya* has argued that the economy is on the road to recovery. "It was expected that there would be less enthusiasm among consumers this Diwali. But the sales figures on Dhanteras and Diwali have completely demolished this analysis. Across sectors, including banking, the results of the second quarter have been stupendous. The share market too has been rising. Centre for Monitoring Indian Economy (CMIE) figures show that jobs have increased," the *Panchjanya* cover story said.

And, as a measure to strengthen the economy, the cover story has argued that the Indian corporate must invest in research so that it can compete with Chinese goods. It has also made an appeal for use of indigenous goods to tide over the trade deficit with China. "If we vow to only use indigenous goods and reject low-quality Chinese goods, then the problem will be solved. India's economic foundation will be strengthened," the article said.