

K.G.Kannabiran Memorial Lecture

Delivered by

Teesta Setalvad

Secretary - Citizens for Justice and Peace (CJP)
Human Rights Activist & Journalist

16-11-2016 @ 5:30pm

Tamilnadu Theological Seminary
Madurai-625016

organized by

People's Union for Civil Liberties (PUCL)-

T.N.& Puducherry

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Teesta Setalvad is an Indian civil rights activist and journalist. She is the secretary of Citizens for Justice and Peace (CJP), an organisation formed for fighting for justice for the victims of communal violence in the state of Gujarat in 2002.

CJP is a co-petitioner seeking a criminal trial of Narendra Modi, the then Chief Minister of Gujarat and the current Prime minister of India and sixty-two other politicians and government officials for complicity in the Gujarat violence of 2002 and whose names did not figure in any of the FIRs/charge sheets that formed the subject matter of the various Session Trials regarding the riots at that point of time. Four of the accused since then were charge-sheeted, of whom Maya Kodnani and Babu Bajrangji have already been convicted.

Teesta has authored the chapter *When Guardians Betray: The Role of the Police* in the book *Gujarat: The making of a tragedy*, edited by Siddharth Varadarajan. The book is about the 2002 Gujarat riots.

People's Union for Civil Liberties

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மக்கள் சிவில் உரிமைக் கழகம் -
தமிழ்நாடு & புதுச்சேரி (பி.யு.சி.எல்.)

K.G.Kannabiran Memorial Lecture

INVITATION

Chairperson

Mr.Gana. Kurinji
President, PUCL

Welcome Address

Mr.Thirumalaichamy
President, PUCL- Madurai District Unit

Introduction

Dr.R.Murali
General Secretary, PUCL

Guest Speaker

Ms. Teesta Setalvad
Secretary - Citizens for Justice and Peace (CJP),
Human Rights Activist & Journalist

Felicitation

Prof. David Rajendiran
Principal, Tamilnadu Theological Seminary
Professor P.Vijayakumar
General Secretary
Indian School of Social Sciences, Madurai

Vote of thanks

Mr.Pon.Chandran
Joint Secretary, PUCL

16-11-2016, Wednesday

5:30 PM

Tamilnadu Theological Seminary (TTS)
Arasaradi - Madurai

All are invited!

Contact : 9443857788 / 9486981344



(1929-2010)

K.G. Kannabiran, a distinguished human rights activist, was instrumental in mediating between the Naxalites and the State in Andhra Pradesh along with K. Balagopal. He was also the President of the Andhra Pradesh Civil Liberties Committee. He had filed more than 400 public interest litigation (PIL) cases single-handedly. In spite of being a prominent lawyer instead of running for money, he chose social service instead and fought all these PILs and many more cases without charging any money. He had worked in the PUCL in the company of Justice VM Tarkunde, Justice Rajindar Sachar, Justice RB Mehrotra, Surendra Mohan and was for a long time President of the PUCL. Mr. Kannabiran was a prominent and most scholarly writer on civil liberties and human rights. He regularly wrote articles for the PUCL Bulletin apart from writing for various magazines and newspapers. He wrote many books. *THE WAGES OF IMPUNITY: Power, Justice and Human Rights* is known to be his best and most read book. K.G.Kannabiran was born on 9 November 1929, in Madurai, Tamil Nadu. He died at age 81 after a brief illness in Hyderabad.

PUCL

People's Union for Civil Liberties is India's largest and oldest Human Rights organization. It is a non political organization founded in 1976 by Jayaprakash Narayan. PUCL defends human rights by mobilizing public opinion, conducting investigations, publishing findings, and filing petitions. PUCL functions in many of the States in India.

In Tamilnadu, PUCL is having units in more than 10 districts.

K.G. KANNABIRAN MEMORIAL LECTURE

The timing of this lecture could not have been more prophetic. A nationwide debate on an 'undeclared emergency' in terms of basic freedoms – the right to know, the right to express, challenge and question executive authority has been shaping up, culminating in the outcry over not just the one day ban on NDTV India but specifically the shameful killing of eight under trials from the Bhopal Central Jail by the MP police, the fabricated FIR against academics and activists in Chhattisgarh has been brewing, so to say, over a year. This has followed an attack on media persons, local and national in the state. A spate of 'sedition' cases against student leaders mobilizing first, against this government's policy of cut-backs in University Grants Commission (UGC) scholarships (a rough estimate by this author in discussion with the 'Occupy UGC' movement puts these at 25,000) and culminating –after Rohith Vemula's institutional murder against Ambedkarite-Leftist perspectives directly challenging the homogenizing majoritarianism of the Rashtriya Swayamsevak Sangh (RSS) and its narrow version of authoritarian religion-based nationalism

Kashmir, Other Parts of Conflict Driven India and Indian Hypocrisy

Before I go into other details in the lecture, some words on Kashmir and Chhattisgarh, and Jharkand and Manipur and Arunachal. The rights of Kashmiris and those of us Indians living in far-off states like Manipur, Arunachal and even Chhattisgarh and Jharkand are shut off to us Indians with an over-hyped understanding of how democratic we really are. The situation in Kashmir is fraught so completely since July 2016. Over 1,000 youngsters have been badly injured—visually impaired by pellets that no civilized police and paramilitary and military should ever use against its own people. International law bans them even in armed conflict. Not only does Kashmir Reader remain banned but Kashmiris living in many parts of India face violence, aggression and hostility. Sharmila Irom's plea to her countrymen and women does not evoke the response that it should. 808 Kashmiri Pandit families who chose not to leave the Valley live under particular threat. All these issues are a serious challenge to Indian democracy and the civil liberties movement. Not least being the illegal incarceration of Khurram Pervez for over 60 days now. The Jammu and Kashmir High Court had not thought it fit to ban these use of pellets even.

Fifteen year old Anandi sums up a call to conscience:

What is even more unfortunate is that it isn't just an 11 year-old Nasir. (Somehow even that word undermines the situation.) Scores of innocent Kashmiri civilians, from infants to a 90-year old, almost already-dying elders. From pregnant women to people with disabilities. From brilliant kids who could have had a bright future, to men and women whose lives have been drastically altered. From children like you and I, to adults like our parents. They all are there. Innocent but dying. If not physically, then mentally dying. Can you imagine yourself in that situation for just a second? Can you imagine not being able to go out of your homes without the fear of being hit by pellets? Or killed? Can you imagine only seeing army men with guns wherever you turn? Can you imagine going to bed not knowing if you'll be alive tomorrow? Can you imagine living constantly in fear?

Today this state of affairs under the Modi Regime appears to have spread to large parts of India

This debate of an 'undeclared emergency' in terms not just of the basic freedoms enshrined as an ideal at least in the Indian Constitution and Republican edifice has now since November 8-9 been overtaken by another, seemingly even more grave crisis, an 'economic emergency' that has led to immense hardships of millions of hardworking, toiling Indians, who –not being part of the formal banking economy or the rather false and rare-fied plastic money and stock market circuit—are faced with a complete loss of faith and trust in their government. A pact that is vital for any vibrant democracy.

In the widespread understanding of what this government, the Modi government, a majority government is doing to India's fundamental freedoms, it would do well to remember—and through this exercise to distinguish between the earlier taste of authoritarianism that we lived through between 1975-1977—and the current state of affairs. There can be no doubt that the assault on political freedoms under the Indira Gandhi-declared emergency was severe, the attack on press freedoms, and the efforts –partially successful—to ensure a 'committed judiciary' , dangerous. This author was 15 at the time that elections were unexpectedly declared and we campaigned zealously as many in Bombay and India did –with the local team of the PUCL of which I have been a life member since age 12—to defeat the ruling dispensation. Bombay returned all Janata Party candidates in the elections that followed. The difference between then and now is the very premise

and worldview on which this government at the centre rests and stands' its open and unashamed allegiance to a 'Hindu rashtra', its commitment to overthrow the Indian Constitution and its republican ideals –that of parity and non-discrimination; basically equally of citizenship. It's there for all to see on the website of the RSS in the 'Bunch of Thoughts' of Golwalkar; it is only echoed in the inciteful pronouncements of those who hold power, having sworn an oath to the Indian Constitution.

Simply put, we have in place a majority government in power, an overwhelming section of who's representatives, in government and in parliament – and in the state assemblies—have no use for the finer points of equality and non-discrimination, and the inherent rights enshrined in the Indian Constitution. Though fascism may not have completely gripped us, our institutions of democracy—and most critically—that pulse of democracy, the Indian people—are being tested and tested sorely to feel the extent of the resistance. **Though fascism may not have overthrown the Indian democratic state, fascists today hold powerful positions of power.**

The threats are many and the challenges vast, and for the purposes of this lecture I shall limit myself to exploring the major threats to the edifice of democracy from the some lurking and inherent threats. These involve executive actions that have culminated over the past two and a half years—though on issues of the misuse of the sedition law and free speech, earlier governments have also faltered; most starkly during the Binayak Sen incarceration when a supine central government (UPA II) did not forcefully intervene when a doctor and civil libertarian was jailed for 17 months, shockingly over a malicious sedition charge.

Sedition Law

India's sedition law, outdated and yet selectively used will also see serious contestation and challenge in coming months and years, as a government, committed to repressive definitions of patriotism and nationalism, shamefully allows inciteful speech and even violence to hold its sway. The Bombay High Court judgement on sedition while issuing certain guidelines for the authorities to follow, did not look at the validity of the section itself. That still awaits judicial clarification in view of its continued and sustained mis-use. The Bombay High Court interpreted an act of sedition to mean an actual threat to disruption of order and incitement and further that ' Words, signs or representations against politicians or public servants by themselves do not fall in this category unless the words/signs/representations

show them as representative of the Government; or comments or criticisms of a government too’.

However it is clear from the manner in which the Karnataka police slapped a sedition FIR on Amnesty International simply because it ‘dared’ hold a meeting on the issue of Kashmir that today, the carefully provoked, and stoked political atmosphere in the country has sent a strong message down law enforcement agencies. ‘Kashmir,’ ‘Bharat Mata ki Jai’ or ‘Gau raksha’ any civilised challenges to these concepts or notions could very easily attract criminal action.

The real challenge to this hegemonic position came from jailed student leader Kanhaiya Kumar, echoing slogans for freedom historically made in the Kashmir Valley. In his now iconic speech on the night of March 3-4 2016 after he was released from Tihar Jail on spurious sedition charges spoke of “Freedom **in India not from India..** from hunger, fear and poverty...” (*Bhookmari se Azaadi.....*)

Constructing Free Speech as Hate Speech and Actually Curbing the Former while Stoking the Latter

True to their sangh parivar lineage, BJP leaders are experts in the fine art of speaking with a forked-tongue. While relying on doctored videos to target students of JNU and the Hyderabad Central University, in March 2016 finance minister Arun Jaitley had thundered in Parliament: “Hate speech cannot be free speech”.

Now, faced with a national outrage over Baba Ramdev’s talk of “beheading lakhs” if law did not come in his way, BJP president Amit Shah has thought it fit to defend Ramdev’s hate speech in the name of freedom to speak. Meanwhile others in the BJP are trying to hide behind the claim that the dubious Baba is not from the BJP. But no RSS or BJP leader thought it fit to challenge Ramdev over his obnoxious utterances at an RSS-organised Sadbhavna rally in Haryana. Worse, the Central Government under Narendra Modi, true to form, has maintained an un-dignified silence even as it is more than well known the proximity between the hate-spewing Baba and prime minister Narendra Modi.

In stark contrast, freedoms are under severest attack in India’s institutions of learning with youth leaders today emerging as the true face of the Indian resistance.

Why Today the Universities Are a Key Battleground for Human Rights in India Caste discrimination is the ugly underbelly of India's higher education system

Today the Indian University has become the real battleground for not just basic political rights,, but in a sense for the future and soul of India. Fast on the heels of the repressions(s) heaped on the Ambedkar Periyar Circle and the students of FTII, 2016 dawned with the 'institutional murder' of Rohith Vemula, a bright Dalit scholar who took his own life after meeting silence and arrogance from Vice Chancellor Appa Rao Podile (Rohith's letter to the VC dated December 18, 2015 raises serious questions of caste discrimination through India's institutions of higher learning.

Though this phenomenon has not been the sole preserve of the RSS-driven Modi government –the establishment of the Thorat Committee by the Manmohan Singh Government in 2007 following grave and widespread allegations of differential treatment and discrimination against students belonging Adivasi and Dalit students was not followed through as it ought to have – the fact that today, under these dispensation, the already existing caste denials within the campus have been made far worse with the powers appropriated by the RSS' wing, Akhil Bharatiya Vidyarthi Parishad (ABVP) that acts like the storm trooper for the central government and police.

Today, nine months after Vemula's death, eight more Dalit students from yet another central university—the Babasaheb Bhimaroo Ambedkar University in Lucknow—are asking: "Will another Rohith Vemula have to commit suicide to open the eyes of university officials?" Eight Dalit research scholars, two of them toppers who ranked first and second in the PhD entrance exam, have been suspended and thereafter expelled without due process since Sept. 8, 2016. At the core is the caste-ist behaviour of a professor and his unconstitutional conduct being protected by the administration and the Ministry for Human Resources Development (MHRD). Increasingly the top men (or women) at these institutions are those sworn not to the Indian Constitution but supremacist ideology.

In the prime minister's own constituency of Varanasi also lies the prestigious Banaras Hindu University, run presently by a man who believes that women should not study at night, dress as they please or eat food that is non-vegetarian. The vice chancellor, Girish Chandra Tripathi, belongs to the same organization where Narendra Modi cut his political teeth, the Rashtriya Swayamsevak Sangh (RSS).

The Indian media has been conspicuous in its efforts to avoid commenting about the conversion of this large campus of north India into a citadel of a police state.

Come 2014, however, the situation has changed drastically, given the ideological sway of the party in power. The Bharatiya Janata Party (BJP), driven as it is by the ideology of the supremacist RSS, is keen to woo Dalits to their lot. They accomplish this aim by appropriating this section to their version of the Hindu undivided family and glossing over embedded discriminations and exclusions—including the abhorrent notion of untouchability premised on being “too impure to even touch or the shadow fall over.”

Never prone to tolerating free discussion and dissent, the supremacist core of the ruling dispensation is particularly concerned about the raw independence that is expressed by young men and women on India’s campuses. The chain of command played a significant role in the episode of authoritarian suppression at the central university. In almost all cases, the youth wing of the RSS, the Akhil Bharatiya Vidyarthi Parishad (ABVP), played the part of agent provocateur, with the backing of the office bearers of the ruling party.

It was an office bearer of the BJP who wrote to a junior minister in the Modi cabinet calling the Ambedkar Student’s Association (ASA) “anti-national” and “casteist.” That led, in turn, to the senior minister of the ministry writing not once but five times, putting pressure on the vice chancellor to act. Action meant humiliation of bright young Dalit scholars, each due a stipend for their research. The money was stopped, defying rules and procedures, and they were humiliated and ostracized, thrown out of their rooms into the cold.

For Vemula, the humiliation proved to be too much. There is also a criminal case under the Atrocities Act pending, though for months now, little progress has been made to ensure accountability from the university vice chancellor and others who may have been responsible.

The ABVP bears a sinister similarity to the Jamiat-e-Talaba of Pakistan. “If you want to change a country, change its students,” noted American journalist Dan Brooks in an article in 2011. The RSS wants to “change India” just as the Jamaat-e-Islami (IJT) is trying to “change Pakistan.” If the ABVP is the former’s instrument for “changing students” in India, the IJT is the latter’s tool for “changing students” in Pakistan.

The ABVP may not, as yet, be able to match the fine record of its Pakistani counterpart. But with the Modi-BJP-RSS-ABVP axis now in place, who can say what lies ahead? In an article on SabrangIndia, Prathama Banerjee reports that in

Gwalior, a few days ago, a meeting organized by the Ambedkar Manch involving an Ambedkarite professor Vivek Kumar from JNU was attacked by ABVP members, who went on to not only fire guns at the gathering but even burn the Indian Constitution, perhaps to avenge Ambedkar's burning of the Manusmriti half a century ago.

The confrontation began soon after the Modi regime swept to power. At the prestigious Indian Institute of Technology-Chennai, a clampdown on the student's body, the Ambedkar Periyar Circle, was directly imposed by an "anonymous" complaint that this student's organization was inducing "hatred" against prime minister Narendra Modi and the Hindus. In true surveillance tradition, the Ministry of Human Resources Development initiated an inquiry into the student's group in May 2015 and shut it down. Protests followed, after which it was allowed to function again.

The list is long. Iconic among these battlegrounds has been the struggle at HCU and the Jawaharlal Nehru University-New Delhi, where the central government's crackdown through a newly appointed vice chancellor sought to convert the iconic campus into a police state. This did not happen. Though student leaders were arrested and charges of "sedition" and "anti-nationalism" slapped against them, the resistance by a seasoned academic community, the Jawaharlal Nehru University Teachers Association, and a united comeback by the student community pushed back the assault. Today, at least five of the prominent student leaders face criminal cases and are out on bail.

The upside, however, is that they—like student leaders from across campuses in India—have emerged as the true challengers to the politics of the extremely authoritarian *Hindutva* right.

Over the past 30 months or so, under the new political dispensation at the Centre, a peculiar attack on the Indian University has been underway, especially those central universities that came into being with special acts of Parliament that ensured not only their autonomy, but also their being embodied—in theory and practice—with the constitutional values and vision, where equality and non discrimination was key. Every effort has been made by the far right to ensure that the university, rather than a space for intellectual growth and challenge, becomes a battleground for deeply contested notions of nationhood.

The assault is dual, ideologically driven by a narrow, supremacist vision and made worse by acts of affirmative action being cut down through executive measures. One example is the cutback in fellowships and grants promised to

students in centrally-aided universities. Though exact estimates are difficult to come by, this author has, through an empirical evaluation, documented that research fellows who hail from the differently abled and religious minorities, and more recently the scholars belonging to Scheduled Castes (Dalits) and indigenous peoples (STs/Adivasis) are being denied their fellowship amounts. It is estimated that over 20,000 research scholars all over the country have been affected by this tardy and insensitive functioning by the central government. This has pushed many student scholars into debt and is yet another contributory cause for the seething discontent within the Indian University.

Over the decades, through a slow and often painful process within these central universities that came into being through key enactments—the University of Hyderabad Act of 1974, the Jawaharlal Nehru Act of 1966 and the North-Eastern Hill University Act of 1973—baby steps toward affirmative action within teachers' unions and associations have ensured that students from rural, marginalized and discriminated-against backgrounds made it into institutions of higher learning.

Today, however, the dual assault of aggressive neoliberal policies that have ensured a cut in scholarships in institutions of learning, accompanied by an ideological assault of a proto-fascist authoritarian character, have rendered campuses in India the focal points of a resurgent democratic movement. Student leaders and associations that do not fall in line with the majoritarian vision face criminal cases, the worst being the law of Sedition (Section 124-A). Apart from the institutions mentioned above, other universities like the Patna University-Bihar, Jadavpur University-West Bengal, National Law School-Bangalore and the Allahabad Central University-Uttar Pradesh are also witnessing similar struggles and repression.

In any democratic and civilized society, the university is the storehouse of young and budding intellectual opinion and often the bedrock of voices of sharp, critical dissent. We are living an age of homogenization and majoritarianism—whether through the blind acceptance of commercialization or privatization of education, or the imposition of a culturally-homogenous worldview where the Indian state and nation is equated with “one language, one culture,” in effect denying a plurality of existence and citizenship. These trends are not just dangerous but pose a challenge to the very foundation of India. Centers of higher learning within India that have become the battleground for the preservation of Indian democracy and all it stands for.

In both Hyderabad Central University and JNU results of the student body elections at HCU, Vemula's alma mater, were a revelation. At HCU, the ultra right-wing ABVP did not win a single seat. The United Front for Social Justice (UFSJ), a unique combination of Dalit, left and other progressive groups, has won all posts in the elections. More than any other section of Indians, the youth within India's universities are posing a singular challenge to the regime. Weeks ago, in the elections to the iconic JNU, too, the victory was for the left-progressive alliance.

At India's premier central university—also the seat of a tussle between the politics of democratic socialism and the extreme right since early February this year—several student leaders were charged with the dreaded “sedition” law. A young Muslim student has mysteriously disappeared after being violently attacked, allegedly by none other than the members of Akhil Bharatiya Vidyarthi Parishad (ABVP), an outfit affiliated with the Rashtriya Swayamsevak Sangh (RSS) that is the ideological fountainhead of the Modi-led government. Najeeb Ahmad “disappeared” after an unseemly brawl with the ABVP, and witnesses saw him being assaulted and bleeding. The pleas of his distraught mother and sister have fallen on deaf ears, and the incident has not generated the outrage it should.

Najeeb has been missing since October 15, and while a comfortable contract of silence engulfs many within the media, the ABVP successfully disrupted an academic exercise in another prestigious central university, the Delhi University, just two days ago.

All these examples have excluded the issue of democratic freedoms within areas of armed conflict, especially Kashmir where the shames, shadows and silences are even more stark. For now, it is sufficient to say the following.

There is an insidiously-brokered and unlawful pact between those in positions of power accrued through democratic elections and outfits like the ABVP, MNS, RSS, HSP, Vishwa Hindu Parisha and Bajrang Dal. These outfits are stepping in as the Indian version of the German Volkssturm or the Sturm Abteilung. Whereas these outfits, including the notorious SA under Fuhrer Hitler were official “arms” of the Nazi party, in India, these proto-fascist non-state actors function unlawfully, non-Constitutionally and enjoy soft treatment from the state. Octopus-like, they have different names, shapes and forms, but they are linked to a larger whole, the RSS. The pernicious infiltration of India's law enforcement machinery over the course of decades by individuals who swear allegiance to the ideology of the supremacist RSS makes it easy for the police to simply not act. With a government in power, wedded surreptitiously to the same goals, there is little calling to account.

Teesta Setalvad

With a media de-privileging news of these un-democratic encroachments on free speech and space, the takeover of the public sphere is near complete.

At the heart of these recent developments also lies a critical issue: the dangerous politicization of the Indian military. India was founded on sound republican principles, with a constitution that squarely makes its people sovereign, and it has always prided itself on an apolitical military. This is critical to both democratic functioning and accountability. But the current government is different from earlier democratically-elected governments, and this became clear when India's defense minister, Manohar Parrikar, publicly credited his parent organization, the supremacist RSS, for giving him and the prime minister Modi the gumption to order the military strikes.

In September 2013, Modi, as the party's prime ministerial candidate, addressed a rally of military veterans in Rewari, Haryana, using the occasion to target the United Progressive Alliance government at the center. Not long after the surgical strikes, posters began to appear in poll-bound Uttar Pradesh, highlighting the military action as proof of the good and robust governance that the BJP could provide to the state. In 1999, when India was at war with Pakistan in the heights of Kargil, the then-DGMO Lieutenant General NC Vij had been sent to the BJP headquarters on Ashoka Road to brief the party leadership. This created a big political brouhaha, with many academics, independent thinkers and also the Congress-led opposition in India claiming that the government was politicising the military.

Universal Adult Franchise

Article 326 of the Constitution provides that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, a person should not be less than 21 years of age. The 61st Amendment of the Constitution lowered voting age of elections to the Lok Sabha and to the Legislative Assemblies of States from 21 years to 18 years. This was done by amending Article 326 of the Constitution, which concerns to elections to the Lok Sabha and the Assemblies.

Tragically however, in late 2015, two state governments, both ruled by the supremacist RSS (through its Parliamentary face, the Bharatiya Janata Party-BJP) amended their amended their Panchayat Raj act such that no one can contest elections for the post of sarpanch or member of the panchayat samiti or zilla parishad if they have not passed Class X. Critically discuss the implications of this

amendment. And tragically, on International Human Rights Day last year, December 10, it was none less than the Supreme Court of India, that ultimate arbiter of fundamental rights that delivered a deadly blow to the constitutional right guaranteed under Article 326. Its decision in *Rajbala v State of Haryana* is the latest in a long line of disappointing judgments, going back to the very first the Supreme Court ever delivered on fundamental rights, *AK Gopalan v State of Madras*. The Supreme Court's judgment in *Rajbala* is a blow to a most basic civil right – the right to vote and contest elections, and effectively disenfranchises a large section of the rural, female and lower caste population in Haryana and, by extension, the rest of India, should other states chose to follow Haryana's example.

Given the proclivities of the government in power, that has little concern or value for what he vast sections of working class Indians, farmers, artisans, informal sector workers, small businesses etc –it could be argued that this testing of India's democratic waters undertaken by first Haryana and then Rajasthan-and shamefully ratified by India's Supreme Court is a manner and fashion of effectively silencing the voice of all those who do not have "specified" educational qualifications (matriculation for all, 'middle pass for a Dalit Candidate, 5th pass for a Dalit woman) or a functioning toilet in their residence!

Incidentally, recently awarded Bezwada Wilson has this to say about the state of India's toilets, seen through the prism of that section of Indians that we have invisibilised. The Manual Scavengers!

Wilson says that with no national data available on Manual Scavenging – we have figures for how many toilets India has, how many televisions and scooters Indians consume but we have no 'reliable data' on how many manual scavengers there are!—"The 1.1 crore toilets built under the Modi government's flagship scheme are not linked to any underground drainage system because in India's urban and semi-urban areas, there is none. By 2019, the government has an ambitious target: construct 1,200 crore toilets nationwide. In effect this will perpetuate manual scavenging, a humiliating practice which is illegal." So now we even have 'national' flagship programmes being announced and sold to the essentially middle class and upper caste media and elite that *not just further the denial of fundamental rights but are downright illegal*. There have been 1370 deaths in two years alone, was there a national uproar.

Senior activists who unsuccessfully challenged the brazenly anti-constituional law (denying universal adult franchise at the panchayat level in Haryana) did so on grounds of "arbitrariness" of the law and its discriminatory impact in disqualifying a

large part of the electorate. The petitioners also pointed out that more than 50% of the rural population of Haryana would be disqualified from standing for panchayat elections if the disqualifications were applied. Predictably, the state of Haryana, governed by the RSS worldview, justified the law on the basis that there was no fundamental right to vote or stand for elections, and in any case, the disqualifications served the larger purpose of spreading education, reducing indebtedness and greater sanitation in rural areas. The critical take away from this action of the Haryana and Rajasthan governments is that the extreme majoritarian worldview of the RSS is not simply brazenly discriminatory on religio-cultural grounds—Muslims, Christians and Communists being the proverbial internal enemies of the 'Hindu Rashtra' but it is also elitist, classist and caste-ist.

In its much assailed December 2015 judgement, when faced with the challenge to the education qualifications, the Supreme Court analyses but then brushes aside the statistics and data presented before it on the *impact* of the provisions with the statement: "It is only education which gives a human being the power to discriminate between right and wrong, good and bad".

How faulty is this reasoning? One, women, 'lower' caste groups, religious minorities and indigenous tribal groups are the most likely to be listed as illiterate. A newspaper report on the new rules quoted a slew of Muslim women in Haryana who would lose panchayat positions as a result, though the paper did not highlight the obvious inference – that depriving such groups of civic rights is directly political-to disenfranchise them, and to, in effect turn them into second class citizens.

Second, is there really any correlation that there might once have been between literacy and socialization, civility, care for others and concern for the larger social good is a contested dictum faced as we are with a middle class and elite – bred on *mantras* of the neo-liberal market that individual advancement, ambition and marketability are the acceptable, socially wow-ed norms, not the irritant, read Nehruvian even tendencies of questioning, free faith and expression, ultimate rationality and defiant rebellion.

More and more of those who are counted as 'literate' are likely to have passed examinations by rote learning, muscle power or the influence of powerful friends in politically powerful places. A majority of them are likely to be cynically self-centred in civic affairs. Senior journalists wrote of the atmosphere on the streets of Faizabad-Ayodhya in December 1992-1993. December 6 was a significant blow to the edifice of Insian Constitutionalism, and though there have been some recoveries – a shaky social peace restored –there has not really been a firm and

non-negotiable re-building of the broken constitutional edifice. During conversations with those from 'poor India' it was the rural poor often who spoke of the rule of law even as many in Bombay, Ahmedabad and Delhi were comfortable with the Babri Masjid demolition. It was the poor asked questions such as: "If they can tear down the mosque after giving undertakings to the Supreme Court, where will I turn if they tear down my hut?"

In a vastly disparate land, where wealth and hunger co exist in cynical collusion, democracy and exercising of the franchise is ultimately, the real fundamental right only of the poor, voiceless and marginalized. If this section is successfully disenfranchised –as the Haryana and Rajasthan governments have done—and our Courts approve, this surely is the worst and most sinister way of squeezing the juice out of Indian democracy.

Tragically, the court was following precedent in this matter by applying similar reasoning contained in *Javed v State of Haryana*, where a like restriction concerning the number of children disqualified a candidate from panchayat elections was upheld on the ground that it was necessary for "socio- economic welfare and health care of the masses" and "consistent with the national population policy". Critical to the Supreme Court's assessments in both cases is not just what constitutes responsible representative citizenship, civility and education but who in fact is a beneficiary of universal adult franchise under Article 326 of the Constitution. That the Supreme Court has put its stamp, once again on discriminatory basis of representation, is an issue that the civil and political rights constituency should do well to consider. It showcases, as never before the argument for a greater expansiveness and representation within the court itself.

Three months back, petitioners from Rajasthan –Norati Devi and Kamla Devi - women's organizations and movements in Rajasthan challenged a similarly iniquitous Panchayati Raj law passed in Rajasthan and the Supreme Court admitted the matter. One of the prayers in that special leave petition challenging the Rajasthan restriction on universal adult franchise is for the Supreme Court judgement in *Rajbala* to be struck down. Once heard, this may also be referred to a larger bench of the Supreme Court. Again, a vital issue of egalitarianism lies within the portals of India's Supreme Court.

Beef Vigilantism and a Growing Mob Culture that Allows Public Lynching

On June 4, 2014, days after the regime took charge in Delhi, Mohsin Sadiq Sheikh, a Muslim techie, was killed by a mob in Pune. Two days after the now iconic lynching to death of Mohammad Akhlaq at Dadri in Uttar Pradesh, on September 30 2015, a Muslim man suspected to be a Pakistani terrorist was lynched to death in Kanpur's Jana Village by a frenzied mob. The 42-year-old victim screamed "Allah, Allah", while he was attacked by at least 15 people, following which one of the mob members said he could be a Pakistani terrorist trying to hide in the village. The man was taken and assaulted mercilessly outside a temple. He was then dragged towards a bank of Ganga River and drowned to death. This and another frightening one that took place 19 days later on October 17 when Noman was killed by a mob in Nahan, Himachal Pradesh, when his truck carrying cattle was apprehended by alleged Bajrang Dal members, and Zahid Bhat, a trucker from Anantnag in Kashmir, was attacked by a vigilante group in Udhampur in Jammu. He succumbed to his injuries at Safdarjung Hospital in Delhi did not generate the outrage that Dadri did. In Phugana, also in October 2015, two Dalit babies are burned alive in a brute attack of upper caste hatred. The lynchings by self styled Cow Protectors (Gau rakshaks) have continued right into 2016 with vigilantes in the Balumath forests hanging to death in Latehar district in Jharkhand on 18 March 2016. The attackers killed 32 years old Mazlum Ansari and 15 years old Imteyaz Khan who were found hanging from a tree. One of the accused has links to a local *Gau Raksha Samiti* (an outfit for protection of cows). The extent to which non-state actors have felt empowered by the government in Delhi can be understood from the fact that another youth in Jharkand, Minhaz, was brutally tortured by the police, simply because he was sending a beef-related message on social media. To complete the rather sordid calendar of lynchings narrative that has marked the RSS control of the Indian government, in March last year, in Dimapur, the capital of Nagaland, one Shareefuddin Khan, whose siblings served in the Indian Army, was brutally lynched inside the jail by local students, after allegations of rape were hurled that were later ascertained as a case of consensual sex. Local newspapers and social media were used to whip up mass frenzy. Against Muslims.

Dalits and Muslims today have united in a rare and special political alliance, for the first time based on an assault on their basic rights and lived and shared cultures –non-vegetarian, beef eating habits, livelihoods. This happened after the Una

floggings on July 8 in Gujarat when not only were Dalits flogged publicly with iron rods but the video of the brutal act proudly shared on social media by the perpetrators. This led to the now iconic Una agitation, after which Dalits and Muslims have come together in the state, in agitation mode. Until then, beef vigilantism and lynchings had only Muslims, from the backward castes, as the victims.

Weeks after the national outrage over Una, however, cow vigilantes that have acquired a rare courage after an empathetic government assuming power in Delhi attacked two Madiga brothers attacked violently after they skinned a dead cow, a must to earn their living in Andhra Pradesh run by a TDP-BJP government. The brothers belong to the Madiga community, a Scheduled Caste that is found primarily in the states of Telangana, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu. The community earns its living by making leather goods.

An unholy alliance between vegetarianism, vigilantism and a hatred for all that is Muslim or Dalit is defining or re-defining the scope of rights denials within a proto-fascist India.

The Dynamics of caste, religion, food and cultural rights reflect a harsh reality of Indian politics today

The attacks have taken place in states like Karnataka and Uttar Pradesh that are not ruled by the supremacist Bharatiya Janata Party (BJP). Attacks have also torn through Maharashtra, Gujarat, Jharkhand and Punjab, which are dominated by the ruling dispensation. The list is long and gory. In one public lynching in Latehar, Jharkhand this March, two Muslim men—a young teenager and his uncle—were left hanging from trees. On the eve of the Bakri Eid festival, the beating to death of 29-year-old Mohammad Ayub, who was carrying a calf along with Salim Shaikh in Ahmedabad, Gujarat.

A vigilante mob set upon them, and while the police watched, beat the young man so mercilessly died two days later on Sept. 16, 2016. Under the law, he was committing an illegal act, as several states in India have enacted rules that ban the slaughter of cows and their progeny (excluding bulls and bullocks in some cases, but not others). But in a country that claims to be a modern and civilized state, the world's largest democracy, did Mohammad Ayub deserve to be surrendered to the lynch mob?

Days before that incident, in Gujarat, twin gang rapes were perpetrated by squads of men to avenge the "possession of beef." This other incident took place

on the eve of the Eid Ul Azhar Festival in Haryana, a state ruled by the BJP, where the chief minister recently made a controversial statement that "rapes and murders were trivial issues." The police were ordered by the Haryana Cow Service Commission, whose mission is to look after the welfare of cattle, to set up a 24-hour helpline so people can report incidents of cow slaughter. Cow slaughter is illegal in Haryana; in 2015, that state government passed a law that punishes the slaughter of cows with up to 10 years in prison.

Over 20 Indian states forbid either cow slaughter or beef eating or both. As a result, access to beef, which is consumed by a large numbers of Indians, including Dalits, many Hindus, Muslims and Christians, is difficult in many states.

Economically and culturally, this cow vigilantism is affecting both Dalits and Muslims. Dalits, the sect of Indians once called India's untouchables, are often responsible for disposing of the carcasses of cows, selling their hides to tanners and their meat to butchers. They do it because upper-caste Hindus are loath to take on that task—they consider the work impure. Until July 11, 2016 when Dalits in Una in Gujarat were flogged mercilessly for performing their legitimate task of carrying cow carcasses to skin the animal, resistance to this vigilantism was scattered. That changed after Gujarat's Dalits took to the streets, abandoned cow carcasses all over the state, even dumping them at the offices of the district administration, protesting vociferously and successfully. This was a unique resistance and protest as reflected in the battle cry, "If the cow is your mother, you bury her."

These dynamics of caste, religion, food and cultural rights reflect a harsh reality of Indian politics and where it stands today. The nuts-and-bolts number narrative behind the cow vigilante hate and lynch campaign tells a cold and cynical tale.

What were the laws before 2014 and how have they been amended since?

Since the days of the debates before the Constituent Assembly between 1947 and 1950, when the doyens of the freedom struggle, Mahatma Gandhi and the leader of Dalits and man who drafted the Constitution, Dr. B.R. Ambedkar, battled issues of religion and culture, the ghost of cow protection has been hovering over and above Indian law and jurisprudence. Unambiguous in his analysis that the issue of cow protection and beef-eating was a cultural or religious more being imposed on India's majority population, Ambedkar had written extensively on the question.

He was unable to triumph over Gandhi and many other leaders, however, and a loose mention under the Directive Principles of State Policy (Article 48) has been used to impose this value.

Until 2014, however, the 20-odd states that had enacted Cow Protection laws, with the sole exception of Gujarat, had been careful to limit the ban to the slaughter of the cow and prevent bull and bullock slaughter only until the "productive" age of 14 years.

Since the present Modi regime rode to power in a triumph of the majoritarian vote in May 2014, states under its rule have amended earlier laws to criminalize the transport, possession and consumption of beef. A slew of Supreme Court judgements from 1958 onwards saw a consistent and rational jurisprudence evolve.

These court verdicts interpreted the laws in these states to say that, while cow slaughter can be banned, the ban on the slaughter of bulls and bullocks should only be maintained until the animal reaches 14 years (the definition of "useful"). That changed in 2005 when a seven-member bench of the Supreme Court headed by then chief justice Lahoti ruled, in effect, that bulls and bullocks are "useful till they die."

The harsher Ban Beef law enacted after 2014 was challenged in Maharashtra (Bombay High Court) almost immediately. On May 6, 2016, the Court struck down Sections 5D and 9B of the amended law and, in effect, allowed consumption, import and transport of beef, ruling that these new additions to the law impinged on the right to privacy, which is part of personal liberty and the right to a meaningful life with free choice. The Court did not go further in view of the 2005 Supreme Court judgement. The appeals now lie in India's highest court. Yet, as reports in the media still show, unlawful acts of aggression on traders importing beef from neighbouring states continue even after the judgement. Ignorance or ideological collusion by echelons of the Indian police?

Economics Ignored

In the hysterically framed present political debate, the sheer economics of the issue are simply not being sensibly debated. A blanket ban on slaughter means the farmer will have to pay for their upkeep which, at current prices, would amount to around 100 rupees a day or 36,500 a year. Can farmers in the grip of an acute agrarian crisis afford this expense? Today farmers, mainly Hindus, sell unproductive cattle to contractors. Who and how will these cattle, once they are past productive

use, be managed? Will the government give them a cattle subsidy? According to the cattle census, already there are 5.3 million stray cattle abandoned by their owners.

The strident campaign against cow slaughter will have an adverse impact on the leather industry, which employs close to 2.5 million people, mostly Dalits. Raw material supply to the industry will be affected. Figures provided by the Council for Leather Exports show that 2.5 million people, the majority of them scheduled castes, are employed in the industry. An estimated eight lakh Dalits earn a living through flaying the skin of dead cattle. This activity is allowed and is squarely within the law.

The current cow hysteria, earlier whipped up by Narendra Modi himself during the run-up to the campaign that brought him to the prime minister's chair, is falsely premised. It is not cows but the meat of buffaloes and unproductive cattle that is mainly used for consumption and exports. In fact, as far as the cow is concerned, the 2012 cattle census shows that "the Female Cattle (Cows)

Population has increased by 6.52 percent over the previous census (2007) and the total number of female cattle in 2012 is 122.9 million numbers." This hardly points to rampant slaughter of cows.

How Many Indians Actually Eat Beef?

The National Sample Survey Organization (NSSO) estimated in 2011-12 that 52 million people in the country eat beef or buffalo meat. Earlier, the National Commission on Cattle, set up by the Atal Bihari Vajpayee Government in 2002 to promote a ban on cow slaughter, also reluctantly admitted in a report that "extreme poverty and customary practices in the coastal areas and among some sections of scheduled tribes, scheduled castes and other backward castes also make them beef eaters." There is clearly a class and caste dimension to beef and buffalo eating. Imposition of an unacceptable food code does and will directly affect the nutrition of the poor.

Through this murderous mayhem, however, India retained its top spot as the world's largest exporter of beef, according to data released by the U.S. Department of Agriculture (which classifies even buffalo meat as beef), and has extended its lead over the next highest exporter, Brazil. According to the data, India exported 2.4 million tons of beef and veal in FY2015, compared to 2 million tons by Brazil and 1.5 million by Australia. These three countries account for 58.7 percent of all the beef exports in the world. India itself accounts for 23.5 percent of global beef

exports. This is up from a 20.8 percent share last year, before the Modi government rode to power.

And to top it all, 95 percent of the beef traders—including the companies that rake in the profits through exporting the meat, are 'Hindus.' Ironically many Hindu businessmen are the largest beef suppliers of India. Out of the six largest meat suppliers in India, four are Hindus, though the companies are given suitable 'Muslim' names. And the BJP political party that has given much legitimacy to the Cow Vigilante Groups that have been on a lynching spree across India has received 25 million rupees in donations from companies exporting buffalo meat, according to contribution reports for financial years 2013-2014 and 2014-2015 submitted to the Election Commission of India.

Cultural and Moral Hegemony: Majoritarianism

It is here that the present laissez faire vigilantism is rooted. Dr. Ambedkar's scathing criticism of the caste system and the Brahminical order contained an analysis of the grounds for untouchability practiced against Dalits, one of which was consumption of the meat of dead cattle. He held that the demand for a ban on cow slaughter was a way of introducing Hindutva of the upper castes into what was to be a secular Constitution. Renowned historian D.N. Jha, no favorite of the present political dispensation, has long argued with incontrovertible historical evidence that even caste Hindus, during Vedic times, consumed beef.

In the book *The Untouchables: Who were they and Why They Became Untouchables?* Ambedkar grapples with erudition on the subject.

Ambedkar writes:

"What is the cause of the nausea which the Hindus have against beef-eating? Were the Hindus always opposed to beef-eating? If not, why did they develop such a nausea against it? Were the Untouchables given to beef-eating from the very start? Why did they not give up beef-eating when it was abandoned by the Hindus? Were the Untouchables always Untouchables? If there was a time when the Untouchables were not Untouchables even though they ate beef why should beef-eating give rise to Untouchability at a later-stage? If the Hindus were eating beef, when did they give it up? If Untouchability is a reflex of the nausea of the Hindus against beef-eating, how long after the Hindus had given up beef-eating did Untouchability come into being?"

Teesta Setalvad

The clue to the worship of the cow is to be found in the struggle between Buddhism and Brahmanism and the means adopted by Brahmanism to establish its supremacy over Buddhism.

Ambedkar discusses at length when and at what stage Hinduism began being associated with the love of the cow and cow protection.

Beef-Eating as the Root of Untouchability

Ambedkar writes:

“The Census Returns [of 1910] show that the meat of the dead cow forms the chief item of food consumed by communities which are generally classified as untouchable communities. No Hindu community, however low, will touch cow’s flesh. On the other hand, there is no community which is really an Untouchable community which has not something to do with the dead cow. Some eat her flesh, some remove the skin, some manufacture articles out of her skin and bones.

From the survey of the Census Commissioner, it is well established that Untouchables eat beef. The question however is: Has beef-eating any relation to the origin of Untouchability? Or is it merely an incident in the economic life of the Untouchables?

Can we say that the Broken Men to be treated as Untouchables because they ate beef? There need be no hesitation in returning an affirmative answer to this question. No other answer is consistent with facts as we know them.

In the first place, we have the fact that the Untouchables or the main communities which compose them eat the dead cow and those who eat the dead cow are tainted with untouchability and no others. The co-relation between untouchability and the use of the dead cow is so great and so close that the thesis that it is the root of untouchability seems to be incontrovertible.

Challenge to the Concept of Civil and Political Liberties

The battle for civil and political liberties today, therefore needs to expand to address this peculiar brand of majoritarian fascism that is upon us. Not just on beef eating and non-vegetarianism, but on India’s very understanding of social studies and history, this battle is being constructed and needs to be fought. Teenmurthy House, the home of India’s first prime minister has been taken over by posters of MS Golwalkar, and worse. The Indian Council of Historical Research (ICHR) and other research bodies are being filled by men who’s allegiance to the academia is

limited to the RSS' political project of claiming India's very existence as not just Hindu but a narrow and a-historic version of the term.

Challenge to the Indian Republic: Contextualizing the Misuse of Religion in the Context of Elections (Judicial Interpretation of Section 123 of the Representation of People's Act, 1951)

It is in this overall context that the crucial interpretation of Section 123 of the RP Act of 1951, currently before a seven member constitutional bench, assumes crucial importance. This sinister tendency, injecting superior, oppressive and hegemonistic notions of religion and caste identities over society has assumed mighty proportions, especially since the mid 1980s. Arguably, market finance and capital the world over, preferring as it does to relate to and transact with monoliths--entities 'un-messed' by pluralism and democracy-- also prefers to ally with those forces furthering hegemony and domination not those emphasizing either pluralism, a multiplicity--even conflictual sense of rights--and certainly not those that foster genuinely democratic cultures of questioning.

Crassly put then --regardless of the lip service to democracy during elections, processes of which are heavily dominated by cash infusions and marketing of images etc; these corporate and monetary forces will also ally with un-democratic, authoritarian, even theocratic tendencies.

Opportunistic, even supremacist notions of society are being articulated by major political players and their parties, programmes and manifestos, all working decidedly against the rich tradition of India's pluralism by narrowly using our religious and caste identities pitted against each other. Especially during election time which is the festival for garnering voter support. There is a strong need to be watchful of the very functioning of the political parties who are holding the composite political system of the country to ransom for narrow electoral gain.

The BJP argued in Court that the interpretation of Section 123(3) of the Act should be narrowly interpreted to understand and mean only the religion of the candidate ("his religion"). Not only was this argument evasive and spurious it actually militates against the line of reasoning articulated in over three dozen judgements of the same court, over decades. How crucial this judicial interpretation is for the saffron party is also clear from the fact that in three manifestoes --1998, 2004 and even 2009 cultural nationalism has been key: quoting from the Court's rather half-baked findings on 'Hindutva' has been crucial to its mass mobilizations of supremacy and segregated citizenship.

Understanding the Party System

Though, constitutionally, the role of political parties has not been defined, there is no possibility of a politics within the parliamentary system without a healthy party system that believes, upholds and re-enforces constitutional values. It is in this spirit, that Section 123 of the Representation of Peoples Act (RPA), 1951 was devised as a reasonable restriction on political speeches in the interest of maintaining the integrity of the nation based on common citizenship and not on religion, race or caste.

Separation of Religion and State

Section 123 therefore erected a wall of separation between state on one hand and religion, caste, race and language on the other hand. Any party or organisation campaigning elections on any of these prohibited grounds has the proximate effect of eroding the integrity of nation and secular philosophy embedded in the Constitution and would undoubtedly be perpetrator of an unconstitutional course of action.

The Bommai Judgement

At all stages of the argument in the Supreme Court, advocates appearing for the BJP and Shiv Sena (as also those for the states of Gujarat, Chhatisgarh and Assam –BJP ruled states—chose to insist that it was their fundamental right to invoke religion. Worse, they spoke in one voice in trying to rubbish the Nine-Member Judgement of the Supreme Court in the *Bommai Case*. This remains a crucial verdict to understand Indian Secularism as against a Appeals to a Theocratic State, the Mis-Use of Religion during elections, the Role of Political Parties, the Interpretation of Section 123 etc. Put very simply is what the Court said in *Dr. Vimal v. Bhaguji* where it has held the object of S.123(3) and (3A) to be maintaining a secular state and purity of elections:

*“...We may also indicate here that in order to maintain national integrity and amity amongst the citizens of the country and **to maintain the secular character** of the pluralistic society to which we belong Section 123 and 123(3A) of the Representation Act have been incorporated. For maintaining purity in the election process and for maintaining peace and harmony in the social fabric, it becomes essentially necessary not only to indict the party to an election guilty of corrupt practice but to name the collaborators of such corrupt practice if there be any.”*

The purity of elections and democracy were the very objects of enacting Section 123 of the Act. *Patangrao Kadam Para 13*:

*"Corrupt practice is not confined only to a returned candidate, it can be committed by the persons mentioned in Section 123 and no one can be allowed to escape consequences of Section 8A, the **object being to maintain the purity in the election process. Fair and free elections are essential requisites to maintain the purity of election and to sustain the faith of the people in election itself in a democratic set up.** Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character. Hence those indulging in corrupt practices at an election cannot be spared and allowed to pollute the election process and this purpose is sought to be achieved by these provisions contained in the RPA."*

The most unsettling feature of the present time is the way the ruling right-wing party espouses *Hindutva* and romanticises it for not just electoral gain. Though the short-term superficial gains are to garner the 'Hindu vote' the real, long term objective is to re-define the very edifice of India and Indians, fashioned as it so far has been on the vast people's mobilizations and experience of the Indian national movement in overthrowing colonial domination. [[Historically, the parent supremacists right-wingers, be they the RSS or the Hindu Mahasabha were actual collaborators with British colonial powers, and even on critical occasions with the Muslim League that like them believed in 'separate' nations for Hindus and Muslims.

By careful design, the party is flamboyantly using *Hindutva* in its electoral campaign and policy initiatives without calculating the damage done to the experience of syncretic India. In the imagined India of the right-wing party, all other religions as a way of life have been pushed to a less favourable or secondary status. This is plainly antithetical to Articles 14 to 16, 25 and the entire constitutional scheme adumbrated hereinabove.

The Hindutva Verdict

A bench of Supreme Court headed by the late Justice J S Verma in Dr Ramesh Yeshwant Prabhoo (*Hindutva Judgement*) ventured to define the meaning of the word "*Hindutva*" or "*Hinduism*" contextualizing it with election publicity and clinched that the words "*Hinduism*" or "*Hindutva*" must not be construed narrowly and unless the context of a speech indicates a contrary

meaning or use, in the abstract, these terms are indicative more of a way of life of the Indian people.

The bench has further observed that "the mere fact that these words (*Hindutva* or *Hinduism*) are used in the speech would not bring it within the prohibition of sub-section (3) or (3A) of Section 123. This approach defies ground reality. When term *Hindu*, *Hinduism* and *Hindutva* is used by a politician particularly the Hindu fundamentalists, it refers primarily to Hindu religion to the general voter/masses. An audience more educated than the average Indian electorate would not comprehend it as inclusive of the culture and religion of those whose religion originated outside India, such as Muslims, Christians and Jews.

Under present consideration by the Supreme Court of India are several petitions that raised and interpreted this issue and over which appeals and reviews were filed. A three judge bench of the Supreme Court of India (Justices JS Verma, Saran Singh and Venkataswami), in 1996, held Shiv Sena supremo, Bal Thackeray to be guilty of a corrupt electoral practice under section 123 (3) and 123 (3A) of the Representation of People's Act. The interpretation of section 123(3) however was narrow. The three speeches made by Thackeray on November 29, 1987, December 12, 1987 and December 10, 1987 were made in support of the then mayor of Mumbai, Ramesh Prabhoo, contesting the assembly elections.

The speeches themselves leave very little to the doubt or imagination

Here is what Thackeray said, then:

1.12.1987: Reported extensively in the Urdu and Marathi newspapers with the photographs under the title "Hindu Dev- devtavareel Teeka Sahan Karnar Nahi Thackeray" (We will not tolerate the criticism of Hindu gods and goddesses - Thackeray)

9.12.87: At another election meeting which took place from 9 a.m. to about 12 midnight at Khar-Danda, near Shankar Temple. This meeting was addressed by Bal Thackeray, respondent No. 1, Harish Chandra Dattaji Salvi (a Shiv Sena leader) and Shambhoo Maharaj, a religious leader from Gujarat. In the said meeting Bal Thackeray, while addressing the audience stated as under : "Hinduism will triumph in this election and we must become hon'ble recipients of this victory to ward off the danger on Hinduism, elect Ramesh Prabhoo to join with Chhagan Bhujbal who is already there. You will find Hindu temples underneath if all the mosques are dug out. Anybody who stands against the Hindus should be showed or worshipped with

shoes. A candidate by name Prabhoo should be led to victory in the name of religion."

10.12.87 a meeting was held from 9 p.m. to about 12 midnight at Vile Parle (East) at Shahaji Raje Marg. This was addressed by Bal Thackeray, Shambhoo Maharaj, Ramesh Mehta, Rishi Kapoor, Jitendra Madhukar Joshi and Ramesh Prabhoo, In this meeting Shri Thackeray uttered the following words while addressing the meeting : "We have come with the ideology of Hinduism. Shiv Sena will implement this ideology. Though this country belongs to Hindus, Ram and Krishna are insulted. (They) valued the Muslim votes more than your votes; we do not want the Muslim votes. A snake like Shahabuddin is sitting in the Janta Party, man like Nihal Ahmed is also in Janata Party. So the residents of Vile Parle should bury this party (Janata Party)." [The above utterances in these three meetings were cited in the petition that challenged and established that the inciteful speeches of Thackeray on behalf of Ramesh Prabhoo in the elections, were examples of promoting the feelings of enmity between different classes of citizens of India, the sole purpose in doing so and making the appeal was to canvas votes in favour of the the candidate, Prabhoo.]

It is however on the crucial aspects of the interpretation of the section of the law, section 123(3) and the relationship between the candidate contesting the election and 'his' religion as also the relationship (and thereby the legal culpability) of a particular candidate with the manifesto of his party (and whether the candidate can be held legally bound to it) that the arguments were made in Court (through November 2016) and will, when the judgement is pronounced be decided.

Hence the judicial deliberations will have lasting implications, especially on those supremacist outfits who unashamedly appeal to exclusivity of the faith of candidates to garner votes.

Is a contesting candidate an 'agent' as defined under the Representation of People's Act and is a 'leader' of the party, who campaigns for him also an 'agent' as defined and liable for legal restrictions under the Act ? Political parties are registered under Section 29(a) of the Act.

If a leader of this party so registered (under the Act) makes a speech that violates the Constitution, is inciteful (and by being a corrupt practice of misusing religion for electoral ends), i.e. if such a speech is violative of Section 123(3) of the Act, what are the consequences for such a 'leader'? Sometimes during an election campaign, a candidate actually contesting the election is present at the time when such a speech is made by a 'leader'; on occasion he is absent. There are posters,

videos and other materials circulated (that are violative of the Election Law, inciting voters against other faiths); can a candidate be held guilty of violation of the Election Law or not? These will be the key issues deliberated upon.

The Bombay High Court in its long line of judgements delivered on the issue (relating to a campaigns by the Shiv Sena-BJP alliance at the time) was categorical. It interpreted the 'Hindutva' plank as a clear violation of sections of the Representation of People's Act. The judgements, coming as they did in the late 1980s and early 1990s had also witnessed Bombay and Maharashtra being burned by the fires of communal hatred.

In appeal, the Supreme Court judgements have been mixed. While some aspects of the judgements of the Bombay high court have been upheld by Supreme Court benches including the one headed by Justice Variava and another bench consisting of Justices NP Singh, Ahmadi and Punchi -- concluding that the plank of majoritarian Hindutva espoused during elections, clearly violated both the Constitution and Indian election law-- Justice Verma in *Dr Ramesh Prabhoo v/s Prabhakar Kunte* while upholding Section 123(3) and castigating Thackeray's speeches on grounds of decency, indirectly gave some judicial validity to the 'one nation, one culture' ideology which is at the base of Hindutva. Subsequent manifestos of the Rashtriya Swayamsevak Sangh (RSS)-inspired Bharatiya Janata Party (BJP) have used this as ultimate validation of their ideology (1998, 2004, 2009).

For decades now, the Sangh driven BJP has blatantly challenged the Rule of Law with Election Campaign(s) that are Polarising and Divisive. In the past few months of 2016 this has been visible, especially in Uttar Pradesh (UP)

Months ago, in April-May 2016, Uttar Pradesh, the state that signals the political fortunes for the country, was agog with yet another potentially divisive controversy stoked by the Sangh-inspired Bharatiya Janata Party (BJP). A few months ago, a Poster of UP BJP Chief, Keshav Maurya as Lord Krishna was spotted in many parts of UP; it uses, yet again, religious symbols as a start up to its campaign ten months before the state elections due anytime before February 2017, signaling the beginning of a campaign that will bank on polarising the voter on religious lines. There is every indication that this strategy would continue.

Ten years ago, in the run up to the UP elections of 2007, the party had been severely reprimanded by the Election Commission of India (ECI) that had even directed that an FIR be filed against senior BJP leaders, for the widespread circulation of a CD containing targeted hate mongering released by the BJP's state

unit at the instance of the central leadership. The Election Commission at the time had directed the filing of an FIR against senior Bharatiya Janata Party leaders -- Lalji Tandon and others -- involved in the production of the controversial party election CD allegedly making a reference to Babri and Godhra train arson of 2002. The CD had been officially released and widely circulated.

The contents of the CD brazenly released by the BJP's state unit -- that claimed it had got the clearance of the central leadership -- were found to be so offensive that independent citizens groups as well as political parties had appealed to the EC to de-recognise the BJP. The Commission had issued a show-cause notice to the BJP on the matter.

Composite Culture

The Indian Constitution incorporates within it a sense of Nationalism known as Territorial Nationalism, where everyone born within the territory of India, is an Indian. The fundamental principle that all Citizens within the territory of India, either by birth of or by acquisition are equal whether he/she is Hindu, Muslim, Christian, Buddhist, Jain or Parsi or atheist! The Mandate of the Constitution is to promote tolerance and harmony amongst the people of India transcending religious linguistic, religious or section or sectional diversities and to preserve the rich heritage of our Composite Culture.

Implications of Narrow Interpretation

While the 1996 judgement of three judges of the Supreme Court, in many ways gave a fillip to the proponents of Hindutva, the said judgment has been disagreed with by two Constitutional Benches of the Supreme Court, subsequently. This is why the matter and legal issues, crucially related to the interpretations of the Constitution and Election Law, now lies referred to a larger, seven Judge Bench.

In the case of Narayan Singh v/s Sunderlal Patwa, the five bench judgment of the Supreme Court disagreed with Justice Verma's judgment and referred it to larger bench of seven Judges. It has been argued that in delivering the 1996 judgement, Justice Verma overlooked the Supreme Court judgement in both the S.R. Bommai case and the Kartar Singh case and gave a restrictive meaning to the definition of corrupt practice under section 123(3)A of the Representation of People's Act.

The Court held that it would not amount to a corrupt practice so long as the candidate did not appeal to the voters on grounds of 'his' religion even though he appealed to the voters on the grounds of the religion of the voters!

Similarly in the case of *Abhiram Singh v/s C.D. Oomachand*, three Judges Bench headed by Justice K. Ramaswamy referred the entire case to a five Judges Bench holding inter-alia that **“we are of the view that the entire case requires to be heard and decided by a larger Bench of five Judges since the decision thereon impinges upon the purity of the election process which gets..... and becomes fraught with the deleterious effect in a democratic Polity!”**

The words of Justice Ramaswami have indeed proven to be prophetic. The 1996 judgement has held sway since 1996 along with another judgment of the Supreme Court (*Manohar Joshi Vs. N.B. Patil*) where the Court unfortunately held that the statement by Shri Manohar Joshi that the “First Hindu State will be established in Maharashtra did not amount to Appeal on grounds of Religion!” This interpretation by the Supreme Court on ‘Hinduism’ and ‘Hindutva’ needs therefore to be thoroughly re-visited. Supremacist and communal forces have looked upon the 1995 and 1996 judgement(s) as *Judicial Imprimatur* of their Divisive Ideology. Since the time *Hindutva/Hindu Rashtra* came up as an assertive phenomenon within the Indian political scene, divisiveness has gone up by leaps and bounds and the polarisation between communities, increased. Today, and quite brazenly, the intimidation of religious minorities is taking place under the flag of *Hindutva* and *Hindu Rashtra*.

Contrary to the Constitutional mandate of inclusiveness and our composite culture this narrower judicial interpretation signals an exclusionary jurisprudence and hence it's re-visitation is crucial for the Constitutional vision and its secure future within India.

Hindutva and Hinduism

It is questionable if Courts are theologically and sociologically equipped to define the term, Hinduism. For some judges, Hinduism and *Hindutva* are synonymous. Divergently, in an equally important verdict, the *S.R. Bommai* case Judges have quoted Swami Vivekanand and Mahatma Gandhi to show Hinduism's ethos of tolerance and respect of all religions.

“Swami Vivekanand stated “that right of religious system and ideals is the same morality. Myself say “Om” other say “Johova” another “Allah ho Mohmmad” another cries “Jesus”. According to historian Tapan Rayachaudhri “the Vivekanand

was among earliest nationalist thinker to claim the Indo-Islamic past as part of the Indian Heritage” Mahatma Gandhi has stated “

The separate religions of Hinduism, Islam, Christianity, Buddhism are different, converging at the same point even as the tree has single trunk but many branches and leaves so there is one perfect religion but it becomes many as it passes through the human medium. The Allah of Muslims is the same as the God of Christians and Ishwara of Hindus” *“You cannot be a true Hindu if you hate any other religion. I consider myself a follower of Islam, Christianity, Zoroastrianism and every other religion because I am a true Hindu”.*

Hindutva

For critiques of the narrower interpretation, Hindutva is certainly not synonymous with Hinduism: Savarkar’s work published in 1923 titled “Hindutva who is a Hindu?” appears to have been ignored when the judgement was penned. Savarkar was quite categorical in defining nationhood. According to him “A Hindu means a person who regards his land of Bharatvarsha from the Indus to the Seas as is father land (Pitrubhumi) as well as his holy land (Punyabhumi) that is cradle of his religion” Referring to Mohammedan and Christians Savarkar says ‘Hindustan’ to them is father land but to them it is not Their Holy Land which is far off in Arabia or Palestine! “ These are the essentials of Hindutva- a Common nation (Rashtra), a common race (jati) and a common civilisation (Sanskriti), Sanskriti is preeminently implied by the word Punyabhumi as it precisely Sanskriti including in sanskar i.e. rites and rituals ceremonies and sacraments that makes a land Holy land”

For the minorities then the option of retaining both their faith and their Indian Nationality is extinguished, under this narrow interpretation. This is the reality of Hindu Rashtra based on Hindutva! Hindutva is not a restatement of Hinduism. It is the formulation of a new political ideology of exclusivist nationhood.

Contrarian Interpretations of Hinduism and Hindutva

The apex court in *Suryakant Venkatrao Mahadik v. Saroj Sandesh Naik (Bhosale)* [(1996) 1 SCC 384] (Mahadik case) held speeches by a candidate and some others made on different dates referring to Hindutva as corrupt practice. Also appeals by such Hindu candidate to a congregation of Hindu devotees in a Hindu temple during a Hindu religious festival with emphasis on the Hindu religion for giving votes to a Hindu candidate espousing the cause of Hindu religion was held to be corrupt practice.

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This court also specified (Para 14) that whether an appeal is such that voters understand the meaning and use of the word "Hindutva" in the speech as appealing to Hindu religion is the relevant factor. This judicial logic was deduced from two previous five-judge bench decisions of the Supreme Court namely *Sastri Yagnapurushadji v. Muldas Bhudarda Vaishya* 1966 (3) SCR 242; and *Commissioner of Wealth Tax, Madras v. late R. Sridharan by LPs*, 1976 SCR 478 but interestingly neither of these two judgements support the conclusion of the Supreme Court that Hindutva or Hinduism means the culture of the people of India in entirety. The bench also unnoticed the fact that same judgement elucidated the essential features of a Hindu and one such "acceptance of the Vedas which is a religious text with reverence as the highest authority as defined in *Bramchari Sidheswar Shai and others Versus State of West Bengal*. Hinduism or Hindutva has two contextual meanings.

The broader meaning as proliferated by scholars like Swami Vivekananda who said in World Parliament of Religions (1893) that, "*the Christian is not to become a Hindu or a Buddhist, nor a Hindu or a Buddhist to become a Christian. But each must assimilate the spirit of the others and yet preserve his individuality and grow according to his own law of growth.*" The narrower meaning is very common and associated with religion as spread by Hindu radicals such as Vishva Hindu Parishad, Shiv Sena and other such political and non-political groups. Appealing to electorates in the name of Hindu Rastra, or Ram Madir would fall certainly under section 123 of the RP Act.

Crucial Interpretations will Impact Indian Polity

If Hinduism is a way of life as suggested by the Supreme Court, then so are Buddhism, Islam Christianity - or any other religious domination - for their followers. All dictionaries suggest that *way of life* describes the pattern in which a person lives which includes their religion, their language, their arts and crafts, their ways of earning a living, and their behaviour with others. The Hindutva judgement does not illuminate these functional insinuations of *Hinduism* or *Hindutva* and hence its reconsideration was imperative but seven-judge bench of Supreme Court hearing arguments in *Abhiram Singh v. C.D. Commachen* and *Narayan Singh v. Sunderlal Patwa* appears to have let slip this opportunity.

If the task of reforming political parties is not assumed thoroughly and instantly, the future of Indian democracy will be in serious peril. While recognising the far-reaching and paramount authority of the state, the Constitution articulates

with equal clarity the principle of secularism and tolerance, which is integral part of our constitutional philosophy towards religion.

This was echoed by Chinnappa Reddy J. in the National Anthem Case

Our tradition teaches tolerance; our philosophy preaches tolerance; our constitution practices tolerance; let us not dilute it.

Land Acquisition, Forest Rights Act and Labour Laws

Apart from this assault on civil and political liberties, this regime –coming to power as it did backed by unaccounted money and capital has also gone about, in the two and a half terms in office –severely turning back hard earned labour rights, farmers and adivasis rights in terms of land acquisition and completely overturning Adivasi rights granted in the **Forest Rights Act of 2006**. This means that while politically a structure of homogenized upper caste militarised Hinduism is sought to be given official weight and currency—itself anti-Constitutional, hard earned rights of Indian farmers, Adivasis and forest dwellers are being taken away.

In 2016 itself, months after assuming power, the Modi regime tried to test the political waters by bringing in a Land Acquisition Ordinance to overturn a 2013 Law that had, itself re-visited colonial legislation that empowered the forest official and timber mafia to exploit forest dwellers and tribals. United Opposition protest put the Modi sarkar project to dis-enfranchise farmers and land holders on hold. At the Centre. Lo and behold, three states run and ruled by the BJP, Gujarat, Maharashtra and Rajasthan simply passed state land legislations that took away the empowering measures of social audit, prior consent and adequate compensation.

The long overdue Forest Rights Act had begun, slowly to ensure that tracts of land guarded by the Forest Dweller –who also protected them against rampant deforestation has been –in one fell stroke-rendered ineffective through an Executive Order of the Environment Ministry (then under Prakash Javdekar). The matter lies in challenge in the Supreme Court. Brute killings in Jharkand as the state and centre collude to snatch away Tribal Land are another moot point.

Similarly labour laws, hard earned have been turned back with every effort being made to informalise the barely protected formal sector. Apart from some of the specific challenges for the rights movements showcased above there are imminent ones that I shall not go into, in detail.

Both the Maharashtra and Gujarat governments have attempted enacting laws that criminalises all criticism and dissent: The Gujarat Protection of Internal Security

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Act (GPISA) and a similar Maharashtra Law. Both proposed laws will in fact be tools in the hands of the states to target any individuals or movements resisting government policy or action. Opposed by civil liberties groups, this opposition needs to be actually taken to the streets so that a mass movement in defence of democracy and civil liberties, emerges. In fact this remains, at the heart, the challenge to the Indian civil liberties movement. How to ensure that democratic politics itself enshrines genuine values of civil and political liberties and economic and cultural rights. Towards that end.

These proposed laws render any and all criticism of the existing political dispensation, especially the growing rage of the minority communities and Dalits against an increasingly intolerant regime, criminal.

Media and Corporate Capital

All these challenges become even more acute, and mass organization and mobilizations to contest them –and assert civil liberties –even more difficult with the composition of the Indian media undergoing a drastic change and corporate capital determining what we see, view and understand. In my interview with P. Sainath in September 2014 he explained this phenomenon,

“Convergence between Parliament, Big Business and Media: The interview also explores the complete domination of Indian Parliament by “more than millionaires” [the 2014 Indian Parliament has 353 of the 545 Members of Parliament worth Rs 10 million; when the last Parliament – 2009—had only 145 MPs worth Rs 10 million] and in turn these very individuals (and their corporate business interests owning controlling shares in media). This enjoys a rare convergence, hitherto unparalleled that was witnessed in the brazen corporate campaign to spearhead Modi to power in 2014. (Sainath to Setalvad)”

There is a stranglehold on free thought, expression, association that is, most dangerously of all being constructed by this unholy nexus. The most exacting challenge of all, then the re-emergence of a genuinely democratic real media.

Ending on a Personal Note

I am honoured and humbled to have been invited to deliver this lecture. Kanna meant ever so much to each one of us down in the human rights field. I recall his joining us on the streets of Mumbai when we collectively staged a dharna for the re-instatement of the Justice BN Srikrishna Commission (disbanded by the Shiv Sena –BJP government, widely accepted to have been perpetrators of the 1992-

1993 pogrom in the megapolis (January 30, 1993). I recall walking over to the home of HM Seervai one of our most erudite jurists at Churchgate after the dharna and the bearing amazing witness to their conversation! Kanna and Seervai were as different politically and temperamentally as chalk and cheese but –being products of a profoundly seasoned generation –were wonderfully engaging conversationalists. In 2002, when Gujarat burned, it deeply affected Kanna too and he was part of the *Concerned Citizens Tribunal-Crimes Against Humanity, 2002*. He wrote a powerful piece for us, in the April-May 2004 issue of *Communalism Combat*, after the historic verdict of the Supreme Court in the Best Bakery Case. Titled, “A Question of Justice,” he severely reprimanded our Courts as only a person of his experience and understanding could do. I conclude then with the concluding part of that article authored by KG Kannabiran, because I believe, in a sense those words, say it all, when Courts of law abdicate their fundamental duty,

“What happened in Gujarat in March 2002, what happened in Mumbai in January 1993, and to members of the Sikh community in 1984 are genocidal trends and courts, as enforcers of International Covenants, ought to have taken serious note of these blatant transgressions of human rights and devised jurisprudential and procedural tools to deal with this situation. A magniloquent attack on lawlessness is hardly a substitute for doing justice to the wronged. A court which innovatively protected propertied interests by devising the concepts of prospective over ruling and basic structure could have devised a concept for disqualifying a chief minister or other ministers as having been constructively responsible for the carnage by redefining a writ of quo warranto for meeting these situations. If the chief minister Modi had been disqualified on the principle of constructive responsibility, Rule of Law would not have become the fugitive that it has become now. Bal Thackeray’s Mumbai is not going to be any different. Seeing Rule of Law fleeing like a fugitive could invite private justice and the terrorist may say, “I shall repay.”

THANK YOU

Annexures

Extracts from the Bommai Case

Further this Hon'ble Court in **S. R. Bommai v. Union of India [(1994) 3 SCC 1] (Bommai case)** as per Sawant, J. held in **Para. 145** that the right to religion is subject to laws governing secular activities such as the law governing politics and that the Indian State is secular state and not a theocratic State in the following words:

"Our Constitution does not prohibit the practice of any religion either privately or publicly. Through the **Preamble of the Constitution**, the people of this country have solemnly resolved to constitute this country, among others, into a **secular republic** and to secure to all its citizens...**Article 25 of the Constitution** guarantees to all persons equally the freedom of conscience and the right freely to profess, practice and propagate religion subject to public order, morality and health **and subject to the other Fundamental Rights and the State's power to make any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.** **Article 26** guarantees every religious denomination or any section thereof the right [a] to establish and maintain institutions for religious and charitable purposes, [b] to manage its own affairs in matters of religion, [c] to own and acquire movable and immovable property and [d] to administer such property in accordance with law. **Article 29** guarantees every section of the citizens its distinct culture, among others. **Article 30** provides that all minorities based on religion shall have the right to establish and administer educational institutions of their choice. It prohibits the State from making any discrimination in granting aid to an educational institution managed by a religious minority. Under Articles 14, 15 and 16, the Constitution prohibits discrimination against any citizen on the ground of his religion and guarantees equal protection of law and equal opportunity of public employment. Article 44 enjoins upon the State to endeavour to secure to its citizens a uniform civil code. **Article 51A casts a duty on every citizen of India**, among others, [a] to **abide by the Constitution and respect its ideals and institutions**, [b] to promote harmony and the spirit of common brotherhood, among all the people of India, transcending, among others, religious and sectional diversities, [c] to value and preserve the rich heritage of our composite culture, [d] to develop scientific temper, humanism and the spirit of inquiry and reform; and [e] to safeguard public property and to abjure

*violence. These provisions by implication prohibit the establishment of a **theocratic State** and prevent the State either identifying itself with or favouring any particular religion or religious sect or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations."*

The Nine Member Constitutional Bench in **Bommai case** deliberated at length on the interpretation of Section 123 of the RPA, 1951. These Paragraphs are of relevance. They are being reproduced:

S R Bommai (Supra) at Para 149:

With respect, we are unable to accept this contention. Reading sub-sections (3) and (3A) of Sections 123 together, it is clear that appealing to any religion or seeking votes in the name of any religion is prohibited by the two provisions. To read otherwise is to subvert the intent and purpose of the said provisions. What is more, assuming that the interpretation placed by the learned counsel is correct, it cannot control the content of secularism which is accepted by and is implicit in our Constitution."(this means that the Corrupt practice is not confined to an appeal to the religion of the candidate but to any religion) (question can we argue that the word "his" refers to the religion of the voter or can the word "his "refer to "his agent "or his party manifesto)

S R Bommai (Supra) at Para 187:

"Politics in positively secular State is to get over their religion, in other words, in politics a political party should neither invoke religion nor be dependent on it for support or sustenance. Constitution ensures to the individual to protect religion, right to belief of propagate teachings conducive for secular living, later to be controlled by the State for betterment of human life and progress. Positive secularism concerns with such aspects of human life."

S R Bommai (Supra) at Para 190:

"Article 25 inhibits the Government to patronise a particular religion as State religion overtly or covertly. Political party is, therefore, positively enjoined to maintain neutrality in religious beliefs and prohibit practices derogatory to the Constitution and the laws. Introduction of religion into politics is not merely a negation of the constitutional mandates but also positive violation of the constitution obligation, duty, responsibility and positive prescription of prohibition specifically enjoyed by the Constitution and the R P Act. A political party that seeks to secure power through a religious policy or caste orientation policy disintegrates the people on grounds of religion and caste. It divides the people and disrupts the social structure on grounds

of religion and caste which is obnoxious and anathema to the constitutional culture and basic features. Appeal on grounds of religion offends secular democracy.”

In other words, it should have been clear to anyone that under our Constitution, there shall be no religion in politics just as there shall be no politics in religion.

S R Bommai (Supra) at Para 196:

“In a secular democracy, in other words a flagrant breach of constitutional features of secular democracy. It is, therefore, imperative that the religion and caste should not be introduced into politics by any political party, association or an individual and it is imperative to prevent religious and caste pollution of politics”. A religious talk, may be a dissertation or a discourse or even hoping for a religious State, on the basis of any so-called exercise of fundamental right u/Article 25, in an election meeting which is a political activity, would undoubtedly pollute politics, and can only be construed as an appeal to vote on the basis of religion.

1. Referring to S. 123 (3) & (3A) of the Act, the Court in *S R Bommai (Supra)* at Para 189 said:

“A political party, therefore, should not ignore the fundamental features of the Constitution and the laws. Even its manifesto with all sophistication or felicity of its language, a political party cannot escape constitutional mandate and negates the abiding faith and solemn responsibility and duty undertaken to uphold the Constitution and laws after it was registered under Section 29-A. Equally it / they / should not sabotage the same basic features of the Constitution either influencing the electoral process or working the Constitution or the law. The political party or the political executive securing the governance of the State by securing majority in the legislature through the battle of ballot throughout its tenure by its actions and programmes, it is required to abide by the Constitution and the laws in letter and spirit”.

S R Bommai (Supra) at Para 252:

“Political parties, group of persons or individuals who would seek to influence electoral process with a view to come to political power, should abide by the Constitution and the laws including secularism, sovereignty, integrity of the nation. They / he should not mix religion with politics. Religious tolerance and fraternity are basic features and postulates of the Constitution as a scheme for national integration and sectional or religious unity. Programmes or principles evolved by political parties based on religion amounts to recognizing religion as a part of the political governance which the Constitution expressly prohibited. It violates the basic features of the Constitution.”