

Across THE AISLE



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JAMMU AND Kashmir was closed down on the evening of August 4, 2019. The assault on human rights began that night. The new team that had taken over — the Governor, advisors, the Chief Secretary, the Director General of Police etc — had scant respect for the Constitution of India.

On August 4, 2019, mobile phone networks, Internet services and landline connectivity were discontinued in the Kashmir Valley. Restrictions on movement were imposed. On August 5, 2019, Constitutional Order 272 was issued by the President stripping J&K of its special status and applying all the provisions of the Constitution of India to the proposed Union Territories. On the same day, district magistrates invoked Section 144 CrPc and imposed restrictions on movement and public gatherings. Hundreds of political leaders and activists were detained. Three former chief ministers were detained — and are still in custody — without charges.

Ms Anuradha Bhasin, Executive Editor of *Kashmir Times*, Mr Ghulam Nabi Azad, MP, and others challenged these restrictions in the Supreme Court. Apart from the contention that the fundamental rights of the petitioners had been breached, Ms Bhasin contended she was unable to publish her newspaper and freedom of press had been contravened.

On September 16, 2019, the Supreme Court ordered that the state government "keeping in mind the national interest and internal security shall make all endeavours to ensure that normal life is restored in Kashmir". As feared, normal life was not

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The law and the reality

restored. On October 10, 2019, the Court recorded the submission of the Central government that some restrictions "have been relaxed". Effectively, however, there was no interim order that the Central and state governments were obliged to comply with, and the conditions in J&K, particularly in the Kashmir Valley, remained the same.

ISSUES AND ANSWERS

The cases were heard on several days, judgment was reserved on November 27, 2019, and pronounced on January 10, 2020.

The Court had framed five issues. Let me give a snapshot of the issues and the answers given by the Court:

1. Can the government claim exemption from producing the orders under Section 144 CrPc?

Ans: NO

2. Are freedom of speech and freedom to carry on business over the Internet fundamental rights?

Ans: YES, under Article 19(1)(a) and (g), respectively, and every order suspending Internet shall be reviewed within 7 days (and periodically within 7 days of the previous review).

3. Is access to Internet a fundamental right?

Not answered.

4. Whether the restrictions under Section 144 were valid?

Ans: After stating that the power is preventive and remedial, that the order must balance the rights and restrictions based on the principle of proportionality

and that repetitive orders cannot be passed, the Court directed the state/authorities "to review forthwith the need for continuance of the orders".

5. Whether freedom of press was violated?

Ans: After examining the doctrine of "chilling effect", and considering that the newspaper had resumed publication, the Court held "we do not deem it fit to indulge more in the issue than to state that responsible governments are required to respect the freedom of the press at all times".

STRIKING A BALANCE

The findings of the Court — and the reluctance to render findings on some issues — were not surprising. At the very beginning of the judgment, the Court made its approach clear: "Our limited scope is to strike a balance between the liberty and security concerns... we are here only to ensure that citizens are provided all the rights and liberty to the highest extent in a given situation while ensuring security at the same time."

During the period from August 4, 2019, to January 13, 2020, when the government was maintaining so-called 'normalcy', 20 civilians and 36 militants were killed and eight security personnel lost their lives.

As you read this column, restrictions continue on Internet, on movement, on public gatherings, on political activities, on speech and writing, and on visitors to the Valley. Political leaders continue to be in custody without charges. So, has anything really changed after the judgment?

Benjamin Franklin said "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety". The context was different; nevertheless that quote has become a classic whenever there is a conflict between liberty and security. Would the conclusions have been different if the Court had kept as its guiding principle the dictum of Benjamin Franklin?

WILL ANYTHING CHANGE?

The Court's judgment gives the government a way to retreat from its authoritarian and militaristic approach to the Kashmir issue — but I doubt the government will take that route. The judgment also gives hope to the seven million people of the Kashmir Valley that their freedoms will be restored — although there is no sign yet of that happening seven days later.

The Respondents (Central and the Union Territory governments) are unhappy that their actions will constantly be subject to judicial review. The Petitioners are unhappy that they have got no real relief, only propositions of law.

More could have been done by the Court, as in the Privacy case (*Justice Puttaswamy*). An opportunity was lost. Maybe more will be done at the next hearing of the case (you bet there will be an action for contempt) or at the hearing of the next case. Sometimes, the law can disappoint.

Fifth COLUMN

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Why offend Mr Bezos?

SINCE HE began his second term as Prime Minister, Narendra Modi has talked of many things. Nationalism, Kashmir, citizenship, Pakistan, patriotism, treacherous Congress leaders. The one thing he seems to avoid talking about is the economy. Is this because he knows that the economy is in worse shape now than when he first became Prime Minister? Is this because as an astute politician he has noticed that much of the unrest we have seen on campuses across India is because India's young people are beginning to feel a sense of hopelessness? A terrifying realisation that no matter how hard they work at their studies they could remain jobless for years?

Wherever I go these days I meet educated young Indians, many of whom voted for Modi, who admit that the thought of the future frightens them. They wear jeans, carry mobile phones and cut their hair in the latest fashion and almost the first thing they say to me is that they would be grateful if I could help them find a job. Not a government job. Just one that does not involve menial work. Even a street child I have helped with her education wants to be a fashion designer.

If for no other reason than that India faces an unemployment crisis, we should have welcomed Jeff Bezos with open arms last week. He tried his best to assure Modi and his ministers that he came bearing the gift of creating a million new jobs by 2025. Wearing an Indian waistcoat and radiating hope and goodwill, the world's richest man declared that he was sure that the 21st century would be India's century. But, instead of being welcomed, he was insulted publicly by Modi's Minister of Commerce who told him that he did India no "favours" by offering to invest a billion dollars. "They (Amazon) may have put in a billion dollars, but then, if they make a loss of a billion dollars every year, then they jolly well have to finance that billion dollars," said Piyush Goyal. If this was not rude enough, there was more to come. A senior BJP official intervened to tweet that Bezos order his newspaper, *The Washington Post*, to start writing nice things about the Modi government if he wanted to do business here.

The Prime Minister himself is so sensitive about the sully of his image abroad by 'liberal' newspapers that he found no time to grant Bezos an audience. An odd decision if you consider that he travels to distant lands regularly to urge investors to come 'Make in India'. Amazon is already, in its fashion, making in India. In rural India, Amazon has become almost a synonym for online shopping. Many of the unemployed youths I run into on my travels regularly go to it to buy everything from small household goods to books. Since in my own case I restrict my online shopping to books, I am constantly startled by the range of goods that young Indians are buying on Amazon. Insulting Bezos was in my view a mistake on the part of the Modi government.

Another mistake that the Prime Minister needs to pay much more attention to is his neglect of the economy in pursuit of political goals like abrogating Article 370 and passing that amendment to the citizenship law that has caused so much misgiving and mistrust. Both the Prime Minister and his Finance Minister, Nirmala Sitharaman, have repeatedly urged Indian businessmen to invest without fear, but if this has not begun to happen, it is on account of misgiving and mistrust. The mission to 'eradicate' black money that began with demonetisation has given so much power to petty officials that they have all started to behave with the same obnoxious officiousness they displayed in bad old socialist times when the Licence Raj was alive and dominant. I live in Mumbai and can report that in recent months I have not met a single businessman, big or small, who has said that business was good.

What should worry the Prime Minister more is that most people blame him for what has gone wrong, whether it is businessmen, shopkeepers or jobless youth. In one voice they say that they voted for Modi not once but twice in the hope that he would concentrate on reviving the economy. When I ask if they are not pleased that such big political reforms as the abrogation of Article 370 have happened, they admit that they are not displeased. But that what they want more is for the economy to start showing signs of real recovery. It is in Modi's hands to control the uncertainty that is caused by the endless new rules and regulations that his officials have come up with. But it is in the hands of men like Bezos to create the millions of jobs that young Indians desperately need.

inside TRACK

COOMIKAPOOR



only to grant an appointment to the representative of a friendly island nation, since he felt the man was a kindred spirit. However, the MEA advised against the meeting, since it would be perceived as a snub to other envoys.

INTELLIGENT SWIPES

The cold vibes between Madhya Pradesh Chief Minister Kamal Nath and Congress Rajya Sabha MP Jairam Ramesh were evident at a recent book festival in Bhopal. Nath was chief guest and Ramesh was on the dais as the author of a book on Jawaharlal Nehru and V K Krishna Menon. Introducing Nath, Ramesh commented tongue-in-cheek that when he worked under Nath as Minister of State in the Commerce Ministry, Nath was so "super intelligent", he didn't feel the need to allocate any work to his junior. Nath retorted that Ramesh was so "super intellectual", he didn't need any mundane ministry work. While Nath was Ramesh's boss in Manmohan Singh's first government, later Ramesh became a Cabinet minister and exerted greater clout in the party because of his proximity to Rahul Gandhi.

LOCK THEM UP

Transport Minister Nitin Gadkari does not hide his frustration with obstructionist bureaucrats. Infuriated with the slow pace of a file from the desk of a director-level officer to a joint secretary, additional secretary and secretary, the plain-speaking Gadkari threatened his officers that he would lock them all up in a room until they worked out a solution. Last week, at a road safety meeting in Delhi, Gadkari warned that "dead assets in government, who neither take decisions nor allow others to work, would be shown the door". While such a drastic step may not yet be imminent, it is learnt that there is a proposal to reduce the retirement age of Central government officers from 60 years to either 55 or 58 years. An alternative suggestion is that no officer should be allowed more than 30 or 33 years of service.

FILM SCRAPPED

Before she passed away, the late Sushma Swaraj wanted to make a documentary on 'A Day in the Life of an MEA Officer'. In the proposed feature, the articulate Swaraj was filmed expounding on what a job in the Foreign Office entailed. After Swaraj's untimely death, it was decided that the focus of the film would be changed, the footage re-worked and some additional shots added so that it would be a fitting cinematic tribute to Swaraj. But strangely, the powers-that-be changed their minds and the documentary was simply scrapped.

History HEADLINE

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The true daughters of Savitribai Phule

THE DAUNTLESS women of Shaheen Bagh, who have continued a sit-in protest on the main highway between Delhi and Noida for weeks, braving harsh winter days and nights, have emerged as a national symbol of dissent against the National Population Register-National Register of Citizens-Citizenship (Amendment) Act regime. On December 15, after they stood up to the cowardly attack by police on Jamia Millia Islamia, the nationwide anti-CAA agitation found its heroes in Akhtarista Ansari, Chanda Yadav, Ladeeda Farsana and Ayesha Hindu — all young Jamia students in their 20s.

Not far away, at Jawaharlal Nehru University, Aishe Ghosh, who was injured in the violent mob attack on the campus, has been leading a struggle against fee hike, thus seen by many as a symbol of accessible education for all.

In all these protests, where woman have emerged as leaders, there is common reference to Savitribai Phule and Fatima Begum Sheikh. The slogans reveal the spirit with which these women have been challenging the government — "Nahin Hindu, Nahin Musalman, Hum hain Savitri-Fatima ki santan" (Neither Hindu, nor Muslim, we are children of Savitribai Phule and Fatima Begum).

Nearly 170 years ago, Savitribai Phule had stood up against Brahminical oppression to fight for the right to education of women and Shudras. Savitribai Phule and Fatima Sheikh too were pelted with stones by anti-social forces at the time. The succeeding generations of women who have been leaders in fighting discriminatory social systems, including the ones who have risen to the occasion during the anti-CAA protests, are all in the truest sense the daughters of Savitribai and Fatimabi.

On January 1, 1848, Savitribai Phule, along with Jyotiba Phule and Fatima Begum, opened India's first school for girls. At the time, when social reform movements were dominated by upper-caste men, Savitribai, a woman from a Bahujan community, became a name in anti-caste and feminist reforms. The Brahminical social structure at the time denied education to women, OBCs and ati-Shudras (Dalits), and all customs were designed to preserve this structure. Reformers contemporary to Savitribai and Jyotiba took on the customs of widow re-marriage, child marriage, female ed-



A poster against the citizenship Act featuring Savitribai Phule. Express

ucation, ban on foreign travel, etc. However, most of them didn't raise issues pertaining to Shudras and Ati-Shudras or address the root cause of the problem — Brahminical scriptures and ideology.

Savitribai and Jyotiba, on the other hand, through their writings, speeches and public interventions, attacked *Manusmriti* and *Brahmanwad*. They were among the first to identify the Indian social structure, characterised by an unequal relationship between the oppressors and the oppressed, and putting the *Stri-Shudra-Ati Shudras*, that is women, untouchables, tribes and all others, at the receiving end of the Brahminical order.

Savitribai was among the first to explain how *Brahmanwad* and *Manusmriti* "created a society based on inequality", calling it "an inhuman play of cunning beings" in her poem *So Says Manu*. She was the first woman author to get published at a time when women were not even seen or heard. She also founded alternative systems such as Satyashodhak Samaj and Satyashodhak marriages. The genius of Savitribai in forging alliances of the marginalised can be seen from the barbers' (OBCs) strike organised by her and Jyotiba in 1889 against the barbaric practice of tonsuring heads of Brahmin widows.

Savitribai's life is testament to her fight for rights of all who were rendered second-grade citizens by the Brahminical

forces, and her triumph over them. Maybe that is why, on her 189th birthday, women and members of the LGBTQ community organised a nationwide protest against CAA and evoked her legacy.

The apprehensions of women, Dalits, tribals, LGBTQ community and people with disabilities about the NPR-NRC-CAA regime are valid. These marginalised sections face further disenfranchisement with CAA and NRC, evident from a report by advocacy organisation Women Against Sexual Violence and State Repression (WSS). The WSS study, conducted in Assam where the NRC was undertaken, found that women in general, and women from marginal and oppressed communities in particular, have historically been excluded from entitlements to land and education and have almost no documentation to prove their existence as citizens.

Bhim Army chief Chandrashekhar Azad raises similar concerns of how historically excluded Dalits, Adivasis and nomadic tribes would be the worst affected by NPR-NRC-CAA.

It is very clear that like the *Manusmriti* deemed Shudra, Ati-shudras and women secondary citizens, the NPR-NRC-CAA is designed to reject Muslims, women, Dalits, Bahujans, Adivasis, LGBTQ community and people with disabilities, and consolidate power in the hands of a few Brahminical forces. The legacy of Savitribai Phule along with Birsu Munda, Jyotiba Phule and Babasaheb Ambedkar should serve as a constant reminder of this ideological struggle.

The daughters of Savitribai who have emerged as the leaders of this movement must form alliances and cross-sectional ties like she did. Like her, they need to write, speak and act on their words. They will be challenged, like Savitribai was, but they must speak up in their cities, towns and villages, in their universities and offices, on streets and and even in their houses, to save the Constitution and to make the constitutional dream of 'justice, liberty and equality' a reality.

In these dark times, Savitribai burns like the light of revolution. By retreading her steps, we will be able to reify the egalitarian society of her dreams.

The writer, an activist of Dalit and gender issues, is part of the legal team challenging CAA in the Supreme Court

Out of MY MIND

MEGNAD DESAI



Centre can enforce its word on CAA

Register of Citizens and the National Population Register are meant to weed out people with inadequate proof of citizenship. The Citizenship (Amendment) Act will ensure that non-Muslim people with inadequate papers will be brought in as refugees. Can the government get away with it? Why ever not?

In Indian democracy, power of a government comes from the electoral success it has achieved. First past the post does not require a majority of votes, just a majority of seats. As in the United Kingdom, a party with a majority in the directly elected chamber commands legitimacy. The Rajya Sabha is more powerful than the House of Lords as it is (indirectly)

elected and not appointed.

If so, the BJP will be within its power to implement CAA/NRC as long as the Rajya Sabha acquiesces. There are no other constraints that can be put on the government. As was seen in the recent judgment on the Internet suspension in Jammu & Kashmir, fundamental rights are subject to severe limitations as per the First Amendment, which was proposed by none other than Jawaharlal Nehru within 15 months of the adoption of the Constitution. The 1949 Constitution embodied the Anglo-American set of fundamental rights. The First Amendment restored the colonial state but with *brown sahib* rulers. The Partition and fear of

Balkanisation led to a strong centralist bias, and the only way states can exert pressure on the Centre is through Rajya Sabha or street demonstrations.

The recent agitation against CAA shows this. The government has now notified the legislation so its implementation has neither been annulled nor even delayed. The government does not intend to relent. Narendra Modi said his government had not even discussed implementing NRC nationwide. He has obviously been overruled by the hard BJP core. Modi 1.0 began with Swachh Bharat. Modi 2.0 is about Swachh Bharatiyata. Since RSS chief Mohan Bhagwat has said all those living in India are Hindus, regardless of their religion, can the

Prime Minister offer an inclusive approach which will be conciliatory? Or will the hard core of the BJP shout him down once again?

The opposition parties have been caught flat-footed. It was students who led the protest. Even the recent meeting convened by Sonia Gandhi showed a divided Opposition, and a strategy based on power of chief ministers to challenge CAA rather than any mass movement.

As this is a Central subject, the Centre can enforce its word. Rushing to the Supreme Court will not help. There is no violation of the Constitution in CAA, and NRC was ordered by the Supreme Court itself for Assam.

I would be happy to be proved wrong.