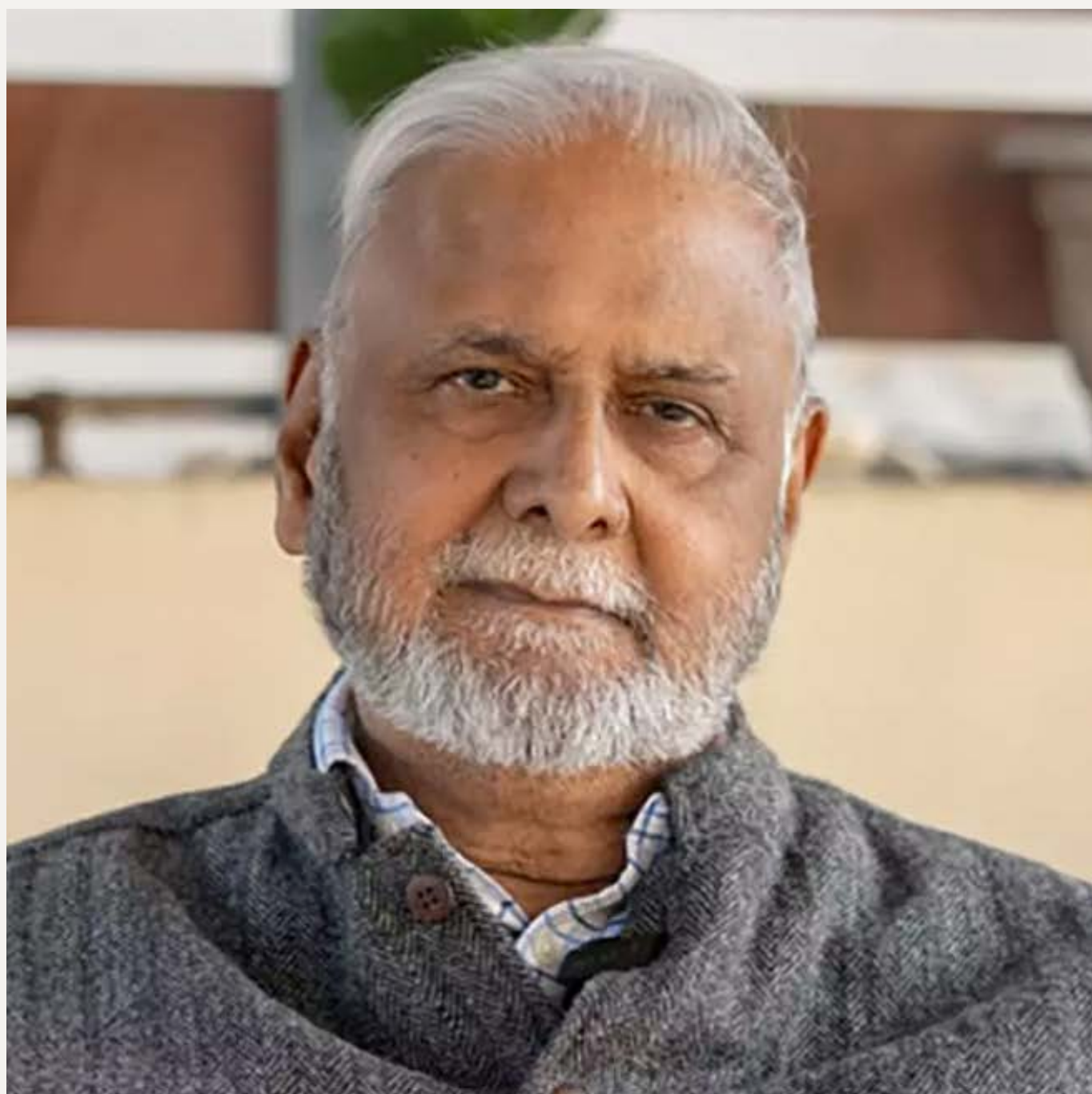
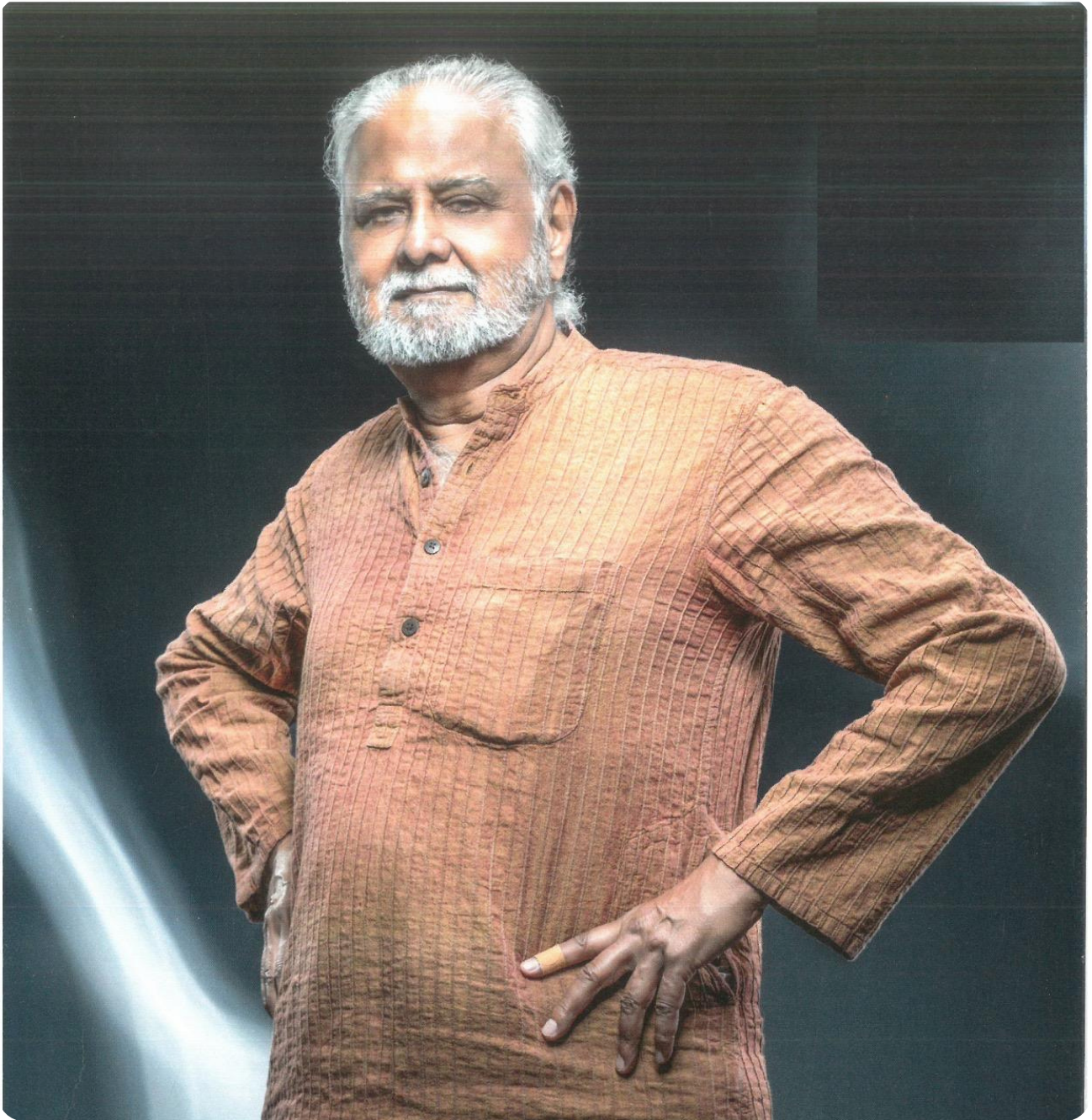


IN LOVING MEMORY OF

Prof. Jagdeep Singh Chhokar





Remembering Prof. Jagdeep Singh Chhokar
25th November 1944 - 12th September 2025

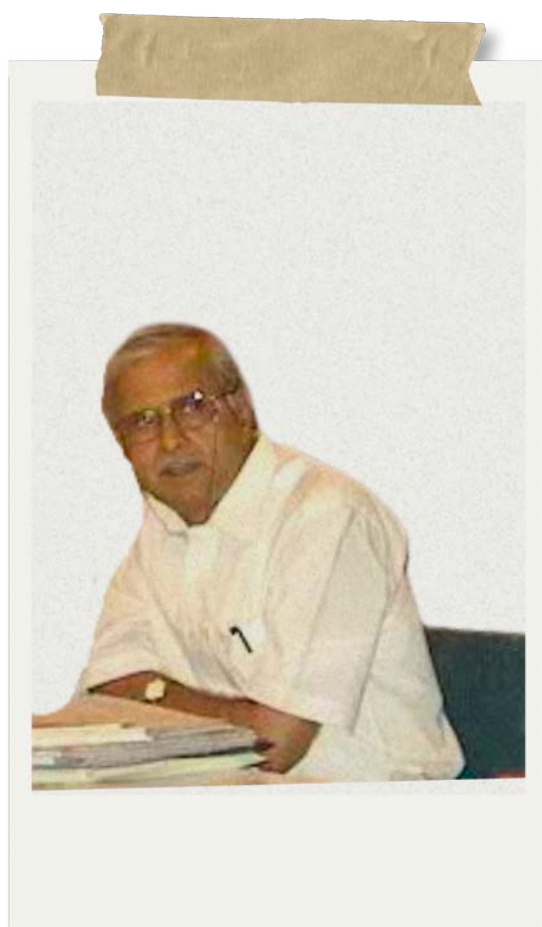
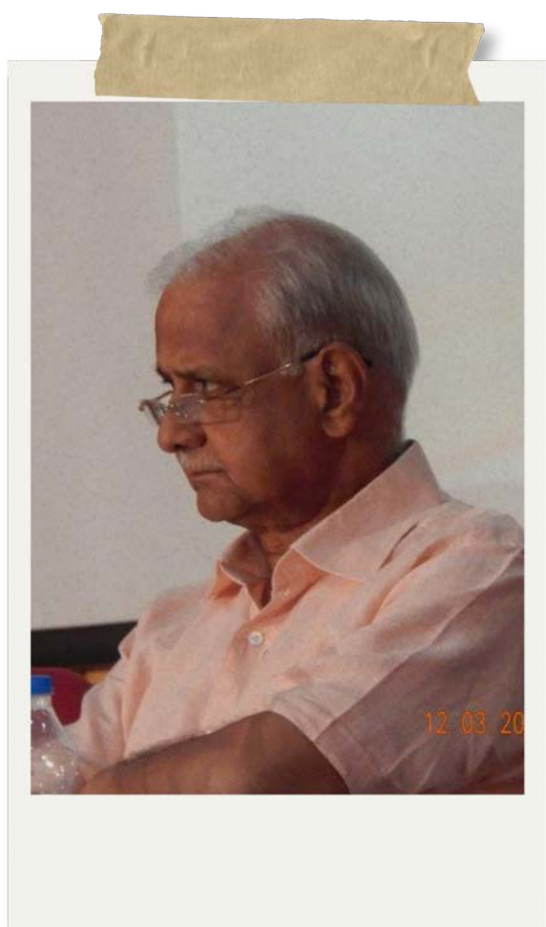
Founder Member & former Trustee of
Association for Democratic Reforms (ADR)

Prof. Jagdeep Chhokar was fond of gardening.
The following picture has been taken from his Facebook page.

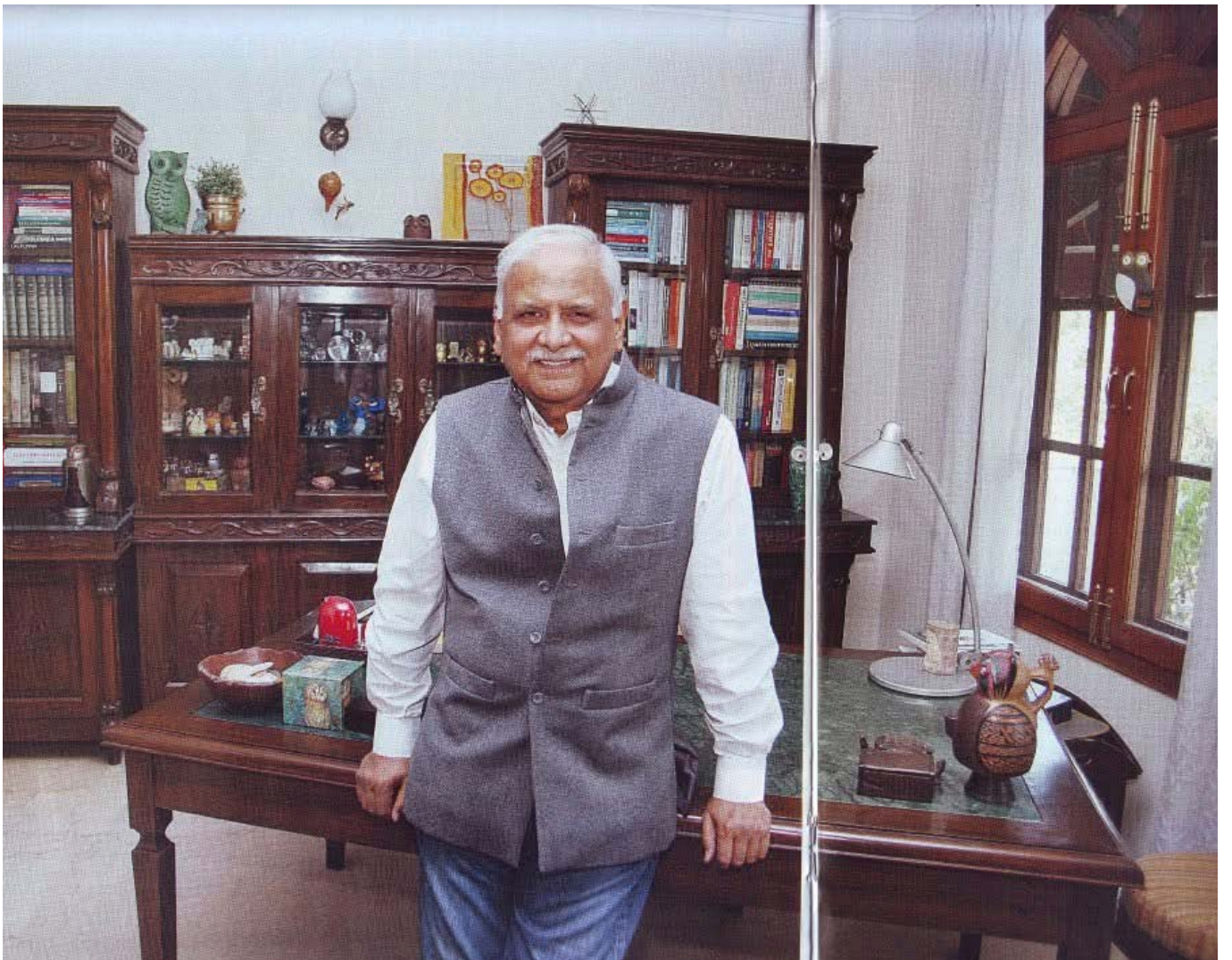


Memorial Book

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Life Journey



One man with multiple hats



Prof. Jagdeep S. Chhokar, aged 81 years, one of the founding members of the Association for Democratic Reforms (ADR), passed away at 4 AM on 12th September 2025 in New Delhi, leaving behind an enduring legacy of integrity and courage. A respected academic, civic activist, lawyer, engineer, and conservationist, Prof. Chhokar's life was distinguished by his commitment to strengthening democratic governance and promoting transparency in Indian public life. There was an overwhelming outpouring of grief across the nation on his demise.

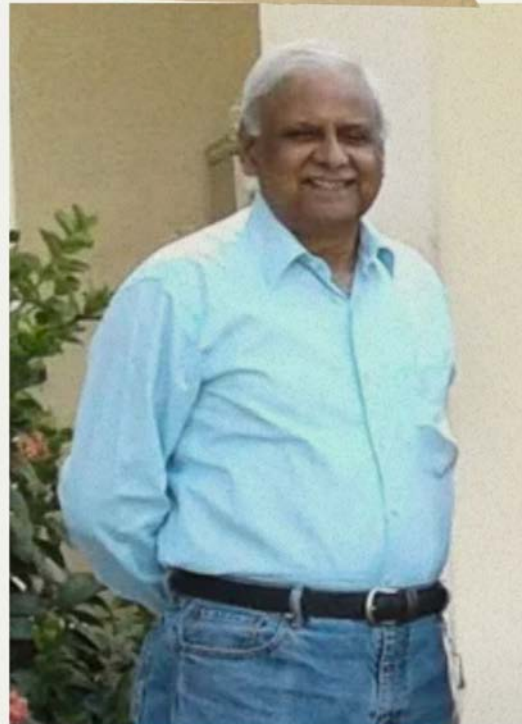
To those who knew him, he was more than an advocate for clean politics; he was a generous mentor, an incisive thinker, and a warm friend. He was a fearless and honest lone but the loudest voice in the room. Colleagues, students, and those who worked alongside him remember him as patient yet persistent, principled, and relentlessly committed to public accountability.

“

“My life has
many twists.”

As quoted in his interview dated 08th April 2024 with Mid-day

”



Professional life apart from ADR

- Before joining the Indian Institute of Management, Ahmedabad, he worked with the Indian Railways as a mechanical engineer and manager for over a decade, and as an International Marketing Manager with a public sector organization for four years.
- He had also taught at Universities in Australia, France, Japan, and the US.
- He was a professor (teacher, trainer, researcher, and advisor) of Management and Organisational Behaviour at the Indian Institute of Management, Ahmedabad, from 1985 till November 2006, when he retired after reaching the mandatory age of superannuation. He was Dean (2001-02) and Director In-charge (July-Sep 2002) at IIMA.
- He was also the founding Chairperson of Aajeevika Bureau, a civil society organisation that works on issues pertaining to internal migration in India.
- He was the lead editor of a volume titled Culture and leadership across the world: The GLOBE Book of in-depth studies of 25 societies, brought out by the Global Leadership and Organizational Behavior Effectiveness (GLOBE) Research Programme, and published by Lawrence Erlbaum Associates, Mahwah, N.J. (now Routledge/Psychology Press), in 2007.

The Guru



Educational Background

Grad. Mechanical Engineering (1967)

Grad. Production Engineering (1967)

MBA (1977, University of Delhi)

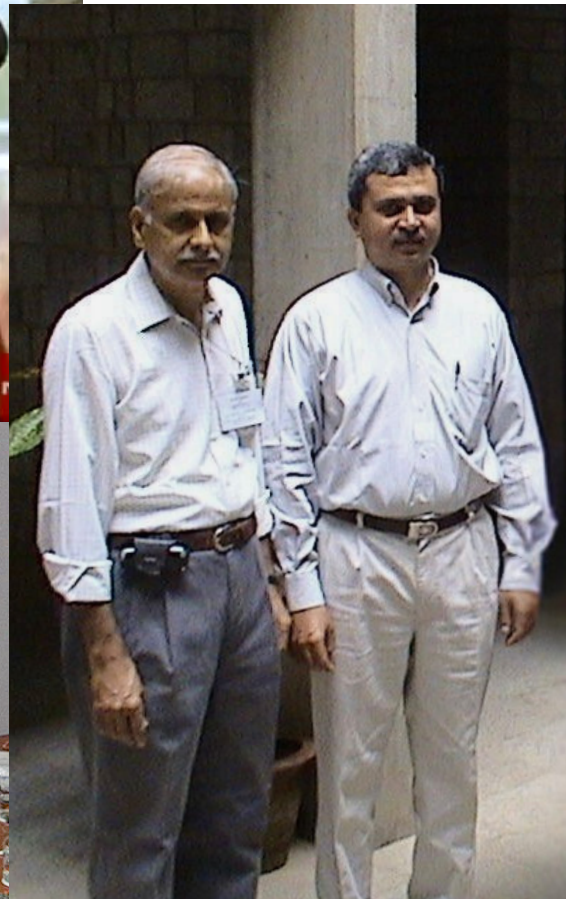
PhD (1983, Louisiana State University)

LL.B. (2005, Gujarat University)

Obtained a certificate in ornithology from the Bombay Natural History Society in 2001



Foreword by Prof. Trilochan Sastry



“These selected writings of Professor Jagdeep Chhokar are unique for several reasons. It is rare to find someone immersed in day to day work on elections and democracy who is also a scholar of such a high order. He was a world renowned researcher during his days at IIM Ahmedabad. That same quality of mind was brought to bear in his work with ADR. He obtained a law degree when in his 50s out of his interest in democracy. He read each and every petition and judgment relevant to democracy in the Courts, whether filed by ADR or another organization. He interacted with the Courts, lawyers, the EC, other civil society organizations. He followed all relevant events on print, digital and social media. Most importantly, he was in touch with voters and the youth on a daily basis, often travelling around the country giving talks and seeing the ground reality. This collection includes articles on Constitutional issues, systemic reforms, as well as concerns about the election process itself.

These writings span 25 years of a critical period in Indian democracy from about 2000 to 2025. India had a series of short-lived coalition governments just before that in the 1990s. Various reports about politicians changing parties or switching support from one party to another, exchange of money, and scams involving huge funds were surfacing. Digital and social media, mobiles and AI were not much in use. Voters and citizens were still dependent on newspapers and TV for news. Professor Chhokar began his work with ADR at that time as a founder member. The challenge of reaching voters with facts and well-supported arguments was much higher then. He started his work when the Courts and the Election Commission were willing to consider genuine voter concerns. Over the years, times changed. There was an explosion of content on digital and social media. He adapted himself to it and became more connected with the youth the older he grew. He understood that today the challenge was to get heard in the massive volume of information pouring out daily. The later writings were one way of putting his ideas across, along with social media and frequent interviews online and on TV.

A few themes run through his writings. One is a deep respect for democracy and voters. He believed that overall development of people, society and the country depended on how well democracy functions. Legal and institutional systems as well as political parties need to be strengthened. Citizens need to come together and work within the Constitution to make democracy work. He used two principal methods: working with the system to strengthen it and working with voters to build awareness. System reform required legal and constitutional understanding, and engaging with the Courts, EC, RTI, Parliament and the political system. Working with voters required informing people about systemic issues and about operational ones including voter rolls, EVMs, role of money power, and criminalization of politics. His writings reflect his belief that voters need to constantly educate themselves on all relevant issues before voting. Based on his work he selected a quote which reflects his views: “No office in the land is more important than that of being a citizen”. ADR uses this as a tag line. He spent most of the last 20 plus years of his life educating people and spreading awareness.

The means of communication has changed, the language used has changed. However the basic issues of democracy remain the same. Professor Chhokar’s writings give insights that are relevant not only for the last 25 years, but for the future as well. We hope that readers will find it interesting and educative.”

“The Man Behind the Words”

by

Dr Kiran Banga Chhokar



Prof. Jagdeep Singh Chhokar with Dr Kiran Banga Chhokar,
his wife and Trustee of ADR

“The articles kept adding up. An injustice, a contravention of the Constitution, an insult to the Republic or to its helpless citizens would rile and provoke Jagdeep. And he’d head to his study to shoot off his anguished thoughts. But sometimes it would be hours of reading and research before he wrote anything. Most often, I was his first reader, reviewer, critic and validator. We played a little game—I gave him marks out of ten!

The next question would be where to send the piece. Over the years the mainstream media stopped accepting his articles. Or they would hold on to a piece till it lost its topicality and relevance. But the alternate media welcomed his writings, and that became his primary outlet. But he always felt that he was writing for the like-minded, and his thoughts and opinions were not reaching those who needed to be aware of them.

Then a few years ago, he started receiving requests from some Hindi newspapers to write for them. He was happy because of their much wider reach. At first, he would write for them in English but would insist on editing the translated copy. He was seldom totally satisfied with the translations. So, he loaded the Devanagari font on his computer and started writing in Hindi himself. He struggled with it for some time but then became quite adept at it.

His opinion was much sought after by journalists and TV anchors. He was often quoted in the print media and interviewed on the visual media. Some friendships thrived because of this visibility, just as some perished!

Every now and then Jagdeep felt strongly that certain injustices and constitutional transgressions called for judicial intervention. In consultation with ADR colleagues, petitions were filed, as in the case of electoral bonds and, more recently, the Special Intensive Revision (SIR). Sometimes, however, he went it alone—as in the case of the release of the convicted rapists and murderers in the Bilkis Bano case, where he was the sole male petitioner!

That was Jagdeep the writer and petitioner. But those who only knew him from his articles and TV debates did not always see his other side—his self-deprecating humour about his own forays into law.

Late in life he formally studied law, not for a degree to hang on the wall, but because he wanted to understand the cases ADR was fighting. The only time he actually appeared as a lawyer for ADR in the Supreme Court. the case was thrown out by the CJI in the first few minutes. He came back home and laughed about it. It became one of his favourite stories—the beginning and the end of his career as a practising lawyer. But the episode did not daunt him. If anything, it gave him more ammunition, more clarity to question not just the law, but the judiciary, its gatekeeping, its deference to power.

He could laugh at himself, but he was deadly serious about the young. It was his strong wish in the last few years that ADR must work much more with youth and draw them into electoral democracy. He had great hope in young people becoming aware of their electoral rights—not as a textbook chapter but as a lived power to say no to money and fear.

He often said that the right-wing politics and the politics of hatred that has come to scar our society can only be countered if young citizens refuse to be divided. He taught for several years of his life at IIM Ahmedabad, and he loved teaching, but perhaps he saw the IIM student community as largely self-serving, trained to manage the system. It was the common youth—working young people who struggle, who migrate, who work in factories and shops and farms—in whom he had real hope.

That is also why he would rarely refuse a request from a young journalist or interviewer. I would watch him spending an hour on the phone with someone who had barely read anything about the issue, and it exasperated me! He would reprimand them—"You haven't done your homework!"—and then still give them time, explain the background, correct their facts, even answer their somewhat immature questions with patience. That patience from an otherwise impatient man was a marvel. It was the more seasoned folks, the ones who already had a fixed narrative, of whom he was more suspicious!

How I wish he had been here to see the last few months—the CJP/GenZ protests. In more than a decade of shrinking hope, these protests have been the only true sign of light. I can imagine his delight. He would have so appreciated the irreverence and boldness with which the youth took on the establishment—with humour, with art, with courage. He was largely cynical of all political movements; he had seen too many compromise. But this one would have made him rise and applaud.

So how should we remember Jagdeep today?

Not only through obituaries, though I am deeply grateful for the love that has poured in. We should remember him by continuing to ask the simple, awkward questions he asked all his life: Who is asking for my vote? Where did his money come from? Who is afraid, and who is making them afraid?

We should remember him by teaching one more young person how to read a candidate's affidavit on the ADR website, how to file an RTI application, how to not be afraid of a uniform or a courtroom. We should remember him by supporting those rookie reporters, those young lawyers and students, when they ask difficult questions.

And we should remember him by refusing to become cynical ourselves. He was angry, often, but never hopeless. He believed that information, in the hands of ordinary people, could still be power.

That was the man behind the words.



Select Articles Authored by Prof. Jagdeep Chhokar



We, the warriors of democracy...

Published: Dec. 27, 2021
Updated: Jan. 08, 2022



JAGDEEP CHHOKAR

elections to the Lok Sabha in compliance with decisions of the Supreme Court of India in 2002 and 2003.

Filling up vacancies in Election Commission is a matter of public interest

Given that the law appointing the election commissioners is being challenged in court, the two vacancies in the Election Commission must be filled using the process suggested by the Supreme Court in March 2023.



Jagdeep S Chhokar

Last Updated : 13 March 2024, 11:07 IST

Risk of vanishing votes in Bihar's revised roll



JAGDEEP S CHHOKAR
FOUNDER MEMBER,
ASSOCIATION FOR
DEMOCRATIC REFORMS

documents any time before July 25, 2025. After publication of draft electoral rolls, if any document is deficient, EROs can obtain such documents, from the electors, whose name

REJOIN

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What is likely to happen then? Here is a possible scenario.

I would be very relieved and happy, and sincerely hope so, if the above scenario does not come to

REJOINDER TO SCROLL

Should the Indian taxpayer pay the hidden cost of donations to political parties?

Some additional context to a Scroll.in article.



Jagdeep S Chhokar

Aug 05, 2019 · 06:30 pm

When the Election Commission becomes a threat to democracy

This article was published in Frontline on 14th August 2025. This was also the last article authored by him.

Once a constitutional safeguard, the ECI now risks enabling the erosion of India's democratic norms through partisanship and opacity.

The Election Commission of India (ECI) was set up on January 25, 1950, one day before the country became a Republic. So, historically, the ECI predates the Republic of India, which is an important factoid that many of us do not know. The poll body was set up under Article 324 of the Constitution, which states that there shall be an Election Commission, which will be responsible for conducting elections to both houses of Parliament, the State Assemblies, and elections to the offices of President and Vice President.

Article 324 vests the Election Commission with plenary powers to do whatever is required for conducting elections. However, the ECI's powers are circumscribed by two kinds of checks. The first is laws made by Parliament—the Representation of the People Act, 1951; the Conduct of Election Rules, 1961, etc. The second is judgements passed by the Supreme Court. In between these two boundaries, the Commission has vast powers and complete freedom of action. Now, Article 324 states that the Election Commission shall consist of a Chief Election Commissioner (CEC) and such number of other Election Commissioners (ECs), if any, as the President may from time to time fix. Initially, there used to be only the CECs and no ECs.

Sukumar Sen was the first CEC. Under him, the Commission did path-breaking work. In the first election, which happened in 1951-52, the literacy levels in India were very low. The majority of the people could not read the names of either the political parties or the candidates. The ECI came up with the innovative idea of assigning symbols to political parties and candidates.

Facilitating democracy

One of the basic duties of the ECI is to assist and facilitate voters to exercise their right to vote. It has come up with innovations to make it easier for people to vote. We have all heard stories about polling booths being set up in remote areas, sometimes for only one voter.

In the early years after Independence, there was one dominant political party: the Congress. Electoral competition was not very intense. Therefore, the ECI's role was not under much scrutiny. Gradually, as electoral competition became more intense, the work of the ECI came into sharper focus. It was during this period that T. N. Seshan came to be appointed as the CEC. He took some drastic steps to make the electoral process more robust and transparent. Some of these steps were not liked by the government of that time. The result was that the government appointed two other Election Commissioners to check the unbridled authority being exercised by Seshan.

So, from a single-member Commission, the ECI became a three-member Commission. This transition was not smooth, though. First, the two Election Commissioners were removed, and it became a one-member Commission again. This was followed by litigation and washing of dirty linen in public. Finally, once again, the ECI had two more Commissioners besides the CEC.

Since then, the ECI has been a three-member Commission. The CEC is supposed to be first amongst equals, because all three have the same powers, although the CEC enjoys a higher level of Constitutional protection compared to the ECs.

Shifts in behaviour

We have had some good CECs and ECs. Some were not so good. But by and large, most of them were non-partisan. Over time, somewhere around 2018, the general behaviour of the ECI seemed to change. It became unresponsive to suggestions, ideas, and queries.

There was a series of appointments to the ECI which did not seem to be above board. One began to get the impression that the system was being manipulated. Then, in August 2020, Ashok Lavasa resigned as Election Commissioner after having dissented from some of the Commission's decisions. That incident made it clear that all was not right in the Commission.

During the Lok Sabha election of 2019, the ECI's behaviour in terms of sharing information with regard to the counting of votes became very opaque. During the counting of votes, the Commission used to release, on its website, figures of votes counted and votes cast. There were, however, discrepancies in the number of votes polled and the votes counted. This was brought to the notice of the ECI. However, they stopped putting that data online.

The ECI issued a press note in which they tried to convey that they were doing a good job. That press note had one very odd sentence. It stated that the confirmed, authenticated results would be available a couple of weeks after the declaration of the results. That is when we first filed our petition against the ECI with regard to the 2019 election. We did not say there was anything wrong with the result. We requested that the process of counting and declaring the result be made more robust and transparent. As a part of that petition, we also said that Form 17C (which contains the number of eligible voters in a polling station and the total number of votes recorded per EVM, etc) should be made available to the people at large, and it should be put on the ECI website. That case is still going on.

In the run-up to the Lok Sabha election in 2024, we went to the court again with a plea that—since the election was coming up—the case should be decided soon. But nothing happened. After the 2024 election, we found in the data put out by the ECI that the number of votes polled and the number of votes counted in the EVMs did not match in 538 constituencies. That is, it matched only in five constituencies. The Commission has to this day not given any clear explanation for this.

The Commission has implemented the Model Code of Conduct selectively. For some parties and candidates, it has been more lenient than for others. The Commission did not act against leaders of the ruling party for invoking the armed forces in their election speeches in the Lok Sabha election of 2019. There have also been problems in the declaration of the dates of elections. Several such things happened, which showed inconsistency of behaviour on part of the ECI. Whenever it was pointed out to them, they did not respond.

Over time, we felt this may have to do with the appointment of the CEC and the ECs. Article 324(2) states that the CEC will be appointed by the President of India following a law to be made by Parliament. But Parliament had never made this law, and successive governments kept appointing ECs. We filed a case in the Supreme Court regarding the process of appointing CECs and ECs.

A five-judge Constitution bench headed by Justice K. M. Joseph passed a very comprehensive judgement in March 2023, in which it spent almost 200 pages to explain why the CEC and the ECs should not be dependent on any other authority in the country, including the government. The court gave two directions. One was that Parliament should make a law as required by the Constitution as soon as possible. The second direction was that till the law is made, the appointment of CEC and ECs should be made by the President based on the recommendation given by a committee consisting of the Prime Minister, the Leader of the Opposition, and the Chief Justice of India (CJI).

More recently, Congress leader Rahul Gandhi came up with the revelation that in one Assembly constituency in Bengaluru, various irregularities happened during the electoral roll preparation and then during voting in the 2024 Lok Sabha election. All this seems to be culminating in a kind of groundswell of mistrust in the ECI. The poll body's integrity and neutrality are under a cloud.

This is a worrying and sad development because the electoral process is at the very heart of a democracy. If the electoral process is not trusted by the people, then there is a grave risk of people losing faith in democracy. If the citizenry of India becomes disillusioned with democracy, that would be a very grave blow to democracy, not only in India but also worldwide. Therefore, it is imperative that the entire electoral system—from the appointment of CEC and ECs down to the last detail of what happens on the ground—is re-examined in great depth and set right.

Now, the question arises, who will do this? Sadly, the general approach and attitude of our political parties is also very suspect. All political parties seem to be interested in their narrow, partisan self-interest. Part of the reason is that the parties are not internally democratic. This is a fatal flaw in our democracy. Parties may claim to be democratic, but it is known to all that no party is truly democratic in its internal functioning. The rubber hits the road when it comes to the choice of candidates for contesting elections. This process is totally at the whims and fancies of the leaders of these parties, some of whom are called the high command or supremo.

Therefore, our political parties are structurally and philosophically not believers in democracy, because if they were, they would be democratic themselves. So, when they contest for the national election or State elections, they are trying to find every possible way to get elected without worrying about democratic norms and principles. And the ECI has, over the years, not done anything in this regard. This is a very basic defect in our democracy, which needs to be corrected. One hopes that this is corrected because if political parties become truly democratic from their base upwards, democracy in the country will automatically get corrected.

Interview of Prof Jagdeep Chhokar on Bihar's 65-lakh question

This article was published in National Herald on 09th August 2025.

"Are we to believe that 22-25 lakh people died in just six months, and another 37 lakh left?"

The Election Commission of India's month-long charade of 'fixing' the voter rolls of Bihar — an exercise now better known as the 'Special Intensive Revision' — has reached its first big milestone. The all-new draft voter rolls are out, and the list, as expected, has set the cat among the pigeons. For no less than 65 lakh names have gone missing from the January 2025 list.

The ECI tells us these are names of people who are either dead or have migrated permanently or are 'duplicates'. But it won't make that list available separately, nor the draft rolls in a machine-readable format to make it possible to cross-check for errors or alleged mischief.

The opposition parties are understandably alarmed — it wasn't that long ago that the ECI presided over another sleight-of-hand revision in the voter rolls: in Maharashtra, where 40 lakh new voters were added in the space of five months (between the Lok Sabha elections in May 2024 and the state assembly elections in November the same year).

The Association for Democratic Reforms (ADR) has petitioned the Supreme Court, urging that it direct the ECI to make available a booth-wise list of deleted names, with reasons for the deletions.

We spoke to ADR founder Jagdeep S. Chhokar to understand what to expect next. Edited excerpts:

While the number of voters in Maharashtra and Karnataka increased significantly, in Bihar it has dropped drastically. How do you see this?

Only those responsible for this can explain the reasons. But from what I can see, the intent behind this exercise appears questionable.

Is there any rationale or system behind what seems like a chaotic move?

I have no idea what the method behind the madness might be. But one thing is certain — the very spirit of the electoral process in our country seems to be getting eroded.

At the moment, the most pressing question is about the 65 lakh voters whose names have been deleted. You have even approached the Supreme Court seeking a complete list of the deleted names. What exactly is the mystery surrounding these 65 lakh voters? And if the list is made public, what purpose will it serve?

What that purpose will be, and what can be uncovered, will only become clear once the full information is made available. The Election Commission does share some data, but never in its entirety.

When information is partial, it naturally raises suspicions and creates the need for more clarity. This cycle keeps repeating itself.

At the very least, people deserve to know why their names were deleted. In the partial list of 65 lakh voters released so far, there is no explanation—only a statement that the names have been removed. The Supreme Court asked us to produce 15 such examples of people who are alive but were declared dead and had their names struck off.

The current list doesn't mention the reasons for deletion. Striking a name off is a legal process. A notice must be issued. The person concerned must be given a chance to respond. But we don't know how this was done. That's why we intend to ask: Who was served notice? What kind of notice was it? What procedure was followed in cases marked 'deceased'?

Earlier, we used to be told how many first-time voters were added to the rolls. This time, however, no such figure has been provided. One wonders: Where have all the new voters gone?

How would I know where they've gone? Only those responsible for making them disappear can answer that.

Typically, the voter list grows every year. Life expectancy is increasing, and the birth rate still exceeds the death rate. So naturally, new voters get added every year. In fact, this used to be celebrated in the past.

But now, it seems as though the dead are being celebrated.

I even heard someone say the other day that earlier, voters used to choose the government; now the government is choosing the voters. Will the Supreme Court be asked to determine who qualifies as a 'true Indian'? And will the rest of us merely stand by and watch?

Looking at the Election Commission's current data, it appears as if Bihar's population is shrinking.

Are we to believe that 22-25 lakh people died in just six months, and another 37 lakh left the state?

If that's true, Bihar will soon be empty.

The ECI is justifying its actions by citing the role of booth-level agents (BLAs). Isn't this essentially firing from someone else's shoulder?

Involving BLAs in this process is legally questionable. It raises serious concerns. Earlier, there were frequent allegations that political parties tried to manipulate voter lists by adding their own supporters. Assigning this critical responsibility to political parties amounts to the ECI outsourcing its own constitutional duty.

This delegation of power essentially breaks the link between the Election Commission and the citizen.

It is important to remember that the term 'political party' did not even figure originally in the Indian Constitution. It was only formally recognised with the introduction of the anti-defection law.

For years, we have heard complaints that political parties were inserting fake names into the voter rolls. Now, shockingly, they are being officially asked to do this.

Why doesn't the ECI provide machine-readable data? What is the difficulty?

There should be no problem at all. Former chief election commissioner Rajiv Kumar himself used to say that their guiding principles are 'Disclosure, Disclosure, Disclosure'. If that is true, why not release it?

The situation now is such that even the draft electoral rolls provided cannot be scanned. Place the paper on a scanner and it comes out blank — clearly, some mechanism has been put in place to prevent scanning. I fail to understand why there is such fear of sharing information.

And yet, they claim to be transparent. Well, everyone can see the kind of 'transparency' on display.

If everything were discussed openly and shown to the public, there would be no room for doubt.

Bihar SIR: Doing the right thing the wrong way

This article was published in The New Indian Express on 23rd July 2025.

Expecting uneducated migrants to fill and upload online forms to enroll as voters is a flight of fancy. The Election Commission still has time to take corrective steps

A correct and up-to-date electoral roll is sine qua non for a free and fair election in a democracy. However, given the size, diversity, and geographical dispersion of population in India, we must also accept that a perfect, 100 percent correct electoral roll is an impossibility. Nonetheless, this cannot and should not detract us from continually 'cleaning' the electoral roll. Viewed in this context, the Election Commission of India's special intensive revision (SIR) of the Bihar electoral roll, announced on June 24, cannot be faulted. However, life is hardly ever so simple. The three documents issued by the ECI that day raise a number of questions, creating confusion. Some of these questions are legal, and some procedural and practical.

One of the major legal issues is the 'disenfranchisement' of all those citizens who were registered as voters by the ECI itself, following the laid down legal procedure, since January 1, 2003. There are two parts to this.

First, in their June 24 order, ECI says that for those on the electoral roll as on January 1, 2003, there is "probative evidence of eligibility, including presumption of citizenship". This implies that this "presumption of citizenship" is not there for those registered as voters after January 1, 2003. This is grossly unfair because it amounts to depriving these people of their rights as citizens.

It is correct that Article 326 of the Constitution says that only citizens of India can vote in elections. But this Article is not the only stipulation on this matter. Section 19 of the Representation of the People Act, 1950 titled 'Conditions for registration' states, "Every person who (a) is not less than 18 years of age on the qualifying date, and (b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency."

Form 6 of the Registration of Electors Rules, 1960 also requires only a self-certification by the applicant that s/he is a citizen of India for registration as a voter. The irony is that a person in any state other than Bihar can get registered as a voter with a self-certification about citizenship today, whereas a person in Bihar has to provide one of 11 documents!

The second issue with this en masse disenfranchisement is that it violates the existing legal procedure for deletion of names from electoral rolls, specified in Section 22 of the Representation of the People Act, 1950. This states, "...before taking any action... on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him".

This is valid as of today, but the irony is that the names of lakhs of registered voters in Bihar have been deleted by a simple administrative order in complete disregard of the existing law.

The procedural and practical issues are far too many for all of them to be listed, not to speak of discussing them. The timing of the exercise in terms of the proximity of the state assembly elections, during the rainy season when large areas of Bihar suffer annual floods, the non-availability of specified documents to a large proportion of the population, and the extremely short period provided for completing the mammoth exercise are just a few of them.

The issue that seems to have been completely underestimated by the ECI is that of migrants. A very large proportion of people from Bihar—the estimates vary between 20 percent and 50 percent—migrate to other states in search of livelihood. The bulk of them work as daily-wage labourers in large cities in a variety of jobs including a major chunk in the construction industry. Another major section works as agricultural labourers in Punjab and Haryana, where entire families migrate. Most of these people are not educated (some are even illiterate) and are economically and socially deprived.

Though the ECI continues to say that those who are not physically present in Bihar can download their Enumeration Forms from the ECI's website, fill them up, and then upload the filled forms on the same site, the practicability of this is highly questionable. Expecting a daily-wage earner described above to go to a cybercafé, download forms, fill them, attach documents, and then upload them, appears to be a flight of fancy that the ECI has, consciously or otherwise, decided to follow. This will not happen; instead, the following scenario is more possible.

The names of thousands of migrants are likely to be missing from the draft electoral roll that the ECI will put up on August 1, 2025. These people will not be able to check the draft roll for the same reasons as those which would have prevented them from registering. Consequently, they will not file any 'claims or objections'. Their names will, thus, not appear in the Final Electoral Roll that the ECI will publish on September 30, and these people will not even know that their names are not included in the Final Electoral Roll.

Not knowing the situation back home, these folks will turn up in their villages a day or two before the polling day, as they do during elections, expecting to cast their votes. The situation that might develop when a large number of people who have voted in all elections over the last 20-25 years find their names missing from the roll is not comfortable to visualise.

Notwithstanding the almost daily press notes issued by the ECI that the entire exercise is proceeding flawlessly and a huge number of Enumeration Forms have been collected ahead of time, and a few discomfiting media reports, it is not too late for the ECI to think through the exercise till the end and rectify errors.

It is necessary to take corrective actions in time so that this does not turn out as a well-meaning action implemented through wrong or inappropriate means such as the US's attempt to introduce democracy in Iraq.

India's national electoral system needs to be fixed

This article was published in Deccan Herald on 30th December 2024.

In our excessive focus on EVMs we often fail to look at the other components that demand our attention and reform to improve India's electoral process.

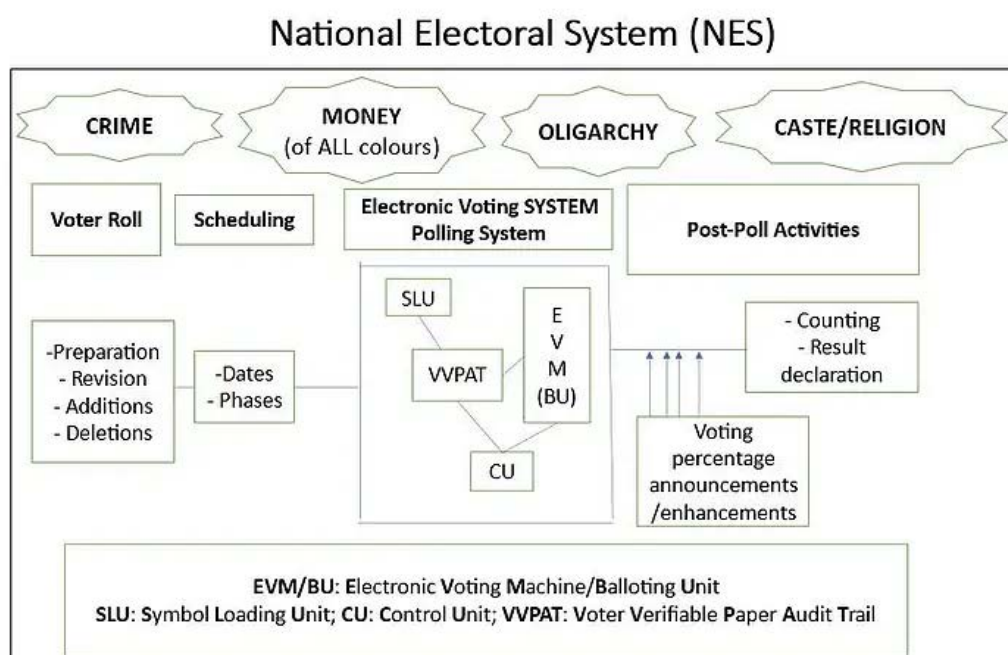
There has been a lot of debate in India about manipulation of elections, their results, and, in particular, about Electronic Voting Machines (EVMs). Ever since over a million EVMs were first used in all the 543 constituencies of the Lok Sabha in the 2004 elections, they have been a bone of contention. Beginning with the Bharatiya Janata Party (BJP) in 2010, there have been complaints galore, and continue.

The EVMs have always been touted as 'stand-alone' machines, whereas the fact is that it was always, from day one, a set of two machines: one EVM and one Control Unit. With continuing complaints and myriad court cases, first came the Voter Verifiable Paper Audit Trail (VVPAT) machines, accompanied by Symbol Loading Units (SLUs). The Election Commission of India (ECI) started calling the EVMs as Balloting Units. This system consisting of four machines is the Electronic Voting System (EVS) or Polling System.

The focus of the national debate, in which all political parties have participated, has been the EVMs. While it is true that the EVMs are a critical part of the election process, we cannot forget that there is more to an election than just the EVM. As poet Faiz Ahmad Faiz said, 'Aur bhi dukh hain zamaane mein mohabbat ke siva'!

As we have learnt in the last few months, particularly in the 2024 Lok Sabha, the recent elections to the Haryana and Maharashtra assemblies, and byelections to some assemblies, a lot can, and possibly does, happen before the EVS comes into play and after the EVS has done whatever it is expected to do.

The chart below attempts to depict various activities which taken together form what should be called the National Electoral System (NES). The NES can be conceived to consist of four major components: Voter Roll, Scheduling, EVS, and Post-Poll Activities.



Voter Roll is referred to as the 'soft underbelly' of the electoral system. While it can be logically accepted that a truly 100% accurate voter roll cannot be expected given the size and mobility of our electorate, the kind of anomalies that have come to the surface in recent times, demand that much closer attention be paid to the voter roll. There have been reports of large scale, systemic deletions, additions, etc. and it is hard to dismiss all the reports as motivated actions of frustrated losers.

Beyond the voter roll, there is the question of how dates for elections for various assembly elections are fixed (Scheduling). Whether it is Gujarat and Jammu & Kashmir a few years ago, and Haryana and Maharashtra earlier this year, and many other examples, states which had gone to the polls together in the past are being held separately — this is a continuing mystery. Mysteries in the electoral process are always avoidable because they create doubts in the voters' minds. A similar mystery operates when elections in one state during the Lok Sabha elections are held in seven phases and elections for the Assembly of that same state, in the same year, are held in just one phase!

Then we come to the EVS which, as has been said above, is critical component of the NES and which has, justifiably, received a lot of attention.

Finally, we have the Post-Poll Activities. The biggest bugbear in this is the counting process itself. Reports coming out of the counting centres indicate that all is not well with the 'counting system'. Reports by counting agents who were apparently physically present at the counting centres show that several details of the specified counting process are given short shrift during the actual counting. In addition, we have all seen the continuing increase in polling percentages repeatedly up to 11 days after the poll.

A still unresolved mystery is the difference in votes cast and votes polled in the EVMs only, not including postal votes, in 538 out of 543 constituencies in the 2024 Lok Sabha elections, based on data displayed on the website of the ECI itself!

It is extremely important to keep in mind the overall environment in which the NES happens. One of the more ironic facts about our elections, which is almost always overlooked and never spoken about in real terms, is the use of security forces. The irony comes in when a so-called democratic exercise is held under the active watch of security forces. This leads to a strange situation where a battle of the ballot is fought under the shadow of the bullet!

The shadow of the bullet is needed because of the overall umbrella of crime, money (of all colours), oligarchy, and caste/religion under which the NES functions. Can there be a bigger folly than to expect 'free and fair' elections under such conditions?

It is high time that all those interested in this process of reclaiming democracy start paying attention to the overall National Electoral System rather than merely focusing on its individual components. We should not lose sight of the forest for the trees.

Interview: 'There is a lot still unaccounted for': Jagdeep S. Chhokar

This article was published in The Hindu on 04th April 2024.

The founder of Association for Democratic Reforms concedes that the disclosure of the electoral bond scheme will not reduce election expenditure.

The Association for Democratic Reforms (ADR) was the lead petitioner in the challenge to the electoral bonds scheme (EBS). It went to court in 2017 when the scheme was first introduced. Jagdeep Chhokar, one of the three founder-members of ADR, is a former professor of IIM Ahmedabad, a trained lawyer, and an ardent campaigner for electoral reforms. He spoke to Frontline on the EBS and why it posed a threat to the very existence of democracy. Excerpts from an interview.

As one of the petitioners in the electoral bonds case in the Supreme Court, how do you assess the present developments?

What the data has revealed is not shocking. It has only reaffirmed what has been talked about for a long time, that political parties were getting huge amounts from the corporate sector. Earlier it was in cash, and when electoral bonds came, it was through bonds. I think the corporate-political nexus is now established. The judgment brings this aspect out in the open. What we found surprising was the attempt by the State Bank of India to prevent, delay, or obstruct the release of the information.

Does the crux lie in exposing the quid pro quo? Some connections have been made.

Establishing the quid pro quo will happen. What is being reported in the media are selective cases. The more obvious details have come out. But the data is so rich. An in-depth analysis will take a long time. It will mean going into the nuts and bolts and details. Hopefully, there will be some corrective action. The important thing is that any investigation into this data is going to be very complicated because the usual investigating agencies like the ED [Enforcement Directorate] or the Income Tax Department will not be able to do it, not because it is beyond their capability but because these agencies work under the informal guidance or control of the government of the day.

I think the investigation will not be easy as every party has something to hide. I don't know whether a real investigation can happen even if the party in power changes. How an independent and fair investigation can be done to trace out all instances of quid pro quo, and perhaps take some action, is the challenge.

Do you think this could have been taken up earlier by the court?

I am glad you asked this question. Yes, they could have taken it up earlier. They did take it up twice, but those hearings were not complete. There were interim orders. The scheme was announced on February 1, 2017. It was notified in January 2018. We did not wait for the notification and filed our petition in September 2017. We sensed, based on whatever information was available, that this scheme had the potential to choke the flow of funds to all the opposition parties, and we thought that was not right. The financing system of political parties before 2017 was far from ideal. But the fact that this new feature gave an additional advantage to the ruling party was very disturbing.

We have maintained that it would be so regardless of which party is in power. We filed a petition seeking to declare it unconstitutional because of the changes made in several laws. The interesting thing is that we filed it in 2017. And the Lok Sabha election was held in 2019. Nobody mentioned the scheme. Life went on. We filed five applications for early hearings. Either they were stayed or nothing specific happened. Two hearings were held but were perfunctory, not really substantial.

Finally, the Supreme Court decided to hear it in October 2023. It reserved its judgment on November 2, 2023. So once the judgment was reserved, it was up to the court to take a call. After the court verdict, everyone is asking what impact it will have on the election. We said we filed it in 2017. For five years there was no discussion. Had the Supreme Court decided it in 2018, we would have been talking of Rs.500 crore only, not Rs.18,000 crore.

We had only asked for the scheme to be declared unconstitutional. This further process of getting SBI to reveal the data has been done by the Supreme Court on its own. We really compliment the court for going ahead to ensure that at least some part of its judgment gets implemented on the ground.

One of the arguments was that if the identity of the donors was revealed they would be persecuted by a rival political party.

Who does this persecution ultimately? The vindictive action or harassment is done by political parties themselves. No one else is involved. Political parties need money. I completely agree. If someone gives money to another party, there is no need to get upset and take vindictive action against the donor. It requires responsible action on the part of political parties.

When demonetisation happened, we were told all transactions would take place digitally. We are the world leaders in Unified Payments Interface or UPI transactions. Why cannot political parties use these applications to get money and spend money? If there is brazen quid pro quo it will get revealed. People have the right to know that a decision to spend Rs.20,000 crore has been made to help the public at large or maybe a particular company. Every decision will hurt or benefit somebody or the other but there will be a sense of equity and balance. The process has to be transparent and known to people. Public authority actions must be seen to be transparent.

Will the scrapping of the bonds bring down election expenditure drastically? One of the main concerns of the ADR was the inordinately large amounts of money that political parties spent during elections.

Election expenditure is a separate story. Every candidate contesting elections has to submit an affidavit on oath giving the break-up of expenditure. But there is no limit on the expenditure of political parties. This in itself is a major loophole. But putting a cap on the expenditure of political parties will not help. In the 2009 Lok Sabha election, we studied the expenditure affidavits of 6,753 candidates. Only four declared they had spent over the limit; 30 said they had spent about 99 percent of the limit. The disclosure of the bond scheme will not reduce election expenditure. In a television discussion, a former Finance Secretary who had piloted the scheme said only 5 to 7 percent of the money used by political parties in elections was declared. The rest was in cash. Electoral bonds are also a fraction of that declared money. There is a lot unaccounted for.

Does this mean it will take a long time for a complete overhaul?

Electoral reforms are an ongoing process. But the EBS threatened the very existence of democracy because it put political activity and government action in the hands of big money and big business. Anyone who had big money could influence political and government activity. That is why democracy was at risk. If big money does it through cash or illegally, there is a fear of getting caught. Under the EBS, there was no such fear. It made it legal. So political parties have to be first demonstrably democratic in their internal functioning. And there has to be transparency in their financial affairs. We approached the CIC and a full bench said that the six national political parties are public authorities under the RTI Act.

As it was an issue of electoral reform, shouldn't the EC have taken suo motu notice of the scheme?

Both the Election Commission and the Reserve Bank of India went on record to say the scheme was not a good one. Apparently, the RBI was told (by the government) that it had not fully understood the scheme.

Did you anticipate this quantum of money?

The quantum of money was known as every year political parties give details of income and expenditure to the EC, including the value of electoral bonds. What was not known was the donors and the attempt to prevent the disclosures. That was surprising.

What of the role of the SBI?

In its very first affidavit, SBI said it could not give the information. It was under oath. It was only after the court gave a deadline that the SBI complied and gave the information in three days. Whether it is a case of perjury or not perhaps needs to be looked into.

What we fought for in electoral bonds case — and what the Supreme Court verdict did

This article was published in The Indian Express on 16th March 2024.

The original petition requested only for the EB scheme to be declared unconstitutional. The SC did that but went ahead and also issued directions to SBI and ECI to ensure full implementation of the judgment. This initiative of the apex court must be acknowledged and commended. 8 pm of March 14, 2024, was somewhat reminiscent of 8 pm of November 8, 2016. It was a few minutes before 8 pm on Thursday, that the media frenzy began after the Election Commission of India (ECI) surprised the nation by putting the electoral bonds (EBs) data provided to it by the State Bank of India (SBI) under the orders of the Supreme Court of India (SC) 23 hours before the deadline of 5 pm on March 15. This newspaper captured the importance of the moment by putting its banner headline “Who paid the parties”.

Life after EBs will not be the same. True, the data revealed so far does not disclose exact one-on-one correspondence between the purchaser and redeemer of each particular EB. But suggestive stuff such as the four sectors that dominate the purchasers of EBs; and some purchases that might be linked temporally to raids by enforcement agencies (brought out by news portals even without the EB information being available but with much greater effort) are already available. So are nuggets of information such as the “Bond Buyer No.1” being a “Lottery King”.

One-on-one correspondence between the purchaser and redeemer of each particular EB can only be established once the unique alpha-numeric number, visible only under ultraviolet light, of each EB is available, as the SBI said during the court hearings. It may encourage some commentators to say “I told you so” but it needs to be remembered that it is the same SBI who said that they will be able to disclose what has been disclosed in three weeks now in roughly 25–28 hours.

While exact correspondence is certainly desirable and all constitutional efforts will be made to get the unique identifier numbers, a lot still needs to be done to make full use of the already available data. Just as one example: The available data is for 21 out of 30 phases. ECI has already filed an application to the SC to return it (to ECI) so it can be put up on the website. Most of the analysis done till the time of writing appears to be of the total for the 21 phases. Obviously, in-depth analysis of the data for each phase has the potential to reveal much more granular information on the linkages between the purchasers and the redeemers. The SC has issued a notice to the SBI to disclose the unique alpha-numeric numbers.

Be that as it may, some larger reflections are in order. These fall into two silos. The first relates to the oft-commented possible impact of this disclosure on the imminent Lok Sabha election. It needs to be remembered that the original petition by the Association for Democratic Reforms (ADR, of which the author is a founder-member), the judgment on which came on February 15, 2024, was filed in 2017 soon after EBs scheme was announced in the Parliament by the then Finance Minister. All that the petition asked for was that the EB scheme be declared unconstitutional along with all corresponding amendments to various laws.

The 2019 Lok Sabha election followed two years later and there was almost no mention of the petition during the run-up to, or during, that election. Since then, there have been only two substantial hearings, one on April 12, 2019, and the other on March 26, 2021, despite the filing of five applications for early hearing.

The SC, in its wisdom, decided to take up the petition in October 2023 and delivered the judgment on February 15, 2024, after reserving it on November 01, 2023. As mentioned, the original petition requested only for the EB scheme to be declared unconstitutional. The SC did that but went ahead and also issued directions to SBI and ECI to ensure full implementation of the judgment. This initiative of the apex court must be acknowledged and commended. It has created this widespread interest in the judgment and its aftermath.

To reiterate, the intent of the original petition was not to directly or indirectly influence the result of any election. It was to bring transparency to the system of financing political activity in the country.

The second silo pertains to “what next”. In a very incisive article in this paper (‘No going back to square one’, IE, March 15) the “way forward” was discussed in detail. State funding of elections is mentioned briefly and rejected, and a national election fund is recommended. Without going into the merits of both, it is important to highlight one major concern with both options — there seems to be an unstated assumption: That political parties will not accept any other form of donations than what they receive either through state funding or from the national election fund. This assumption has not been tested but my expectation is that no political party will be willing to accept this requirement, and even if some of them do, it will be impossible to ensure this in practice.

I fully agree with and respect the sentiment expressed in the op-ed that “it is indispensable that we confront this issue (of corruption in politics) head-on”. The only way to confront it head-on is to legislate that all donations to political parties will be through digital means, with no exception whatsoever. After all, wasn’t this what all of us, citizens, were asked to do at 8 pm on November 8, 2016, when demonetisation was announced?

Rising Concerns About India's Judiciary

This article was published in The Wire on 18th January 2024.

The immediate cause of concern arises from the recent public utterances by two of the seniormost members of the highest judiciary in the land.

I write this piece with a heavy heart and a grave sense of responsibility. This is because I am writing about the Sentinel on the Qui Vive, a phrase etched in Indian jurisprudence by Justice Patanjali Sastry in his judgment in *State of Madras v. VG Row, Union of India & State*, in the following paragraph:

"What is sometimes overlooked, that our Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike as in America where the Supreme Court has assumed extensive powers of reviewing legislative acts undercover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in the discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights," as to which this court has been given the role of Sentinel on the Qui Vive."

The immediate cause of concern arises from the recent public utterances by two of the seniormost members of the highest judiciary in the land.

Standards of judicial conduct

The first thing these public utterances bring to mind is the "Restatement of Values of Judicial Life", as adopted by a Full Court Meeting of the Supreme Court of India on May 07, 1997. This "restatement" was ratified and adopted by the Indian judiciary in the Chief Justices' Conference 1999. All the high courts in the country also adopted the same in their respective Full Court Meetings.

The "restatement" ends with the following sentence: "These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but illustrative of what is expected of a Judge."

Just in case a 1997 "restatement" is considered out of date (though there does not seem to have been any later document for Indian judiciary) there is a later document called The Bangalore Principles of Judicial Conduct 2002 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002.

The Bangalore Principles is an 11-page detailed document which provides six "Values" divided into 41 "Application Principles", typical of UN guided agencies. The "restatement", on the other hand, is a crisp three-page document which lists 16 "Values" of judicial life in fairly clear and direct terms.

Item 9 of the "restatement" reads: "A Judge is expected to let his judgments speak for themselves. He shall not give interview to the media" (*italics added*).

Sources of current concerns

The primary sources of current concerns are a spate of interviews given by a former judge of the Supreme Court soon after his retirement on December 25, 2023, and an interview given by the current Chief Justice of India to PTI on January 01, 2024. I will begin with the interviews given by former Justice Sanjay Kishan Kaul. Though he has given many interviews, I will limit my observations to the interview published in the Indian Express on December 26, 2023.

Since the interview was published on the very first day after his superannuation, it can be argued that he did not violate Item 9 of the “restatement”. Technicalities such as whether the interview was actually conducted on the day of superannuation can be ignored but the issue of the letter and spirit of Item 9 of the “restatement” remains.

Coming to substantive issues, Justice Kaul makes extensive comments on the judiciary dealing with the government, particularly ‘strong’ governments. A few issues stand out. One pertains to what is referred to as “check and balance”. A couple of statements are worth quoting:

“Let’s take from 1950. All of them will always be a little tough and that is part of the job. They don’t like anybody to interfere and the judiciary’s job is to check and balance” (italics added).

“A weak opposition is also a problem. The absence of legislators from the opposition in the Parliament is an important factor. Maybe in public perception, it is their inability to politically handle the government. Now, the court cannot be placed to politically handle the government... The court cannot be the opposition. The judiciary is a check and balance but to say, look, the government is doing this wrong and now, you have to do something about it— is wrong” (italics added).

With respect, I would like to state that the judiciary’s “job” is not to “check and balance”, and judiciary is not a “check and balance”. Its job is to interpret the law, and it is a part of the system of checks and balances. To clarify that it is not just a matter of semantics, it is worth pointing out that judges, and more particularly judges of the highest court of the land, whether serving or retired, are known, and expected, to use words with care. This creates a concern about how the ‘job’ of the judiciary is seen and understood at the highest echelons.

The second issue is that of relations between the executive and the judiciary. For this again, a quotation is needed.

“Sometimes we forget the past. When there is a strong executive, there will be a little pushback for the judiciary. 1990 onwards, we have had coalition governments. So, the judiciary was able to advance its cause, sometimes even transgress into some areas, I feel. But with a majority government coming, it was expected that some steps would have to be taken back” (emphasis added).

This raises two concerns. One, what is judiciary’s ‘cause’? Two, why should judiciary ‘transgress’ even if there is a coalition or a ‘weak’ government? There can be more than one response to these two questions but it is doubtful many of the answers will do a favour to the institution that Justice Patanjali Sastry referred to as the Sentinel on the Qui Vive!

Justice Kaul’s comments on what he calls “politico-legal” cases which he terms as “basically political decisions” are valid but what he says about these getting “hyped to different levels because of the political consequences” has the potential to be misunderstood as undue political sensitivity.

He is again very correct in terming “bail hearings in...political cases” as “a complete waste of time” but then again, he ends the paragraph with “the government can weigh which cases it should litigate”, leaving one thinking should he not have let the government know this in no uncertain terms when he was on the bench.

When asked about the “role of the Chief Justice”, he referred to the Supreme Court as “a very registry-driven court” and went on to say, “Whatever happens is really between the Chief Justice and the registry.”

This takes one back to December 5, 2023, when it was discovered that two petitions seeking contempt of court action against the Union government over the delay in appointing judges whose names were cleared by the Supreme Court collegium, listed before a bench headed by him seemed to have been deleted from the cause list, he was reported to have said, “I clarify that it is not that I have deleted the matter or that I am unwilling to take the matter, both.” When it was suggested that an explanation should be asked from the registry, he reportedly said, “I am sure the Chief Justice is aware of it...Yesterday I found it was deleted. I checked up.” When the counsel in the case said it “very unusual”, Justice Kaul was reported to have said that “some things are best left unsaid sometimes”. The last statement about leaving some things ‘unsaid’ says a lot!

We now come to the interview given by the CJI to PTI on January 1, 2024. The very first issue that comes to mind is item 9 of the “restatement” which categorically says that a judge “shall not give interview to the media”. It is correct that the first sentence refers to let “judgments speak for themselves” which the CJI alludes to later in the interview, but more on this later in this piece. One wonders whether the ‘Values of Judicial Life’ still apply or have they been given a quiet burial.

Coming to the substantive issues in the interview, in this case two issues stand out. One deals with the allocation of cases to different judges and the other with what has come to be referred to as the Ayodhya judgment.

When asked about some recent commentary, arising out of a few recent incidents including, but not limited to, Justice S.K. Kaul’s comment on December 5, 2023 mentioned above, the CJI said, “There are very well-defined structures and processes for the allocation of cases.” He then explained the system in some detail and went on to say, “I have been a member of the bar as well, no lawyer can insist that I’ll have my case decided only by a particular judge because that does not do justice either to the credibility of individual judges or the purity of the administration of justice.” He followed up this with:

“I am very very clear in my mind that if the credibility of the institution of the Supreme Court is to be maintained, we have to ensure that the allocation of cases in the Supreme Court is not going to be a lawyer-driven allocation. It has to be an allocation which we do in terms of our processes and systems which are laid down in the Supreme Court. Having said that I can only say that, well, you have to trust your decision makers.”

This repeated stress on “lawyer-driven allocation” is possibly an indicator of the over-sensitivity of the CJI to some recent incidents. In addition to Justice Kaul’s comment in open court, there was another incident in which a couple of senior lawyers wrote ‘open’ letters to the CJI about apparent inconsistencies in the process of case allocation.

Based on the contents of these letters, which are available in the public domain, there does not seem to be any demand for a “lawyer-driven” allocation; all that the lawyers seemed to have been asking for was reasons for deviations from the “systems and processes” specified in the documents of the court itself, namely, Supreme Court Rules, 2013, and Handbook on Practice and Procedure and Office Procedure 2017, published by the Supreme Court of India under Article 145 of the Constitution of India. The concerns it raises are two-fold: (a) That there were apparent deviations from the laid down “systems and processes”, and (b) that the CJI chose to respond to these seeming deviations through a scripted interview in the public domain thereby violating Item 9 of the “Restatement of Values of Judicial Life”.

The Ayodhya judgment is indeed historic, though there have been all kinds of commentary on it. One of the issues that has been around ever since the judgment was pronounced on November 9, 2019 has been that of the authorship of the judgement. This is supposed to be the very first judgment of the Supreme Court since the court’s inception for which the name of the judge who actually wrote the unanimous judgment was not revealed. Since the CJI was a member of the five-judge bench who pronounced the judgment, when he was asked about the authorship, he said:

“When the five-judge bench sat to deliberate on the judgment as we all do before a judgment is pronounced, we all decided unanimously that this will be a judgment of the court and therefore there was no authorship ascribed to an individual judge. The case had a long history, of conflict, of diverse viewpoints, based on the history of the nation and all of us who were part of the bench decided that this will be a judgment of the court. The court will speak through one voice. The idea of doing so was to send a clear message that all of us stood together not only in the ultimate outcome but also in the reasons that were indicated in the judgment, and that is why we decided that it will read as a judgment of the court. Since we decided that it will read as a judgment of the court, it will always remain a judgment of the court. And I will close my answer with that.”

This response creates uncertainty about all the unanimous judgments that the court has issued in its entire history. Simply stated, the uncertainty is: Are all other unanimous judgements not “judgments of the court”? The number of questions this response raises can be increased to match the number of times the phrase “judgment of the court” (five times) but that should not be necessary. The question stands on its own.

Concluding comments

Arguably, the strongest pillar of the state which has been entrusted the onerous responsibility of safeguarding the most cherished fundamental rights of citizens under the Constitution of India by “We, the People” seems to be on shaky ground itself. This does not portend well for the nation, the society, and the people. The hope of this article is that the judiciary will pull itself together in pursuit of its momentous task and it is the duty of all of us, “We, the People”, to strengthen it so that it can become a true Sentinel on the Qui Vive.

Is There Life After Electoral Bonds?

This article was published in The Wire on 20th November 2023.

A lot of us seem to have forgotten that political parties, elections and democracy existed even before 2017 – and so before the existence of electoral bonds.

Though introduced in 2017, Electoral Bonds (EBs) seem to have become a popular topic in the national discourse ever since the recent three-day hearing in the Supreme Court (SC). There has been fair bit of writing in the print and digital media, and also some discussion on TV. In quite a few of media writings suggestions have been given on how to make EBs less opaque or confidential (as the Solicitor General of India kept insisting during the SC hearings). Quite a few correspondents/reporters have also asked me to specifically comment on how to make EBs “acceptable”. That is what prompts the title of this piece.

A lot of us seem to have forgotten that political parties, elections and democracy existed even before 2017, i.e., before the introduction of EBs. Existence of political parties implies that parties got money to conduct their affairs including contesting elections, and there was no mystery where and how they got the money and from whom. There were several methods of political parties getting money such as (a) by cheque, (b) by bank draft, (c) by digital transfer through banks, (d) digital payment through apps, (e) Electoral Trusts, and (f) cash, with each donation being not more than Rs 2,000. The most popular method, of course, was cash in unlimited amounts.

The only complication was, and still is, that there was no incontrovertible proof of the transactions by the last, and the most common, method and therefore no one except the giver and the receiver knew how much money was given by whom and to whom. Some insiders and snoopers were of course, the expected exceptions. Consequently, it was not possible for people at large to know whether decisions by a particular political party in power, in the Centre or any of the States, were motivated by welfare of the people at large or for the benefit of a donor of a large amount of unaccounted cash. We also need to remember that donations need not be strictly only in cash, they can also be in kind such as making aircraft or helicopters booked in the name of some company or individual, being provided to a political party for its use.

Though the Union of India has claimed during the hearings in the SC that ever since EBs were introduced that transparency of electoral funding has improved, the statement made above – “no one except the giver and the receiver knew how much money was given by whom and to whom” – is still valid with a very interesting change. Going strictly according to the EBs scheme as announced by the government, not even the receiver may know who has given the money! This of course is creative imagination of the highest order as everyone knows that one who gives money always makes sure the receiver knows who is the giver. The pious concept of gupt-daan (anonymous donation) does not apply to political donations.

What can, and should, the Supreme Court do?

I will refrain from suggesting what the SC should do because the judgment is reserved, but being part of one of the petitioner-organisations, what we have requested the SC to do is to declare Sections 135, 137, 11 and 154 of the Finance Act 2017 and consequential amendments in Section 31 of the Reserve Bank of India 1934, Section 29C of the Representation of the People Act 1951, Section 13A of the Income Tax Act 1961, and Section 182 of the Companies Act 2013; and Section 236 of Finance Act 2016 and consequential amendments in Section 2(1)(j)(vi) of the Foreign Contribution (Regulation) Act 2010 "as being unconstitutional, null and void". What this legal jargon means is that, in effect, we have requested the SC to declare the Electoral Bonds scheme as unconstitutional or illegal, or in even simpler words to strike it down. And of course, this is what we would like the SC to do.

The other issue - "What can the SC do?" - is, I think, more important and needs some comment. A lot of commentary has suggested that the SC should make some modifications in the EBs scheme to remove what has been variously called as "selective disclosure", "selective or partial transparency" and of course the celebrated "partial confidentiality".

It is necessary to go to some basics in order to resolve this issue of "What can the SC do?". Under the principle of separation of powers, the three pillars of the State - the legislature, the executive and the judiciary - have separate and distinct powers. In simple terms, the prime function of the legislature is to make laws, the prime function of the executive is to implement laws, and the prime function of the judiciary is to interpret laws. The power to interpret laws implies and includes the power of judicial review. This power of judicial review implies that the higher judiciary, the Supreme Court and the high courts have the power to review any action of the legislature and the executive and decide whether these actions are in keeping with the Constitution of India or not, and if they find any of the actions not to be in line with the Constitution, the Supreme Court and the high courts have the power to declare any such action as unconstitutional. That is why in our petition we have requested the SC to declare the above-mentioned laws as "unconstitutional, null and void".

I maintain that all that the SC can do is to declare these laws as unconstitutional and no more. While many of the suggestions that have been, and are still being made, about what the SC should do, are valuable but they are all outside the remit of the SC. What must be remembered is that laws can be made only by the legislature. Yes, the SC can certainly make suggestions, if it wishes to do that, but it cannot, in my view, make modifications to the scheme as enunciated by the government and passed by the Parliament. As an aside, the passing of the EBs scheme by the Parliament is also in doubt because it was included in a Money Bill, thus disabling the Rajya Sabha from making changes to it but that issue is being examined by a separate constitutional bench of seven judges and was therefore not argued before the current bench of five judges.

At the end of the day, we just have to wait and see what the SC does.

Why the Proposal to Have Remote Voting Machines Could Be Concealing More Than It Reveals

This article was published in The Wire on 31st January 2023.

The proposal for remote voting for migrant resident voters (MRIs) is not new has its origins in an older proposal, to allow Non-Resident Indians to vote. There are serious issues with this.

The Election Commission of India (ECI) has announced a new initiative to introduce a 'remote voting machine (RVM) system' for migrant voters via its letter on December 28, 2022 and invited all recognised national (8) and regional (57) political parties for a discussion on this issue on January 16, 2023. It asked them to convey their "views on issues highlighted in the letter for legal, administrative and statutory changes to bring in clarity of the subject, by January 31, 2023" in a specified format.

Official reports from the commission termed the meeting as successful but other reports said the scheduled demonstration did not happen as almost all opposition parties disagreed or found fault with the ECI's proposals.

The evolution

The latest proposal for the RVM system for migrant voters has not come out of nowhere, although the EC's letter of December 28, 2022 refers only to its concern for the low voter turnout, the inability of migrants to vote as a cause of the low voter turnout, and to a judgment of the Supreme Court (Dr. Shamsheer V.P. vs Union of India) of June 25, 2015 as the prime causes for coming up with this proposal. A peep into some relatively short-term history, however, shows a somewhat different picture.

Actually, the process started in 2014 when the EC decided to work on permitting Non-Resident Indians (NRIs) to cast their votes remotely in response to requests from the Ministry of Overseas Affairs and Rajya Sabha MP Naveen Jindal. Postal voting was proposed as a solution and consultations with various groups were held. Some parties such as the Nationalist Congress Party supported the postal ballot option while others such as the Bharatiya Janata Party, Bahujan Samaj Party, and the Communist Party of India did not agree with it.

The Congress had reservations about the postal ballot paper being sent electronically. However, it was the Ministry of External Affairs (MEA) who had the strongest reservations saying that "diplomatic missions do not have the logistical wherewithal to handle attestation for a large number of overseas electors", and that permission required of the host country for this might be tricky in non-democratic countries.

A 12-member committee was set up in 2014 to study mainly three options for voting by NRIs: voting by post, voting at an Indian mission abroad, and online voting. In 2015, this committee finally recommended the options of e-postal ballot and proxy voting to NRIs, rejecting the other two. E-postal ballot is a ballot paper that is sent to the voter electronically and returned to the returning officer by post. The law ministry accepted the recommendation on proxy voting and the Cabinet passed the proposal to amend the law.

A Bill to amend the Representation of People Act, 1950 and the Representation of People Act, 1951 to allow for proxy voting for NRIs was introduced in the Lok Sabha on December 18, 2017, and passed on August 9, 2018. However, the 16th Lok Sabha was dissolved while the Bill was awaiting Rajya Sabha's approval, and therefore, it lapsed.

It was at this point in time that comments were made on the preference given to NRIs over MRIs (migrant resident Indians).

The matter rested there till November 2020 when the EC told the law ministry that it was “technically and administratively ready” to extend the Electronically Transmitted Postal Ballot System (ETPBS) to NRI voters for elections in 2021 in Assam, West Bengal, Kerala, Tamil Nadu, and Puducherry. It was proposed that any NRI interested in voting through the postal ballot in an election will have to inform the returning officer (RO) at least five days after the notification of the election.

On receiving such information, the RO will dispatch the ballot paper electronically. The NRI voters will mark their preference on the ballot printouts and send it back along with a declaration attested by an officer appointed by the diplomatic or consular representative of India in the country where the NRI is resident. It was not clear if the voter was to return the ballot paper through ordinary post or drop it off at the Indian Embassy, which may then segregate the envelopes. Nothing was heard of the proposal since then.

The RVM system proposal

Now comes the RVM proposal as if it is a totally fresh initiative of the EC to increase the total voting percentage and being considerate of the migrants’ plight. There are several issues with this proposal.

1. Urgency of the EC’s desire to assist ‘domestic migrants’

EC’s letter of December 28, 2022 says that it had formed a “Committee of Officers on Domestic Migrants” which had a meeting with political parties on August 20, 2016. It then consulted other “experts” and “submitted its report in November 2016”. It has taken the EC a little over five years to discover that “empowering the migrant voters to exercise their franchise from their places of work entails a host of legal, statutory, administrative and technological interventions on a spectrum of issues...”

In addition, several issues are identified “requiring consultations for acceptable solutions to the complex problem of increasing voter participation beyond current level”.

2. Level of preparation and homework done by the EC

The issues “requiring consultations” are identified under the following heads:

- Who is a domestic migrant?
- What is remote voting?
- How to implement a model code of conduct in remote locations (other states) where the election process is not going on?
- How to provide a controlled environment to ensure secrecy of voting and inducement-free voting? How many such remote booths should be set up? Who should be appointed as polling personnel?
- How to provide a facility of polling agents to candidates for voting at such controlled remote locations and ensure identification of voters to avoid impersonation?
- A method of remote voting/voting technology:
 - Remote voting methods: Postal ballot (ETPBS), internet voting, or remote voting machine in line of EVMs.
 - How to count votes cast at remote booths and transmit to returning officers located remotely (in other state)?”

Of all of the above issues, the EC has presented suggested solutions for only the last one: an RVM system option. For the remaining five issues the EC does not mention any suggested solution and has requested the invited political parties for suggestions in a given format. This shows how well prepared the EC is to implement this proposed system.

3. Technical features of the RVM system are described in Annexure-I of the EC's letter of December 28, 2022. The following points need clarification.

The very first item in the "proposed RVM voting method" says a "remote voter has to pre-register for remote voting facility by applying online/offline within a pre-notified time before elections with his home constituency RO." This appears that the process expects a migrant voter to (a) either be computer- or IT-savvy enough to 'pre-register' with her 'home constituency RO' online or (b) pre-register 'offline', which in common understanding means to go to the 'home constituency' and pre-register with the 'local' or 'home' RO. Both these options are no different from the existing rules where the migrant voter has to either register herself at the place of work or go to the 'home constituency' to vote which are not at all practical for migrant voters.

If the very first step in the so-called 'remote voting' process is no different from the existing rules, then what is the point of the entire exercise of the RVM system?

The second issue deals with what is called "RVM features". The description says, "It is a standalone, non-networked system having the same security features as the existing Indian EVMs and provides the same voting experience to the voter as EVM. RVM system is essentially a modified version of the existing EVM system." (Italics added). On the face of it, it sounds contradictory: If it is a "modified version", then it is difficult to see how it can have the "same security features" and provide "the same voting experience"! There is obviously something missing here.

Various components of the RVM system described are supposed to have the same controls, functionality, etc. as the existing EVM system but are also said to have additional new features and parts. The entire explanation of the system appears to be convoluted and confusing.

The "proposed commissioning process" says inter alia that "...loading of symbols in [the] presence of representatives of political parties/candidates by RSLU onto RVVPAT, the symbols could be viewed on a screen/monitor by all stakeholders in real time as per the existing practice." It is not clear whether it will be done at the remote location or the home location. Similar doubts exist in the "proposed voting process" and the "counting process of RVM".

The entire process described in Annexure-I is very sketchy and does not appear to have been thought through in detail. It gives the impression of being a work-in-process. Given this lack of clarity in the letter of December 28, 2022 and its annexure, it is not possible to figure out what exactly did the EC plan to "demonstrate" in the proposed meeting on January 16, 2023.

Two serious concerns

The letter of December 28, 2022 raises two other serious concerns.

1. Conflict of interest

The letter of December 22, 2022 says, "Accordingly, the Commission has been working with two public sector units, who are manufacturing existing EVMs, i.e., Bharat Electronic (sic) Limited (BEL) and Electronics Corporation of India Limited (ECIL) to develop a robust, failproof and efficient stand-alone system for remote voting based on existing EVMs, under the guidance of the Technical Expert Committee."

In a letter of January 7, 2023, addressed to the Chief Election Commissioner (CEC) and the two Election Commissioners, a retired secretary to the Government of India, E.A.S. Sarma, inter alia wrote the following:

"A far more serious issue is the conflict of interest in the case of the CPSE, Bharat Electronics Ltd (BEL), on whose credentials the integrity of the entire electoral system based on the EVM technology so precariously rests. The BEL, as a premier CPSE par excellence, has outstandingly competent technical personnel. Their credentials are unquestionable. However, the ruling political party at the Centre has appointed at least three Directors on BEL's Board of Directors, Shri Mansukhbhai Shamjibhai Khachariya, Dr P.V. Parthasavrathi, and Dr Shiv Nath Yadav" who have contested elections as nominees of the ruling political party at the Centre."

Sarma goes on to write that "this information has been gathered from the public domain" and while he has "no intention whatsoever to question their integrity in any manner", he does "feel seriously concerned about the possible conflict of interest that arises from this, in the management of such an excellent CPSE, directly involved in developing the source code for operating the EVMs, around which the vulnerability or otherwise of the EVMs so critically revolves."

He further writes that "this has clearly tilted the level-playing ground between the political parties, in favour of the ruling political executive", and that "it is highly objectionable since appointment of persons with political affiliations violates the CPSE guidelines".

2. 'Stakeholders' in elections?

Paragraph 12 of the EC's letter of December 28, 2022 says, "In the context as above and desirability of ensuring that domestic migrants are able to exercise their franchise to improve participation and deepen democracy further, the Commission desires to solicit views of the Recognised National and State Political Parties, as the most important stakeholders in the electoral process, in the matter to effectively recommend required legislative changes, changes in administrative procedures and finalise voting method/technology." (Italics added).

Earlier in the letter, in paragraph 9, the letter refers to its own "Committee of Officers on Domestic Migrants", "studies made by Tata Institute of Social Sciences on the subject of domestic migrants and issues in election participation", and "deliberations with various relevant Ministries/Organisations and experts." (Emphasis added).

It is noteworthy that citizens/voters or migrants find no place among the stakeholders in the election process in the reckoning of the EC. Undoubtedly, the Tata Institute of Social Sciences is an extremely reputed institution but it seems unlikely that it is the best repository of knowledge on domestic migrants. There are organisations who have been working exclusively on domestic migrants for many years and who are not so difficult to locate.

As a matter of fact, one of the former chief election commissioners, S.Y. Quraishi, has actually quoted a survey by one such organisation, Aajeevika Bureau, in his piece in the Indian Express published on January 17, 2023 on this issue. It is interesting that the EC was not able to locate what a former CEC could! Of course, the EC does not think it is necessary to share exactly who are the "experts" that it consults.

The last word

It is not that citizens have not spoken on this issue. There has been a Citizens' Commission on Elections (CCE) consisting of eminent citizens which was set up on March 5, 2020, and its findings were published in early 2022 in a volume titled 'Electoral Democracy: An inquiry into the Fairness and Integrity of Elections in India'. The CCE also sent a copy of its findings to the EC. This volume also has a 16-page chapter titled 'Is the Indian EVM and VVPAT System Fit for Democratic Elections?' written by two well-known professors of Computer Science and Engineering at an Indian Institute of Technology (IIT).

It is critical to remember that all the unresolved problems of the existing EVM and VVPAT system will get carried over to the so-called RVM system and the confidence of citizens in the electoral system will possibly go down further.

Two speculations

It has been speculated in some quarters that this announcement of the RVM system for domestic migrants is a mere smokescreen for two hidden objectives. One is to extend the voting facility to NRIs which was the original intention, and the other is to deflect attention away from the problems of the EVM-VVPAT system. It is not possible to make any serious comment on these issues since there is no real, dependable information available on them.

We, the warriors of democracy...

This article was published in Civil Society Magazine in 2022.

In his now famous speech to budding police officers in Hyderabad on how civil society groups can be subverted, the National Security Adviser, Ajit Kumar Doval, widely regarded as the third most important official in the security establishment, significantly said: “The quintessence of democracy does not lie in the ballot box ... it lies in the laws which are made by the people who are elected by those ballot boxes ... The new frontiers of war, called Fourth Generation of Warfare, is represented by the civil society....”

There are two fallacies in this formulation. One, ballot boxes are not of any use unless citizens, actually cast their votes into the ballot boxes. The other fallacy is about the people elected by those ballot boxes. What type of people are they? Data shows the number of MPs in the Lok Sabha with criminal cases against them has been growing. The Association for Democratic Reforms (ADR) collected this data from the self-sworn affidavits of candidates contesting elections to the Lok Sabha in compliance with decisions of the Supreme Court of India in 2002 and 2003.

Readers can judge the quality of “the people who are elected by those ballot boxes” from this table:

MPs in Lok Sabha with criminal cases pending against them		
Year	Number of MPs	Percentage
2004	125	23%
2009	153	28%
2014	185	34%
2019	233	43%

So, what’s new, you might ask? Till the year 2004, voters had no way of knowing what “type” of people they were casting their votes for in the “ballot boxes”. This was because of a specific provision in law that permitted a sitting legislator, convicted in a criminal case, to continue to be in that position and contest further elections, whereas a common citizen was barred from contesting elections for six years if convicted in a criminal case. But we are getting ahead of our story.

HOW IT ALL BEGAN

Around 1998-99, there were a lot of media reports about people with pending criminal cases against them contesting elections and getting elected. Around the same time, in May 1999, the Law Commission of India submitted its 170th report, Reforms of the Electoral Laws. In a comprehensive review of all the electoral laws one of the recommendations of the commission was:

“In the interest of transparency, we have also suggested provisions making it obligatory upon every candidate to declare the assets possessed by him or her or by his/her spouse and dependent relations and the particulars regarding criminal cases pending against him/her, in the nomination paper itself.”

A group of public-spirited persons decided to file a Public Interest Litigation (PIL) in the Delhi High Court in December 1999, requesting the implementation of the above recommendation. The Delhi High Court, in a decision on November 2, 2000, upheld the petition and directed the Election Commission of India (ECI) to collect and make the necessary information available to voters.

The Union of India (UoI) filed an appeal in the Supreme Court against the Delhi High Court’s decision. Several political parties became interveners in the case, in support of the stand of the UoI, opposing the Delhi High Court decision.

The Supreme Court gave its judgement on May 2, 2002, upholding the High Court judgement, and directed the ECI to get information on a sworn affidavit from each candidate seeking election to Parliament or the state legislature, as a necessary part of his nomination paper, on the criminal, financial and educational antecedents of the candidate.

The ECI’s implementation of these directions made the entire political establishment very unhappy. In an all-party meeting on July 7, 2002, it was unanimously decided that the Supreme Court’s decision and the consequent order of the ECI would not be allowed to be implemented, and the Representation of the People Act, 1951 (RP Act), would be amended, in that very session of Parliament if necessary, to nullify the Supreme Court’s decision and the ECI order.

A bill to amend the RP Act was accordingly prepared but it could not be introduced in Parliament as the Lok Sabha was adjourned sine die. The government then decided to issue an ordinance.

Given that the draft of the ordinance seemed to be prima facie unconstitutional, about 30 civil society representatives met the President and cautioned him about it. When the ordinance was sent to the President, he “returned” it. The Cabinet, however, sent it to the President again and he had to sign it following established convention. The Supreme Court’s decision of May 2, 2002, thus stood nullified.

The struggle did not end here. Three PILs were filed in the Supreme Court challenging the amendment of the RP Act. All three petitioners were civil society organisations: Association for Democratic Reforms, People’s Union for Civil Rights and Lok Satta.

The Supreme Court gave its judgment on March 13, 2003, holding that the amendment of the RP Act was unconstitutional and null and void. It restored the Supreme Court judgment of May 2, 2002, saying it had “attained finality” and that there shall be no appeal against that judgment. This effort, from 1999 to 2003, is what enabled voters/citizens to know what type of people were “elected by those ballot boxes” and laws made by whom are the “quintessence of democracy”.

THE AFTERMATH

Yet the number of tainted MPs in Lok Sabha has consistently risen over the last four general elections! So, what impact has all this effort had? On the face of it, the proportion of people with criminal cases pending against them in the Lok Sabha has increased.

But if one goes into some details of the electoral process, it is revealed that most of the reasons for this increase can be found in the laws made by the people who are elected by those ballot boxes!

Further, the root of all these mysterious outcomes lies in an institution called “political parties”. What political parties in India are, and what they should be, is best described in the following paragraph of the 170th Report of the Law Commission of India:

“If democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is, therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be a dictatorship internally and democratic in its functioning outside.”

The National Commission to Review the Working of the Constitution (NCRWC) chaired by the former Chief Justice of India, Justice M.N. Venkatachaliah, in its report submitted on March 31, 2002, said:

“The Commission recommends that there should be a comprehensive legislation (may be named as the Political Parties [Registration and Regulation] Act), regulating the registration and functioning of political parties or alliances of parties in India.”

These recommendations were made in 1999 and in 2002, but it seems “the people who are elected by those ballot boxes” have not had the time or inclination to implement them.

SEVERAL INITIATIVES

On the other hand civil society activists, or shall we call them ‘Fourth Generation Warriors’, have been trying to get exactly the same done.

The ADR requested a committee chaired by Justice M.N. Venkatachaliah, to draft a bill to regulate the functioning of political parties. This committee drafted what it called the Political Parties (Registration and Regulation of Affairs, etc.) Bill, 2011. This draft bill has been shared with all the major political parties but none has shown any inclination of taking it up.

In addition, several initiatives have been made by civil society groups to cleanse the electoral and political systems. Some representative examples are listed below:

- In June 2013, the Central Information Commission (CIC), in response to an application by ADR and S.C. Agrawal, declared in a unanimous, full bench decision, that the six national parties – the BJP, INC, BSP, CPI, CPI(M) and NCP – are public authorities under the Right to Information (RTI) Act, 2005. All six parties refused to comply with the CIC’s order. In May 2015, the same petitioners filed a petition in the Supreme Court to implement the CIC’s order. The petition is still pending in the Supreme Court.
- In July 2013, the Supreme Court set aside clause 8(4) of the RP Act on petitions filed by Lily Thomas, a public-spirited Supreme Court lawyer, and Lok Prahari, a civil society group in Lucknow. As a result, sitting MPs and MLAs were barred from holding office on being convicted in a Court of Law.

- In September 2013, the Supreme Court ruled, in a PIL filed by the People's Union for Civil Rights, that the right to register a "none of the above (NOTA)" vote in elections should apply and ordered the ECI to provide such a button in the Electronic Voting Machines (EVMs).
- Again, in September 2013, on a PIL filed by Resurgence India, another civil society group, the Supreme Court ruled that no columns or boxes should be left blank in affidavits filed as an essential part of the nomination papers, in terms of its judgment in the 2003 ADR case.
- In March 2014, the Delhi High Court in its judgement in a PIL filed by ADR, held that the BJP and the Congress were both guilty of accepting funds in violation of the Foreign Contribution (Regulation) Act, 1976 (FCRA 1976), and directed the Ministry of Home Affairs and the ECI that appropriate action under FCRA 1976 be taken against them within six months of the judgment. Both the parties first filed appeals in the Supreme Court and then withdrew them. In the meantime, the government amended the FCRA twice, once with retrospective effect, eight years after the Act being amended had ceased to exist! The matter is still sub judice.
- In September 2017, ADR and Common Cause, another civil society group, filed a PIL in the Supreme Court challenging the constitutional validity of the Electoral Bonds scheme introduced by the government, enabling anonymous donations to political parties, in any amount, by anyone (including Indian and foreign companies with branch offices in India).

In an interim order on April 12, 2019, the Supreme Court said that "the rival contentions give rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country. Such weighty issues would require an in-depth hearing...". But the learned judges of the Supreme Court have not had time to hear the petition till now, while elections continue to be held and unaccounted money keeps flowing.

The third highest functionary in the security establishment of the country seems to have a lot on his hands in dealing with Fourth Generation Warriors!

Interview: Regulating freebies: Poll panel's baffling turnabout

This article was published in Civil Society Magazine on 05th November 2022.

Promises fly thick and fast during election time. Political parties seek to outdo one another in getting the attention of voters. In the heat of the moment, mostly anything goes and voters are none the wiser about how some of those promises will be fulfilled — for instance, where will the money come for that scheme or subsidy.

Can this runaway situation be reined in? Is it possible to make parties and political leaders more accountable even as election promises are being drummed up rather than later when they have failed to deliver on fanciful ideas? Does an answer to the pernicious culture of freebies lie in stricter rules at election time?

The Election Commission of India has proposed that parties spell out their promises in a form that will go along with their manifestoes. The financial implications of every promise, the commission contends, will then be known so that there is a level playing field during elections. No one will be able to promise the moon and get away with it, as often happens now.

The idea was floated by the commission on October 4 in a letter to parties and laid open to discussion, but it has met with protests that the commission is exceeding its mandate, which is to hold free and fair elections, and instead getting into how governments run.

If the commission's proposal goes through, parties would have to spell out before an election what a promise is going to cost and how this expense will be met. They will have to state whether it will be through rationalizing expenditure, non-tax revenue, additional taxes or loans. To this end, the commission has further suggested that chief secretaries of states provide the budget estimate (BE) and revised estimate (RE) to show what funds are available.

Knowledgeable and impartial activists who have for long been demanding transparency in the running of political parties are baffled by the commission's proposal. They don't think it can be seriously implemented. In fact, they fear that such rules will curtail democracy rather than enrich it.

Jagdeep Chhokar of the Association for Democratic Reforms (ADR), which has been campaigning for cleaner elections and accountable parties, says: "I see this with scepticism. Many things in the commission's letter are less than clear. The entire scheme seems to be unimplementable and an exercise in showing a lot is being done. My apprehension is that on the ground nothing may happen."

Chhokar points out the commission had earlier shied away from taking up the issue of freebies, saying it would be an "overreach of powers." It told the Supreme Court on March 2 that the giving of freebies was a matter of policy, to be decided by the party concerned, and that it was for voters to judge whether the freebies were economically viable or not.

Chhokar quotes the commission as saying in court: "... offering any mass distribution of freebies either before or after the election" was a "policy decision of the party concerned and whether such policies are financially liable or it has an adverse effect on the economic health of the state, is a question that has to be considered and decided by the voters of the state."

The commission said it could not regulate "such policies" which "may be taken by the winning party when they form the government. Such an action without enabling provisions in the law will be an overreach of powers."

Chhokar wonders what has changed between March and October for the commission to now say that it “cannot overlook the undesirable impact of some of the promises/offers on the conduct of free and fair elections in maintaining a level playing field for all parties and candidates.”

Chhokar argues the electoral bonds would be a better issue for the commission to take up if what it is concerned about is providing a level playing field. At present, parties don’t need to disclose from whom they have received political donations by way of bonds, it is only the amounts that are known. The matter is in court.

“Now, the promises made by political parties in their manifestoes are of great concern, but, according to the Election Commission, something like electoral bonds does not distort the political field at all. There are many other specifics in this letter I can point to. But, let me add, between March 2 and October 4 there was a significant event. On July 16, the prime minister talked about what is called the ‘revdi culture’ of the country. I don’t know if there is any correlation in these three days,” elaborates Chhokar.

“But for the Election Commission to change its view from March 2 to October 4 without giving any justification for this change is surprising, to say the least, and trying to provide a level playing field only on the basis of what has been said in election manifestoes and not something as glaring as the electoral bonds raises weighty issues. Weighty is the Supreme Court’s word, not mine,” he says.

The issue of unsustainable freebies underlines the much larger question of distinguishing between party and government. The responsibility for executive actions devolves on the government, which when it comes into office has wide responsibilities to those who voted for it or didn’t.

“So, the government that is formed as a result of the elections, is not the party which contested the election and this distinction has got blurred very, very badly. Everyone seems to assume the government is the party and the party is the government. There should be a difference between party and government,” explains Chhokar.

Promises also aren’t only made in manifestoes, Chhokar points out. They are made in speeches during election time and before election time. He refers to a judgment mentioned in the Election Commission’s October 4 letter – *S. Subramaniam Balaji versus the state of Tamil Nadu and others* on July 5, 2013. In this, the Supreme Court says, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date of elections.

“This is a fundamental mistake we seem to make – that elections happen only from the date of the announcement of the election till the date of counting of votes. Election is not a process confined to those two to three weeks. Election is a process that goes on 24/7 around the year,” says Chhokar.

“Aren’t the advertisements one sees in national newspapers by governments in one state or the other in the country related to elections?” he asks. “Elections may be two years away but every action that a political party takes has an impact on the election. To assume that the Election Commission should act only after the announcement of the date, is a fallacy.”

Chhokar says holding of political parties accountable is long overdue. But it can’t be restricted to the promises they make at election time. Political parties should be made accountable under the law, which they aren’t at present.

"I have specific instances where so-called leading political parties have got together to amend the law so that the prosecution of parties is avoided. They have come on record saying otherwise there would have been no choice but to prosecute parties. Why shouldn't political parties be prosecuted if they violate the law? So political parties must be held accountable for all their actions," he says.

Chhokar's big fear is that there is an attempt to reduce the electoral exercise to a mechanical process. He worries about talk of reducing the expenditure on elections. So also the Election Commission's suggestion of BE and RE figures within which promises can be made. "What we are being told is that within this limited area you can do whatever you like and then there will be elections. That is not how a representative democracy works. People choose their representatives and political parties have to represent them," he says. "Somebody has found it very useful to use this term 'revdi culture'. And, therefore, the whole country is getting behind it. To me there appears to be a systematic attempt to undermine the entire electoral process," he cautions.



Three Desperate Measures to Cull the 'Aaya Ram, Gaya Ram' Phenomenon

This article was published in The Wire on 19th September 2022.

The problem of defection is not of the legislators alone. Political parties are essential actors in this drama of defection that now plays out repeatedly and brazenly in the political theatre of this country.

Haryana has long been decried, and rightly so, for having given the notorious 'Aaya Ram-Gaya Ram' phenomenon to Indian politics. However, the Haryana MLA, whose real name was Gaya Lal, and whose shenanigans birthed the phenomenon, did not know that his actions will become the leitmotif of Indian politics for many years to come.

In 1967, Gaya Lal, elected from the Hasanpur constituency in the Palwal district of Haryana, changed his party affiliation three times in one day. He moved from the Congress to the Janata Party, back to the Congress, then again to the Janata Party after nine hours, and then once again back to the Congress. At a press conference in Chandigarh, he was introduced by the then leader of the Congress party as "Gaya Lal has now become Aaya Lal".

This expression over time evolved into the now infamous phrase, 'Aaya Ram, Gaya Ram', which is also used by the Indian Express in its latest editorial.

What was started by Gaya Lal in 1967 became almost a torrent. Writing in the Economic and Political Weekly in 2003, B. Venkatesh Kumar estimated that almost 50% of the 4,000 legislators elected between 1967 and 1971 subsequently defected.

Attempts to deal with the phenomenon of defections started in 1967 itself with the Lok Sabha setting up a committee headed by Y.B. Chavan which gave its report in 1968, recommending the passing of an anti-defection law. But it was finally in 1985 that the law was passed and came into effect on March 18.

Incidentally, this marked the first time when the expression "political party" was included in the constitution under the tenth schedule through the 52nd amendment – which added Article 102(2) to the constitution.

The anti-defection law worked reasonably well but over time political parties and elected politicians discovered loopholes and started exploiting them. As a result, the law was amended via the 91st amendment to the constitution in 2003. This amendment removed the provision of splits in legislative parties.

Under the original law, as a result of a 'split' in the original political party, one-third of the members of the legislature moved out of the party so that they were not liable to be disqualified. So the members of the legislature started defecting in groups of 'one-thirds.'

The amended anti-defection law worked reasonably well again but just for some time before loopholes were discovered again.

The phenomenon seems to have intensified in the last few years as listed in the IE editorial – Arunachal Pradesh (2018), Karnataka (2019), Gujarat (2018-19), Madhya Pradesh (2020), West Bengal (2021), and now in Goa. Questions are now being asked as to what can be done to deal with what has correctly been called a deeper as well as a national challenge.

But before I go on to attempt an answer to that question, it is imperative to highlight another critical aspect of Indian politics that is inextricably linked to defections. And this has to do with money.

Even if the obscenely large sums of money that are bandied about are discounted, the videos of legislators enjoying the facilities of luxury resorts and private jets are indicative of the vast amounts of money apparently being involved in the defection activity. Notwithstanding whether the monies spent are accounted for or not, black or white, the fact that over Rs 10,000 crore has been pumped into the political system via totally opaque electoral bonds cannot be ignored.

What can, and should, be done?

“Desperate times require desperate measures,” a phrase believed to have originated with a saying coined by the ancient Greek physician, Hippocrates, is important to understand in this context. A deep-seated and complex malady such as defection cannot be dealt with by simple measures like tinkering with the anti-defection law.

It is extremely important to underline that the problem of defection is not of the legislators alone. Political parties are essential and major actors in this drama of defection that now plays out repeatedly and brazenly in the political theatre of this country. Therefore, three interdependent actions are called for.

First, any legislator who defects (i) should be unseated from the legislature and his/her seat declared vacant, (ii) s/he should not be allowed to contest the fresh election that is held for this vacant seat. This may seem unduly harsh to some bleeding-heart commentators but it needs to be pointed out that defecting after getting elected as a representative of a particular political party is a very serious betrayal of the trust that voters placed in that candidate. This repeated betrayal of trust is likely to lead to a loss of confidence of voters at large in the entire electoral, and then the entire democratic, system.

The consequences of such loss of confidence in a democracy are too grim to even be imagined. That such strong action is not unwarranted is seen from the proceedings of the National Commission to Review the Working of the Constitution (NCRWC), which mentioned in the Statement of Objects and Reasons of the 91st Constitution Amendment Bill, “The NCRWC is also of the view that a defector should be penalised for his action ...”

The second action is necessary to moderate one of the ill effects of the first one. ‘Penalising’ the defecting legislator, as suggested in the first action, will result in giving political parties greater power and control over legislators elected with their support. This in itself may not necessarily be undesirable under all circumstances but will not be good in the current situation of political parties in India.

To counter this, it will be necessary to make political parties demonstrably democratic in their internal functioning. Though this is anathema to all political parties, this has been repeatedly recommended by all commissions and reports for the past four decades.

Third, the finances of all political parties must be made transparent. This has also been repeatedly recommended over the last 40 years but the situation has gone from bad to worse with the introduction of the electoral bonds scheme.

What is likely to happen?

While the three actions are necessary to effectively deal with the problem of defections, realistically speaking, we must accept that these are not likely to happen – at least not in a hurry.

Political parties are not going to take these measures because it appears they are convinced that they are above the law of the land and no law applies to them.

This has been proved repeatedly such as when the Delhi high court held the Bharatiya Janata Party (BJP) and the Congress guilty of having violated the FCRA (Foreign Currency Regulation Act) in 2014 and directed action to be taken against them within six months of the decision. Not only was no action taken but the FCRA was amended three times, retrospectively.

Another instance is six national political parties blatantly refusing to comply with a full-bench decision of the Central Information Commission (CIC), the highest statutory authority in the country for implementing the Right to Information (RTI) Act, declaring these six parties as public authorities under the RTI Act in March 2013.

So, if political parties are not ready to take these three necessary actions, what about the last bastion of the people – the judiciary?

Rather than give an assessment, it is best to reproduce a paragraph from a Supreme Court judgment on August 10, 2021 on a related issue:

“This Court, time and again, has appealed to the lawmakers of the Country to rise to the occasion and take steps for bringing out necessary amendments so that the involvement of persons with criminal antecedents in polity is prohibited. All these appeals have fallen on the deaf ears. The political parties refuse to wake up from deep slumber. However, in view of the constitutional scheme of separation of powers, though we desire that something urgently requires to be done in the matter, our hands are tied and we cannot transgress into the area reserved for the legislative arm of the State. We can only appeal to the conscience of the lawmakers and hope that they will wake up soon and carry out a major surgery for weeding out the malignancy of criminalisation in politics.”

To go back 19 years, it is the same Supreme Court that had said in 2002:

“Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.”

The same Supreme Court which in 2002 issued “necessary directions to the Executive to subserve public interest” and woke up those who were in “deep slumber”, in 2021 found its “hands are tied”!

What more can be said?

Inconsistency in the Judiciary: A Tale of Two Judgments

This article was published in The Wire on 08th July 2022.

The Supreme Court's judgments in the cases of Zakia Jafri and Nupur Sharma are a study in contrast; one in which observations in court supplanted the main arguments of the petitioner, and the other, where the court proceedings were virtually left out.

The Supreme Court of India has been in the news of late, primarily for two judgments. The first came on June 24 in a case titled Zakia Ahsan Jafri versus State of Gujarat and another; and the second, on July 1, in a case titled N.V. Sharma versus Union of India and others.

While the latter was technically an order, for the sake of readability, both will be referred to as 'judgments'.

These two judgments are a study in contrast. In the former, the court goes out of its way to write things that might well have been mentioned during the court proceedings, but were certainly not the main contention; in the other, it refrained from writing what was actually said during the court proceedings. Let me explain.

The Zakia Ahsan Jafri judgment

The Zakia Ahsan Jafri vs State of Gujarat and another case (henceforth, Zakia Jafri) was a special leave petition (SLP), filed by Zakia Ahsan Jafri and Teesta Setalvad against the judgment and order passed by the Gujarat high court. The inclusion of Setalvad as a petitioner was objected to by the respondents and the court agreed to drop her as a petitioner.

In the normal course, the Supreme Court would be expected to either uphold the petition and grant the special leave to appeal; or reject or dismiss the petition and refuse to grant the special leave to appeal.

In this case, the court decided to grant the leave to appeal, "saying in paragraph 3 of the judgment: "In that light, we have granted leave to appeal and decided to examine the matter on merits at the instance of the appellant – Zakia Ahsan Jafri."

Examining "the matter on merits", the court, at the end of a 307-page judgment, said the following:

"Accordingly, we hold that this appeal is devoid of merits and resultantly, deserves to be dismissed in the aforementioned terms. We order accordingly. (Para 92)"

The judgment also has a 145-page annexure.

While holding that the "appeal is devoid of merits and resultantly, deserves to be dismissed" is fine, what is important is that the dismissal is "in the aforementioned terms". These "aforementioned terms", therefore, acquire great importance.

The judgment has been commented upon at great length by people who know the law much better than I do, such as a former judge of the Supreme Court; a lawyer who has been practising in the Supreme Court for many years; and also by a former bureaucrat. I will, therefore, not spend any time or space on that, but will confine myself to just a couple of points relevant to the essential thesis of this piece.

The following paragraphs or parts of paragraphs from the judgment need to be noted:

"The protagonists of quest for justice sitting in a comfortable environment in their air-conditioned office may succeed in connecting failures of the State administration at different levels during such horrendous situation, little knowing or even referring to the ground realities and the continual effort put in by the duty holders in controlling the spontaneous evolving situation unfolding aftermath mass violence across the State." (Italics supplied) (Paragraph 45).

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete" (Italics supplied) (Paragraph 45).

"The respondents had justly contended that the attempt of the appellant was to keep in improvising their grievances and make new allegations including to involve new offenders as being party to the larger criminal conspiracy hatched at the highest level. Appellant in filing the protest petition had the gumption to assert that the list of persons was not exhaustive besides naming new persons as offenders. In the name of protest petition (running into 514 pages), appellant was also indirectly questioning the decisions rendered by the Courts in other cases including sub judice matters, for reasons best known to her. She was obviously doing so under dictation of someone. In fact, the sizeable contents of the protest petition are founded on the affidavits filed by those persons, whose version have been found to be replete with falsehood" (Emphasis supplied) (Paragraph 79).

"Despite the humungous task undertaken by the members of the SIT with sincerity, objectivity and dispassionately including to the satisfaction of this Court in all these cases, the argument of the appellant was bordering on undermining the integrity and sincerity of the members of the SIT" (Emphasis supplied) (Paragraph 85).

"While parting, we express our appreciation for the indefatigable work done by the team of SIT officials in the challenging circumstances they had to face and yet, we find that they have come out with flying colours unscathed. At the end of the day, it appears to us that a coalesced effort of the disgruntled officials of the State of Gujarat alongwith others was to create sensation by making revelations which were false to their own knowledge. The falsity of their claims had been fully exposed by the SIT after a thorough investigation. Intriguingly, the present proceedings have been pursued for last 16 years (from submission of complaint dated 8.6.2006 running into 67 pages and then by filing protest petition dated 15.4.2013 running into 514 pages) including with the audacity to question the integrity of every functionary involved in the process of exposing the devious stratagem adopted (to borrow the submission of learned counsel for the SIT), to keep the pot boiling, obviously, for ulterior design. As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law" (Emphasis supplied) (Paragraph 88).

The following are a few amazing aspects of the judgment:

1. That the court knew what environment the supposed "protagonists of quest for justice" were sitting in;

2. That it knew how the minds of such “protagonists of quest for justice” worked, including how this mind “misled” itself;
 3. That if a petitioner or appellant asserts that something that an investigative agency had done was not exhaustive, the petitioner or appellant is said to have “had the gumption”;
 4. The court knew – though it does not say ‘how’ it knew – that the appellant “was obviously doing so under dictation of someone”. The honourable court did not feel the necessity of explaining what made this ‘obvious’.
 5. That it is an absolute no-no for any petitioner or appellant to question or attempt to “undermin(e) the integrity and sincerity of the members of any investigating authority.
 6. That proceedings lasting for 16 years is a rare event in the Indian judicial system.
 7. That submitting a “complaint running ... into 67 pages and then ... filing a protest petition ... running into 514 pages”, and “question(ing) the integrity of every functionary involved” in the investigative process shows the ‘audacity’ of the petitioner/appellant; which seems to be an extremely undesirable activity.
 8. That the honourable court knew that the above two activities were done “to keep the pot boiling, obviously, for ulterior design.” Again, the court does not disclose or explain what the “ulterior design” was.
 9. Following from the above, and “(a)s a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law.”
- It is left to the reader to decide if all of the above needed to be described in 307 pages while rejecting the appeal.

Two other points need to be noted about this judgment:

The first pertains to the observations of the Amicus Curiae (literally, a ‘friend of the court’). The dictionary definition of this phrase is: “A person, not a party to the litigation, who volunteers or is invited by the court to give advice upon some matter pending before it.”

In the present case, it was a senior advocate who had been invited by the court. The relevant paragraph from the judgment pertaining to the Amicus Curiae is reproduced below:

“The analysis and opinion of the SIT of the materials collected during investigation allegation-wise, witness-wise as well as, offender-wise are broadly agreed upon even by the learned Amicus Curiae – except the observations made regarding some matters, which observations have also been thoroughly enquired into by the SIT by way of further investigation and duly analyzed for recording its opinion (appended as Annexure-1 to this judgment), in the final report presented to the concerned Court” (Paragraph 81) (Emphasis supplied).

Annexure-1 has three paragraphs of immediate relevance to the Amicus Curiae. These are reproduced below:

“Shri Raju Ramchandran, Amicus Curiae has come to the conclusion that at this prima facie stage offences inter-alia u/s 153 A(1)(a) & (b), 153B(1) (c), 166 and 505(2) IPC are made out against Shri Narendra Modi (Page 423 of the judgment) (Emphasis supplied).

“Shri Raju Ramchandran, Ld. Amicus Curiae is of the view that a prima facie case u/s 153 A(1)(a) & (b), 153B(1)(c), 166 and 505(2) IPC is made out against Shri Narendra Modi, Chief Minister (Page 426 of the judgment) (Emphasis supplied).”

"It may be mentioned here that the Ld. Amicus Curiae has agreed with the various recommendations made by the SIT on the different issues inquired into/investigated by the SIT. However, the Ld. Amicus Curiae is of the view that at this prima facie stage offences u/s 153A(1) (a)& (b), 153B (1)(c), 166 and 505 (2) IPC are made out against Shri Narendra Modi regarding the statement made by him in the meeting on 27.02.2002. In this connection, as discussed, above SIT is of the view that the offences under the aforesaid sections of law are not made out against Shri Narendra Modi" (Page 428 of the judgment) (Emphasis supplied).

The judgment and the Annexure go to great lengths to explain how the SIT made further investigations after receiving the views of the Amicus Curiae and on the basis of these further investigations the SIT concluded that the view of the Amicus Curiae was not correct.

It is, once again, left to the readers to make up their mind about what to make of the importance or value of the Amicus Curiae in this case.

The second point to note arises out of a tradition of the higher judiciary in the country. It seems to be a well-entrenched tradition in the Supreme Court and the high courts that whenever a bench consists of more than one judge, and if the judges agree and issue a unanimous judgment, the name of the judge who actually writes the judgment is clearly stated, though all the judges constituting the bench sign the judgment.

To the best of the author's recollection, this tradition was first overlooked in the Ayodhya judgment, announced on November 9, 2019. This was a unanimous judgment from a bench of five judges, all of whom signed the judgment, but the name of the judge who wrote the judgment was not revealed.

The judgment under discussion, the Zakia Jafri judgment, appears to be the second judgment in the history of the Supreme Court not to reveal the name of the judge who actually wrote this unanimous judgment of a bench consisting of three judges.

The N.V. Sharma order

The N.V. Sharma versus Union of India and others case (henceforth referred to as the Nupur Sharma case, for reasons which will be evident soon) was a plea filed by Sharma to transfer FIRs registered against her in different parts of the country, to Delhi.

The very first question asked by the court was, "Why is she here under a deceptive name?" The response of the lawyer was, "she has threat ...". This is what clarified that 'N.V. Sharma' was a kind of pseudonym for Nupur Sharma.

Starting with this first question, the court continued to make observations and ask questions, some of which are worth reproducing.

"She has threat or she has become security threat? The way she has ignited emotions across the country. This lady is single-handedly responsible for what is happening in the country."

"We saw the debate on how she was incited. But the way she said all this and later says she was a lawyer it is shameful. She should apologise to the whole country."

When the lawyer representing Sharma said, "FIR was in Delhi first...", the court asked

"What has Delhi police done? Don't make us open our mouth. What was the TV debate for? Only fan an agenda? Why did they choose a sub judice topic?"

"These acts are done by people who are not religious at all."

The lawyer said, "She will be called to magistrate court now...", the court responded:

"Her remarks show her obstinate and arrogant character. She should go to those courts."

"What if she is the spokesperson of a party. She thinks she has back up power and make any statement without respect to the law of the land."

The lawyer interjected, "There was a question by the anchor to which she responded ...", to which the court's response was:

"There should have been a case against the host then."

The lawyer, again, tried to explain, saying, "But there was no intention. It was again and again said that the 'Shivling' was just a fountain or a fawarra. This was said by the debater on the other side and not the anchor ... If this is the position, then every citizen will have no right to speak."

The Court responded by saying:

"In a democracy everyone has a right to speak. In a democracy, grass has right to grow and donkey has the right to eat."

The lawyer then read out the names of states where the FIRs against Sharma had been registered. These stretched from Delhi to Mumbai, Nagpur to Jammu and Kashmir, among other states. He then read out parts of the Arnab Goswami judgment on how journalistic freedom needs to be protected.

The Court's response to this was:

"There is nothing like that principle of law laid down which you wish to submit."

The lawyer then read parts of the T.T. Antony judgment on the aspect of multiple criminal proceedings on the same cause of action. Only the first information about a cognisable offence can be the source of Section 154 and thus no second FIR.

To this the Court's response was:

"Thus you have the remedy and you can approach the High courts concerned in this case and cite this law."

The lawyer then said, "it was only for one single episode. Here law laid down is for all citizens."

To this the Court responded, saying

"Not all citizens, here a special treatment was meted out to an individual."

The lawyer maintained, "Multiple FIR on the same incident cannot happen...". The Court's riposte was:

"The freedom of a journalist cannot be equated to that of a political spokesperson who is making statements on television and ignites emotions across the country."

The lawyer insisted, "But the fundamental rights ... here it was only one incident. There was only one FIR in Delhi". Again, the Court asked:

"What happened in that FIR?"

"She has joined probe", informed the lawyer. The Court asked further:

"Then what happened? There must have been red carpet for you. A red carpet!"

The lawyer tried to explain again, "Even Satinder Singh Bhasin got a similar treatment where similar FIRs were clubbed. He was a businessman and not a journalist. He was not put in double jeopardy with respect to T.T. Antony case."

Finally, the Court agreed:

"Yes...yes..."

The lawyer tried to press home the apparent advantage of the agreement, saying, "This court has laid down a yardstick for multiple FIRs. Treatment of law should be equal."

The Court did not take the bait, saying:

"When you register a FIR against someone then they are arrested but not you. This shows your clout."

"Sorry if the conscience of this court is not satisfied then law can be moulded accordingly."

The lawyer finally gave up, saying, "Then I will withdraw the plea," And the Court agreed, saying: "We allow the withdrawal."

What makes this case special, as compared to Zakia Jafri, is that after all this discussion, the Order issued by the court read as follows:

"Learned senior counsel for the petitioner seeks and is permitted to withdraw the present writ petition with liberty to avail the alternate remedies available under the law. The writ petition is dismissed as withdrawn."

In conclusion

This is why taken together, these two judgments show remarkable inconsistency in the approach of the Court. The judiciary's reluctance to deal with cases having political ramifications is not new. It was commented on specifically even in 2016, and then in 2018 in the context of reducing criminalisation of politics in the country.

But as recently as July 1, 2022, a new factor has come into play. Chief Justice of India (CJI) N.V. Ramana, speaking at a felicitation event organised by the Association of Indian Americans in San Francisco, referred to the "the vigorously promoted ignorance among general public" and the "flawed thinking of all hues flourish(ing) in the absence of proper understanding among people about the Constitution and the functioning of the democratic institutions" particularly among political parties, both "(t)he party in power" and "(t)he parties in opposition."

CJI Ramana's actual words were:

"As we celebrate 75th year of Independence this year and as our Republic turned 72, with some sense of regret I must add here that we still haven't learnt to appreciate wholly the roles and responsibilities assigned by the Constitution to each of the Institutions. The party in power believes that every Governmental action is entitled to judicial endorsement. The parties in opposition expect the judiciary to advance their political positions and causes. This flawed thinking of all hues flourishes in the absence of proper understanding among people about the Constitution and the functioning of the democratic institutions. It is the vigorously promoted ignorance among general public which is coming to the aid of such forces whose only aim is to run down the only independent organ."

The CJI further asserted that the judiciary is "answerable to the Constitution and the Constitution alone" and went on to add, "To enforce checks and balances envisioned in the Constitution, we need to promote Constitutional culture in India. We need to spread awareness about the roles and responsibilities of individuals and institutions. Democracy is all about participation."

It now remains to be seen if the CJI converts his words into action!

Should electoral ID data be linked to Aadhaar?

This article was published in Down To Earth on 15th January 2022.

Correcting electoral rolls in a society like India's has to be done the hard way — going door to door. Quick fixes and tech solutions like Aadhaar can do more harm than good

The issue of linking India's voters' list with the Aadhaar database is in news again with the surreptitious passage of The Election Laws (Amendment) Bill, 2021 in Parliament recently. The fact that it was passed hurriedly with hardly any discussion is enough to raise suspicion. But there is more to it, and part of that is contained in the history of this idea.

That history began March 3, 2015: The Election Commission of India (ECI) launched "a comprehensive programme" — the National Electoral Roll Purification and Authentication Programme (NERPAP) — "with the prime objective of bringing a totally error-free and authenticated electoral roll".

One of the stated objectives of the NERPAP was linking EPIC (Electoral Photo Identity Card) data with the Unique Identification Authority of India's (UIDAI) Aadhaar data with the laudable objective of authenticating the EPIC data.

The ECI took up this programme with a lot of enthusiasm. By August 2015, when the Supreme Court ordered a ban on this linking, 320 million voters had already been linked to their Aadhaar IDs.

The ECI apparently believed (and seems to still do) that such a linkage would enhance the credibility of electoral rolls. Given that the reliability of Aadhaar itself has been (and still is) under cloud, it is hard to understand the ECI's faith in it.

Doubts over the efficacy and intent of the NERPAP drive, ostensibly to create "a totally error-free and authenticated electoral roll", resurfaced in early 2018: Missing voters were discovered in some states, starting with Karnataka where the names of some 6.6 million voters of a total 50 million had gone missing. More than 1.5 million names were reportedly restored after the Election Commission ran a verification drive.

This is why there is a very serious apprehension that the linking of electoral roll data with Aadhaar may result in the disenfranchisement of legitimate voters.

The usual remedy that is touted officially — that anyone who thinks her / his name has been inappropriately removed from the elector roll, can always approach the ECI for reinstatement of the name — does not carry much weight for a simple reason: Not everyone whose name was, or is, deleted due to infirmities in the Aadhaar ecosystem, which are by now well-known, will or can approach the ECI for re-enrolment.

Given that deprived sections of society are usually the worst hit by such exclusion, many won't have the wherewithal to even approach the ECI. This apprehension of disenfranchisement acquires sinister undertones if some of these deletions are systematic bids to deprive specific groups of their voting rights, as has been mentioned as a possibility.

There is more in the history of this attempted linkage. Two former chief election commissioners (CEC) have been quoted as saying, on conditions of anonymity, that the UIDAI had lobbied long and hard to link voter IDs and Aadhaar as a way to legitimise the controversial biometric ID project.

"They said we should integrate Aadhaar with electoral rolls to eliminate duplicates; the Commission held the view that we should hold off until we fully understand the implications," said one of these former CECs.

Finally, the EC seems to have succumbed in February 2015 when HS Brahma was CEC, and the exercise was launched in March 2015.

The Supreme Court in its August 2015 interim order restricted the use of Aadhaar to the Public Distribution System (PDS), and the distribution of liquefied petroleum gas and kerosene, thus putting a stop to the ECI's much-touted scheme. In its final order in September 2018, the apex court held privacy a fundamental right and said linking of Aadhaar with voters' ID data could not be done unless there is a specific law subject to certain conditions such as a specific interest of the state, and the test of proportionality is satisfied.

This is why the ECI wrote to the Union law secretary in August 2019, proposing amendments to the Representation of People Act (RP Act) and the Aadhaar Act to empower it to collect and use Aadhaar data for "cleaning" voters' lists as a "back-end exercise".

To create a semblance of following the Supreme Court judgment, and to create a paper trail to prove the same, the Union law ministry wrote a pro-forma letter to the ECI asking it to explain how it had ensured that the Supreme Court's order is not violated.

However, the ECI and the Law Ministry need to remember that the court said: "We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory ..." (emphasis added). The court also added: "No deserving person will be denied service for failure of authentication."

Therefore, if, in the implementation of the amended RP Act, even one eligible voter is prevented from casting her / his vote, the ECI will risk the possible consequence of violating a specific direction of the highest court of the land.

Then there is also a fundamental conceptual inconsistency in combining these two databases. Aadhaar — as has often been pointed out even by government authorities — was designed as, and is, a proof of identity; if stretched further, it's a proof of residence. On the other hand, the registration of a person as a voter is a proof of citizenship which confers on the holder the right to vote.

Claiming that combining these two will improve the accuracy of one, particularly when the other one is also not error-free, is something quite strange.

There are also two practical considerations which go against this proposal. One is the difficulty or at least uncertainty of matching one's finger prints or iris impression. This is a common experience which this writer has personally faced several times.

Imagine an illiterate voter at a remote village being asked by the polling officer to show her Aadhaar and to verify finger prints or iris; she then is told these do not match, thus she is not allowed to vote.

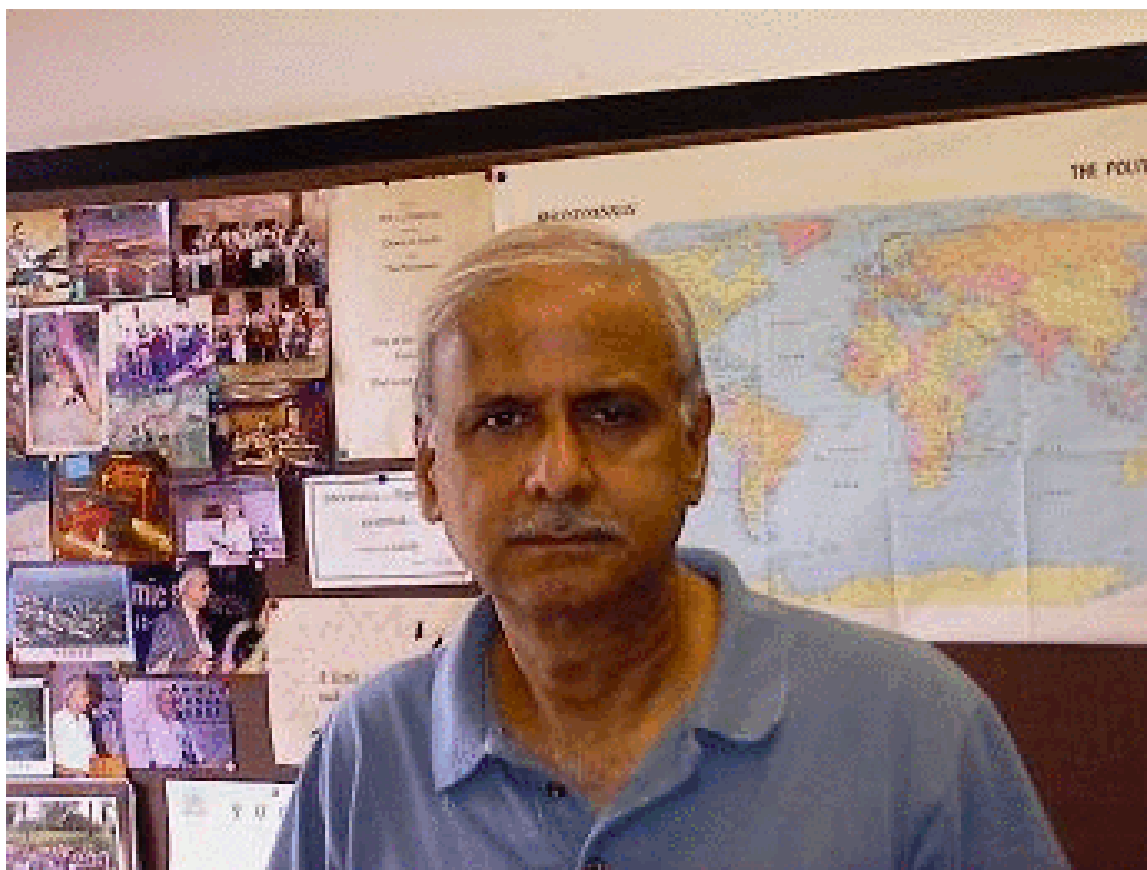
It is not difficult to replicate the scenario in slums and some other groups which can be easily identified and differentiated — remember "systematic bids to deprive specific groups of their voting rights"?

The other is a common sight in cities where one sees auto-rickshaws with stickers proclaiming 'Get Aadhaar Made in 5 Minutes'. Doesn't it speak volumes of the accuracy and reliability of Aadhaar? And there are still people who believe that such a scheme can verify, authenticate, de-duplicate, and purify the electoral rolls!

Correcting the electoral rolls is one of the most important tasks that the ECI is mandated to do. The only way it can be done in a society such as India is the hard way, by actually going from door to door. The ECI's quest for quick fixes and technical solutions such as the Aadhaar ecosystem are likely to do more harm than good.

Another possibility is that the ECI is under pressure to do this, not an end in itself, but as a preparatory step to pave the way for other ambitions of the government of the day such as simultaneous elections or one-nation-one-election, which was discussed for almost three years with no acceptable consensus.

In sum, linking the electoral roll data with the Aadhaar data set is not a good idea and should not be done.



There's Not Much to Celebrate in EC Saying Candidates Have to Declare Criminal Records

This article was published in The Wire on 12th January 2022..

All that the announcement does is to follow exactly what several judgments of the Supreme Court have ordered.

The announcement of the schedule for elections for five state assemblies was a much anticipated event. What attracted attention of some observers was the inclusion of requirements for disclosure of criminal antecedents by candidate and political parties who sponsor them. A tweet by someone with over 8,500 followers is representative:

"Candidates with criminal antecedents will have to publish their crime records in newspapers etc. 3 times before the poll: CEC

Also, political parties will have to give a list of candidates with criminal antecedents in home page of their websites. Also, reasons of their selection."

This appears at pages 21 to 24 of the 92-page press note issued by the Election Commission of India (ECI) and is numbered as items 21 and 22. As the press note correctly mentions, this is in compliance of three judgements/orders of the Supreme Court on February 16, 2018, September 25, 2018 and August 10, 2021. These cases were filed in 2011, 2015 and 2018.

The origins

This long and continuing saga started with the filing of a PIL by the Association for Democratic Reforms (ADR) in the Delhi high court in 1999, requesting that candidates contesting elections to parliament and state assemblies who have criminal cases pending against them be required to disclose these while filing their nomination papers. The high court, in a judgement given on November 2, 2000, accepted the request and ordered that all candidates contesting MP and MLA elections will be required to file a sworn affidavit as a necessary part of their nomination papers, declaring criminal cases pending against them.

The high court's decision seemed unacceptable to the government of the day, so the Union of India filed a Special Leave Petition (SLP) against the high court's judgment in the Supreme Court. Several political parties became interveners to the case in support the government, claiming that it was a legislative matter and the judiciary has no jurisdiction to interfere in the matter. The Supreme Court in its judgment delivered on May 2, 2002 upheld the high court judgment, saying:

"Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest."

Even this was not acceptable to the political establishment. An all-party meeting was held in which it was decided that the high court and Supreme Court judgments will not be allowed to be implemented and the Representation of the People Act (RP Act) will be amended, in that very session of parliament, for this purpose. A draft Bill for this was prepared but could not be introduced in the parliament because of disruptions and then an adjournment due to what came to be known as the petrol pump scam. The cabinet then decided to promulgate an ordinance to achieve the same purpose.

The ordinance was sent to the president for signature, but the president returned the ordinance without signing it. The cabinet then sent it to the president again, exactly in the same form, and following the established convention, the president had to sign it. The RP Act, thus, stood amended and the Supreme Court judgment was rendered ineffective.

Three PILs were filed in the Supreme Court challenging the constitutional validity of the amendment of the RP Act. The Supreme Court, in a landmark judgment delivered on March 13, 2003, declared that the amendment of the RP Act “does not pass the test of constitutionality” and “has resulted in the violation of guarantee under Article 19(1)(a)”. Article 19(1)(a) is the Fundamental Right “to freedom of speech and expression”.

This is how criminal antecedents of candidates contesting elections to parliament and state assemblies came to be known to voters.

How it evolved further

The next stage in this saga began in 2011, when a civil society organisation called Public Interest Foundation filed another PIL in the Supreme Court seeking decriminalisation of politics and requesting the Supreme Court to “(a) lay down appropriate guidelines/ framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections; and (b) lay down a time frame of six months during which trial of such persons are concluded in a time bound manner;” among some other requests.

The Supreme Court issued an order on March 10, 2014, directing that cases against MPs and MLAs be tried “as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s)”.

In the meanwhile, a PIL filed in 2005 came to be decided on August 27, 2014. The case was *Manoj Narula vs Union Of India*. It was filed “assailing the appointment of some of the original respondents as Ministers to the Council of Ministers of Union of India despite their involvement in serious and heinous crimes”. Originally, the PIL was heard by a three-judge bench headed by the then chief justice, and on March 24, 2006, it was decided that “Having regard to the magnitude of the problem and its vital importance, it is but proper that the petition is heard by a Bench of five Judges.”

Thus, it is the five-judge bench that gave the judgment in August 2014. The majority judgment of three judges left it “to the wisdom of the Prime Minister”, while saying that the prime minister “can always be legitimately expected (to) consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers”, and also adding that it “is the constitutional expectation from the Prime Minister”.

There were two other separate but concurring judgments in which one of the judges considered it “...the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution,” and the advice given was that “the Prime Minister and the Chief Minister of the State, ...will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951”.

Now, to the current situation

Then came an important judgment on September 25, 2018, again in a Public Interest Foundation case. There are two important features of this judgment. One, despite overwhelming evidence, the court shied away from saying that candidates who had criminal cases pending against them for some specified heinous offences be barred from contesting elections, subject to some safeguards, and two, this was the judgment that put the system on the path of candidates and political parties advertising pending criminal cases. Both these issues have been commented on in detail in *The Wire* on September 25, 2018, and on October 12, 2018.

To reiterate, it was pointed out, especially in the piece on October 12, 2018, that (a) the directions requiring candidates and parties putting out advertisements in newspaper disclosing pending criminal case were not likely to be of much help, and (b) the only way to reduce, if not eliminate, criminals getting into legislatures was to bar such people from contesting elections, which the Court declined to do citing jurisdictional issues. In the process it ignored its own ruling of 2002 wherein it said:

“Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to sub-serve public interest.”

While stopping short of doing what actually requires to be done, the judgment seems to have a lot faith in its own wishes and desires. Following are just two samples of its expectations:

“117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the concerned authorities. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that —“we shall be governed no better than we deserve”, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy” (Emphases added).

“118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by the Parliament through appropriate legislation.

The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonized when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even conceive of the idea of entering into politics. They should be kept at bay" (Emphases added).

After expressing all its hopes and aspirations, the judgement ends on a pious note:

"We are sure, the law-making wing of the democracy of this country will take it upon itself to cure the malignancy. We say so as such a malignancy is not incurable. It only depends upon the time and stage when one starts treating it; the sooner the better, before it becomes fatal to democracy. Thus, we part."

Reality unfolds

The denouement of all the pious hopes started on November 27, 2018, when a contempt petition was filed by one Rambabu Singh Thakur against the then chief election commissioner and several others raising "grave issues regarding the criminalisation of politics in India" and bringing to the attention of the court "a disregard of the directions of a Constitution Bench of this Court in" the judgment on September 25, 2018.

The judgment in this case was announced on February 13, 2020, wherein the court noted that "the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates in the first place" and issued detailed directions on the way (a) political parties, giving tickets to candidates with criminal cases pending against them, should give reasons for giving tickets to such persons; (b) how parties should publish these explanations in the mass media, including social media; and most importantly, (c)) "the reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere "winnability" at the polls."

Where are we now?

It fell to a public-spirited advocate practising in Delhi but originally hailing from Nalanda district of Bihar to take this activity forward. Brajesh Singh filed a contempt petition on November 6, 2020, also against the then chief election commissioner and several others, bringing "to the notice of this Court the flouting of its directions given vide Order dated 13.02.2020". The contempt petition was based on state assembly elections held in October/November 2020. The judgement of this petition came on August 10, 2021. It is quite amazing to see that the court took another significant step forward but refrained from dealing with the issue properly, for which there is only one way, as we shall see a little later.

First the step forward. The court held eight political parties guilty of contempt of court and fined six of those parties Rs 1 lakh each, and the remaining two Rs 5 lakh each. The cause of the contempt was that the parties had given (a) tickets to persons who had criminal cases pending against them, and (b) flimsy and non-convincing reasons for giving tickets to such persons. Parties fined Rs 1 lakh each were Janata Dal United, Rashtriya Janta Dal, Lok Janshakti Party, Indian National Congress, Bharatiya Janata Party, and the Communist Party of India. Parties fined Rs 5 lakh each were the Communist Party of India (Marxist) and the Nationalist Congress Party.

While fining political parties must be commended, it is worth reflecting on whether the amounts of money levied as fine would (a) have any adverse financial impact on the parties, and (b) the amounts will work as deterrents enough to encourage parties not to indulge in such blatant defiance of the orders of the highest court in the land.

Practicability

While we do commend the court for the act of levying fines on political parties, the practicability of the implementation of the directions of the court, and more importantly, monitoring the implementation, must be given very serious thought. The judgment itself refers to it, almost in passing, when it says that “Arguments have been advanced before us with regard to the practicability of implementation of the direction contained in paragraph 4.4” (Para 30).

Some of the factors that make satisfactory monitoring, even on the part of the Election Commission, extremely difficult, if not impossible, are also described in the piece published in The Wire on October 12, 2018 which has been referred to earlier.

Avoiding the obvious

The following excerpts from the judgment deserve careful reading:

“The nation continues to wait, and is losing patience. Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government” (Para 17).

“The Constitution Bench therefore observes that though criminalisation in politics is a bitter manifest truth, which is a termite in the citadel of democracy, the Court cannot make law.” (Para 50).

“In paragraph 107, the Constitution Bench recommends that Parliament bring out a strong law whereby it is mandatory for the political parties to revoke membership of persons against whom charges are framed in heinous and grievous offences and not to set-up such persons in elections.” (Para 51).

“No one can deny that the menace of criminalisation in the Indian political system is growing day by day. Also, no one can deny that for maintaining purity of political system, persons with criminal antecedents and who are involved in criminalisation of political system should not be permitted to be the law-makers” (Para 71).

“This Court, time and again, has appealed to the law-makers of the Country to rise to the occasion and take steps for bringing out necessary amendments so that the involvement of persons with criminal antecedents in polity is prohibited. All these appeals have fallen on the deaf ears. The political parties refuse to wake up from deep slumber” (Para 72).

The reader would recall that very similar sentiments were expressed by the court in its judgment of September 25, 2018, mentioned above, including some pious hopes.

The above statements need to be read with or contrasted with the following:

“... The Constitution Bench after elaborately considering the said issue, held that issuing such a direction would amount to entering into the legislative arena and as such, such a direction could not be issued. In our view, in the teeth of the observations made by the Constitution Bench in paragraph 96, though some suggestions made by Shri Viswanathan are laudable, it will not be possible for us to accede to them” (Para 53).

“The only question is, whether this Court can do so by issuing directions which do not have foundation in the statutory provisions” (Para 71).

“However, in view of the constitutional scheme of separation of powers, though we desire that something urgently requires to be done in the matter, our hands are tied and we cannot transgress into the area reserved for the legislative arm of the State. We can only appeal to the conscience of the law-makers and hope that they will wake up soon and carry out a major surgery for weeding out the malignancy of criminalisation in politics” (Para 72).

At the risk of crossing a Lakshman Rekha, it must be said that it is beyond comprehension that a court which can be so sagacious and perceptive as to write that “The political parties refuse to wake up from deep slumber”, is not able to discern that it, itself, seems to be in deep slumber by repeatedly ignoring a settled principle in law “filling in the gap or vacuum in legislation” which has been very well elaborated in a judgment of this very court, of May 2, 2002.

The last word

Finally, to come back to the announcement of the Election Commission of India that we started with. All that the announcement does is to follow exactly what several judgments of the Supreme Court have ordered. It must, however, be noted that all the judgments referred to (a) do not seem to be on a firm footing as far as implementation is concerned; (b) will be very difficult, if not impossible, to implement; and (c) in the light of (a) and (b), do not, and cannot, achieve the objective of at least reducing, if not completely eliminating the adverse impact of criminality on the political and electoral systems in the country.

The highest court in the country has to match the confidence and public-spiritedness that it displayed in 2002, if a dent has to be made to purify the politics and elections in the country. Repeatedly appealing to the legislature is not going to get us anywhere.

Migrant Worker Crisis: The Supreme Court Has Abdicated All Responsibility

This article was published in The Wire on 19th May 2020.

In a petition seeking to mitigate the miseries of migrant workers, the top court also indulged in what under normal circumstances would be considered frivolous talk.

"How can we stop migrants from walking", the Supreme Court is reported to have asked on May 15, 2020. The questions seemed quite incongruous on the face of it but bordered on being bizarre when seen in the light of a statement made by the solicitor general (SG) of India in the Supreme Court on March 31, 2020, that "there is no person walking on the roads in an attempt to reach his/her home towns/villages". This was reportedly said while filing an affidavit on behalf of, none other than, the Union of India!"

Some other reportage of the same event also had SG Tushar Mehta saying, "I have instructions to state that no one is now on the road. Anyone who was outside has been taken to the available shelters". The same report also quoted him as having said, "Home Secretary makes an official statement on record to say 'as of 11AM on March 31, nobody is in the road. They have all been taken to the nearest shelter available'".

This happened in the context of a petitioner seeking to mitigate the misery of thousands of migrants who were walking long distances on highways to go to their villages because there were no jobs, no place to stay, and no money to buy food, and no reliable means of transport. The three-judge bench said, "it was not possible for the court to monitor who is walking and who is not walking".

The response of the SG was, of course, self-assuring. He said, "states are providing interstate transport. But if people get angry and start on foot instead of waiting for the transport to be provided nothing can be done. We can only request that people should not walk. Using force to stop them would be counterproductive".

While the SG argued that using force "would be counterproductive", the chief minister of the most populous state of the country directed district administrations to form special police teams to stop migrant workers from travelling on their own.

The bench also indulged in what, under normal circumstances, would be considered frivolous talk, usually not expected in such a setting when one of the judges "asked the petitioner whether he was willing to go and implement government directives if the Court grants him special pass". When the issue of 16 migrants being run over by a goods train while they were sleeping on the railway tracks, on May 8, was raised, the bench said, "How can anybody stop this when they sleep on railway tracks?".

This last remark not only displayed the lack of sympathy for the victims of the tragedy, it also betrayed the fact that the judges had, at least temporarily, overlooked a law which first came into existence as far back as, and has been on the statutes since 1890. It is called the Railways Act. It was last revised in 1989. Section 147 of the Railways Act, 1989, reads as follows:

"147. (1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid."

The existence of such a provision in law is only incidental.

The proceedings of the petition, excerpts of which are mentioned above, and of several others on the issue of migrants walking home, are indicative of the attitude of the judges towards these unfortunate citizens of the country. Two observations of the bench, one asking the petitioner if "he was willing to go and implement government directives...", and on the 16 persons being run over while asleep on the railway tracks, are examples of the callousness and indifference with which the issue of migrants seems to have been dealt with by the apex court.

This mindset seems to have been abetted by the solicitor general, who not only considers public interest litigations (PILs) anathema but is also thoroughly disapproving of citizens who file PILs. What is disturbing, indeed shocking, is that various benches of the apex court have accepted some statements made by the solicitor general which are patently contrary to the facts on the ground.

The most amazing instance of this is the statement about there being "no person walking on the roads in an attempt to reach his/her home towns/villages," which seemed to have been believed by the bench without any doubt or demur, at a time when photographs and videos of hoards of migrants walking on the roads were being widely shown by both, the print and the audio-visual, media.

As a matter of fact, the director general of police of UP was quoted as saying that "the number of people who are moving is huge", as late as May 17, 2020. A headline on May 18, 2020, is quite revealing: "Protest by migrants stokes traffic chaos after UP govt seals borders". Yet another report illustrates the desperation of the migrants, "Covid-19 lockdown: Migrants stranded in Haryana cross Yamuna to reach Uttar Pradesh".

Petitions related to migrants are not the only instance of the apex court appearing to abdicate its authority in deference to the executive. A recent order of the court on the issue of restoration of 4G internet services in Jammu and Kashmir, is a graphic example of that. Responding to a plea for the restoration of 4G internet services, the court decided "to constitute a Special Committee comprising of the following Secretaries at national, as well as State, level to look into the prevailing circumstances and immediately determine the necessity of the continuation of the restrictions in the Union Territory of Jammu and Kashmir...The Special Committee is directed to examine the contentions of, and the material placed herein by, the Petitioners as well as the Respondents. The aforesaid Committee must also examine the appropriateness of the alternatives suggested by the Petitioners, regarding limiting the restrictions to those areas where it is necessary and the allowing of faster internet (3G or 4G) on a trial basis over certain geographical areas and advise the Respondent No. 1 regarding the same, in terms of our earlier directions".

The order is peculiar for many reasons but two stand out. One, it violates one of the fundamental principles of natural justice, *nemo iudex causa sua*, which means "no one can be a judge in his own case." By setting up a committee of secretaries to "determine the necessity of the continuation" of the ban on 4G services, the court has authorised pretty much the same people to take a decision which they, themselves, had made!

Two, the order is peculiar also in the sense that while it does ask the committee of secretaries to "determine the necessity", but it is not at all clear about what will they do after they "determine the necessity."

A national daily has expressed strong views on this order: "But the SC order is also troubling because it appears to be part of a broader pattern of delay and evasion, and passing the buck, in cases that touch upon fundamental rights and crucial policy issues..." (emphasis added).

What is the Supreme Court missing?

The first thought that comes to mind is the well-known "Gandhi's Talisman". This is what the Mahatma said:

"I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to swaraj [freedom] for the hungry and spiritually starving millions?

Then you will find your doubts and your self melt away."

When the court speaks about the unfortunate migrants walking on the highways in a disparaging tone, it is difficult to believe that the court remembers the Mahatma's Talisman.

Given that Mohandas Karamchand Gandhi gave his talisman in a letter to a friend, who was tormented by doubts, many decades ago, the fact that the bench may have overlooked this can be understood. There is, however, an event which occurred not too long ago, on May 6, 2020, to be precise. It was the first "virtual" farewell in the history of the Supreme Court. Justice Deepak Gupta was the retiring judge and he made some significant observations in his farewell speech. Some parts of his speech are worth reproducing in full:

"In addition to being independent, honest and courageous, the judiciary must also be humane and compassionate.... A compassionate superior judiciary which lives up to the principles enshrined in the Preamble to the constitution to provide justice – social, economic and political, and to ensure the dignity of the individual, is something which we all must strive for."

"In this battle between the rich and powerful on the one side and the voiceless, poor and downtrodden on the other, the scales of justice can never be balanced equally. One cannot equate apples with oranges. If real justice has to be done then the scales of justice have to be weighted in favour of the underprivileged."

"(I)n the present day and age judges cannot live in ivory towers but must be aware of what is happening in the world around them. The scales of justice to be really equal, must, in fact, be balanced in such a way that the poor and the underprivileged are not denied justice" (emphasis added).

If the apex court benches had shown some humaneness and compassion while dealing with our, and their, migrant compatriots, perhaps the pronouncements might have been different.

The saving grace

While the migrants walking home seemed doomed because of the strange attitude of the apex court, hope has come from the high courts. First off the block was the Orissa high court, which took up the issue of migrants on May 7, 2020. This decision was, however, stayed by the Supreme Court on May 8, 2020. This was followed by the Gujarat high court, which took suo motu notice of newspaper reports on May 11, 2020.

These were followed by the Andhra Pradesh high court and the Madras high court, both on May 15, 2020. Both, these courts have asked some very relevant and searching questions of the state as well as the Central governments.

The Madras high court, for example, has asked the Union of India, represented by its secretary, Ministry of Home Affairs, New Delhi; and the government of Tamil Nadu, represented by its chief secretary, Chennai, to respond to the following questions by May 22, 2020:

- “1. Whether any data is being maintained by the Government of India regarding the details of migrant workers working in each State/Union Territories in India?
2. If so, what is the number of migrant workers in each State/Union Territories in India and the details regarding their nativity?
3. What is the number of migrant workers stranded in each State/Union Territories in India as on today?
4. What are all the assistance provided to those migrant workers by the respective States as well as the Union Government?
5. Whether those migrant workers are allowed to cross the State borders or prevented from crossing the borders and if they are prevented, whether they are provided with basic amenities such as food, shelter and medical assistance?
6. How many migrant workers died on their way to the native States?
7. To which States/Union Territories, the deceased workers belong to?
8. What are the relief measures/compensation provided to the families of those migrant workers who lost their lives on their way back to their native States?
9. How many migrant workers in each State/Union Territories have been evacuated from their working States to their native States through buses/trains throughout India?
10. What are all the steps taken to transport the remaining people to their native States?
11. Whether migration of people is one of the reasons for spread of Covid-19?
12. Whether the Central Government has instructed the respective States/Union Territories to provide financial assistance, job opportunities in their native State/Union Territories for the labourers who migrated from other States?”

It is this kind of questioning that can make the executive accountable for its responsibilities towards “the poorest and the weakest man” of Mahatma Gandhi.

One hopes these high courts will be allowed to continue their proceedings without any interference from any quarters!

Why the Solicitor General Is Wrong to Call for PILs to Be Scrapped

This article was published in The Wire on 05th May 2020.

Tushar Mehta's remarks calling public interest litigations "self-employment generating petitions" sound like a complete and summary rejection of the concept and reek of contempt.

One of the Indian government's senior-most legal officers, solicitor general Tushar Mehta said in the Supreme Court on April 3, 2020, that "'professional PIL shops' must be locked down." This has created some concern in the country whether PILs (public interest litigations) are indeed "detrimental to the entire country".

The solicitor general did not limit his comments to the "professional PIL shops" but also went on to comment on the petitioners and reportedly said, "none of the petitioners have even bothered to serve the poor and needy or the persons suffering from the virus and, therefore, can never be treated as 'public spirited citizens'." He also expressed concern that the precious time of government officers was being wasted in "preparing replies to frivolous PILs".

The same stance was repeated before the Supreme Court on April 15 when the solicitor general said, "These are self-employment generating petitions. This court should not entertain such petitions. I have serious reservations regarding the kind of petitions that are landing before the court during these times."

The origin of PILs

It may be worthwhile to recount briefly how the concept of PILs came to Indian jurisprudence. It started in 1979 with a lawyer by the name Pushpa Kapila Hingorani who filed a habeas corpus petition on behalf of undertrial prisoners in Bihar in the Supreme Court. The case came before a bench headed by Justice P.N. Bhagwati, and came to be known as the Hussainara Khatoon case, 1979, and resulted in the release of all the undertrials in Bihar, and subsequently about 40,000 undertrials all over the country. Kapila Hingorani came to be known as the 'Mother of Public Interest Litigation' in India.

However, it was in the S.P. Gupta vs President of India And Ors. Case, in a judgment written by Justice P.N. Bhagwati, and pronounced on December 30, 1981, that the concept of PILs was discussed in detail for the first time. The section of the discussion about PILs covered 11 pages and 12 paragraphs of the 488-pages judgment, and concluded with:

"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective" (Para 22).

The judgment did not overlook frivolous PILs, and quoted a professor of law as saying, "The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room".

Misuse of PILs

Starting with considerable goodwill generated by judgments by Justice P.N. Bhagwati and the redoubtable Justice V.R. Krishna Iyer, in 1979-81, it did not take too long for unscrupulous elements to discover, and start exploiting, the potential of PILs. It was during the period 1981-88 that expressions such as private interest litigation, personal interest litigation came into circulation.

As this phenomenon of misuse of PILs continued to increase, the Supreme Court decided to frame a compilation of guidelines to be followed for entertaining letters/petitions received in the court as Public Interest Litigation, in December 1988. This was subsequently expanded twice, in August 1993 and in August 2003.

The issue of possible misuse of PILs has been discussed in some detail in two Supreme Court judgments: one in 2010 – State of Uttaranchal vs Balwant Singh Chaufal and Others – Civil Appeals Nos. 1134-35 of 2002 decided on January 18, 2010; and the other in 2018 – Tehseen Poonawalla vs Union of India and Anr, Writ Petition (Civil) No. 19 of 2018, and Other Petitions decided on April 19, 2018.

The 2018 Tehseen Poonawalla judgment, written by Justice D.Y. Chandrachud, has a separate section on PIL consisting of four paragraphs. It is significant that the 2018 judgment quotes two paragraphs from the Balwant Singh Chaufal (2010) judgment. This is what that paragraph says:

“161. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged.” (emphasis added)

“162. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non- monetary directions by the courts.”(emphasis added)

There is a distinct difference in the tenor between the statements made the solicitor general and in the judgement. While the above paragraph acknowledges that “genuine and bona fide public interest litigation must be encouraged”, the solicitor general’s reference to “professional PIL shop” which are “detrimental in the entire country” sounds like a complete and summary rejection of the concept of public interest litigation. Some of his remarks are very close to being contemptuous of the concept, particularly when he refers to them as “self-employment generating petitions”, and makes an unqualified recommendation to the court “This court should not entertain such petitions.” Even the expression “PIL Shops” is derogatory and reeks of contempt.

The stance of the solicitor general appears to be consistent with what his senior, the attorney general, told the Supreme Court in April 2019, during the hearing of another PIL related to electoral bonds. When asked that with the opacity of electoral bonds, voters will not know where political parties get their money from, the attorney general said, “Voters have a right to know what? Voters don’t need to know where the money of political parties comes from”.

Such persistent stands by the highest legal officers of the government give the impression that a concerted effort by the government, through the legal officers, to restrict access to judicial remedies for the common folk is underway. This is in direct contrast to the logic underlying the concept of public interest litigation outlined in the S.P. Gupta case in 1981:

"This question is of immense importance in a country like India where access to justice being restricted by social and economic constraints, it is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to Justice and promote public interest litigation so that the large masses of people belonging to the deprived and exploited sections of humanity may be able to realise and enjoy the socio-economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes."(emphasis added)

There could be another, more ominous, perspective on this and that has to do with the possible impact of crises on democracy. Steven Livitsky and Daniel Ziblatt in their book, *How Democracies Die* (2018) say:

"For demagogues hemmed in by constitutional constraints, a crisis represents an opportunity to begin to dismantle the inconvenient and sometimes threatening checks and balances that come with democratic politics."

One hopes that the top legal officers of the government will realise that throwing the baby out with the bathwater is not a good idea, and even if they persist in trying to do so, the higher judiciary will be sagacious enough to prevent them from doing so.



MPLADS, its suspension, and why it must go

This article was published in The Hindu on 05th May 2020.

There are five reasons why the Members of Parliament Local Area Development Scheme must be abolished

All Opposition parties have been unanimous in their criticism of the government's recent move to suspend the Members of Parliament Local Area Development Scheme (MPLADS) for two years, approved by the Cabinet. The government's reason is this: to use these funds "to strengthen the government's efforts in managing the challenges and adverse impact of COVID-19 in the country".

Such political unanimity is not very common but does happen whenever self-interest is involved. Under the scheme, each Member of Parliament "has the choice to suggest to the District Collector for works to the tune of ₹5 crores per annum to be taken up in his/her constituency".

It must be said upfront that notwithstanding the fact that unilateral decision-making is inappropriate in a democracy, the decision to suspend MPLADS for two years is a good first step. In fact, the MPLADS scheme should be completely abolished, and for the following reasons. First, the scheme violates one of the cardinal principles, which though not specifically written down in the Constitution, actually permeates the entire Constitution: separation of powers. Simply put, this scheme, in effect, gives an executive function to legislators (read legislature). The argument that MPs only recommend projects, but the final choice and implementation rests with the district authorities is strange; there are hardly any authorities in the district who have the courage or the gumption to defy the wishes of an MP.

CAG's observations

Second, implementation of the scheme has always left much to be desired. The details below, which are some of the observations made by the Comptroller and Auditor General (CAG) of India, in a report make it clear: Expenditure incurred by the executing agencies being less than amount booked. Utilisation of funds between 49 to 90% of the booked amount; Though the scheme envisages that works under the scheme should be limited to asset creation, 549 of the 707 works test-checked (78%) of the works recommended were for improvement of existing assets; Wide variations in quantities executed against the quantities specified in the BOQ (Bills of Quantity) in 137 of the 707 works test-checked. Variations ranged from 16 to 2312%. ("2312%" is the figure actually mentioned in the audit report); Use of lesser quantities of material than specified by contractors resulting in excess payments and sub-standard works; "no accountability for the expenditure in terms of the quality and quantities executed against specifications"; Delays in issuing work orders ranging from 5 to 387 days in 57% of the works against the requirement of issuing the work order within 45 days of the receipt of recommendation by the MP; Extensions of time granted to contractors without following the correct procedure; Register of assets created, as required under the scheme, not maintained, therefore location and existence of assets could not be verified; "The implementation of the scheme was marked by various shortcomings and lapses... These were indicative of the failure of internal control mechanisms in the department in terms of non-maintenance of records".

Gaps in utilisation

Third, there are wide variations in the utilisation of the MPLAD amount in various constituencies. A report published in IndiaSpend has some very interesting insights based on data made available to it by the Ministry of Statistics and Programme Implementation. Some of these are: "A year after they took office, 298 of 542 members of the 16th Lok Sabha – India's lower house of parliament – have not spent a rupee from the ₹5 crore that is set aside annually for them to develop their constituencies"; 508 MPs (93.55%) did not, or could not, utilise the entire MPLADS amount from May 4, 2014 till December 10, 2018, in 4 years and 7 months. Only 35 MPs of the Lok Sabha utilised the entire amount of MPLADS during this period; Though ₹1,757 crore had been released for MPLADs, only ₹281 crore had been utilised by all the 543 MPs till May 15, 2015. This means only 16% of the money had been spent in one year by all the MPs put together, because the Lok Sabha was constituted in May 2014; Since the MPLADS began in 1993, ₹5,000 crore was lying unspent with various district authorities by May 15, 2015.

It is clear from the details above, as well as later experience, that most MPs use money under MPLADS quite haphazardly, and a significant portion of it is left unspent.

Fourth, added to the data above is fairly widespread talk of money under MPLADS being used to appease or oblige two sets of people: opinion-makers or opinion-influencers, and favourite contractors. Sometimes these two categories overlap. An often-heard tale is that of the contractor being a relative, close friend, or a confidant of the MP, and the contractor and the MP being financially linked with each other.

Finally, we come back to the legality or constitutionality issue which was mentioned earlier. The constitutional validity of MPLADS was challenged in the Supreme Court of India in 1999, followed by petitions in 2000, 2003, 2004, and 2005. The combined judgment for all these petitions was delivered on May 6, 2010, with the scheme being held to be constitutional.

With due respect to the top court, it must be said that the Court does not seem to have been able to appreciate the situation in totality. It seems to have placed an unquestioned trust in the efficacy of the scheme of implementation of MPLADS drawn up by the government without an assessment of the situation prevalent in the field, evidence of which is available in audit reports wherein gross irregularities and infirmities in implementation have been pointed out. The possibility that implementation of a lot of schemes bears no relationship to how the schemes were intended to be implemented, seems to have completely escaped the attention of the Court. Common experience does not support this because of large, yawning gaps being found in actual implementation.

Cases of misuse

Reports of underutilisation and misutilisation of MPLADS funds continue to surface at regular intervals but there seems to have been no serious attempt to do anything about it till now. There are innumerable instances of misuse of these funds; one prominent example is the construction of a fountain in the open space of an unauthorised settlement, or a jhuggi jhopdi colony, which did not have provision of drinking water. The general belief in the settlement was that the contractor who bagged the contract to build the fountain was related to the local Member of Parliament.

Therefore, it would be in order to convert the two-year suspension into the complete abolition of this undesirable and unconstitutional scheme.

The status of NOTA

This article was published in Civil Society Magazine on 06th January 2020.

The phrase 'criminalisation of politics' entered the Indian lexicon in 1993 when it was used by the Vohra Committee which had been set up "to take stock of all available information about the activities of crime syndicates/mafia organisations which had developed links with and were being protected by government functionaries and political personalities".

This high-powered committee stated unambiguously that there was a "nexus between criminal gangs ... and politicians ... in various parts of the country..." and that there were "underworld politicians".

Responding to a public interest litigation (PIL) by a civil society organisation, the Supreme Court ordered that every person contesting an election to the parliament or an assembly would have to disclose all criminal cases against him/her in a sworn affidavit, as a necessary part of the nomination form.

Data from these affidavits over the years resulted in what were then felt to be startling revelations. Out of 543 MPs of the Lok Sabha in 2004, as many as 128 (24 percent) had criminal cases pending against them. This number increased, and continues to increase, to 162 (30 percent) in 2009, 185 (34 percent) in 2014, and 233 (43 percent) in 2019.

In 2004, the People's Union for Civil Liberties (PUCL) filed a PIL in the Supreme Court asking for a new button to be provided on the electronic voting machines (EVMs) called NOTA (None Of The Above). The primary purpose was to protect the confidentiality of a voter who wanted to cast his/her vote but did not want to vote for any of the candidates. The existing provision in 2004 was that such a voter would have to sign on a form saying s/he did not wish to vote for any of the candidates. Since these forms were preserved, the identity of the voter could be found out which created the possibility of some of the candidates harassing that voter because s/he did not vote for one of them. Secrecy or confidentiality of one's vote so that one can vote without any fear of consequences is, in any case, an accepted principle of democracy all over the world.

The Supreme Court in a judgment delivered on September 23, 2013, directed the Election Commission to "provide necessary provision in the ballot papers/EVMs and another button called 'None of the Above' (NOTA) may be provided in EVMs so that the voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy".

The court made very significant observations in the judgment, one of which said, "When the political parties realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity."

This was important because it had become clear over the years that political parties continued to give tickets to persons with very dubious records, including those of serious crimes. Lest it be considered an exaggeration, the 2019 Lok Sabha election had nine candidates who had rape charges pending against them! It is sad that three of them did get elected.

When requested not to give tickets to such people, political parties claim (a) these people have very high “winnability”, (b) other parties also do the same, if we don’t our candidate will lose, and (c) people vote for such candidates.

The last reason is not correct. Regardless of the number of candidates, only about two or three have a reasonable chance of getting elected and these belong to leading political parties. If a voter does not deliberately want her/his vote to go waste, s/he will have no real choice whom to vote for. Data collected over several elections shows that almost half the constituencies have three or more candidates with criminal records.

This is why the Supreme Court’s observation that political parties will be “forced to accept the will of the people and field candidates who are known for their integrity” becomes important. It is worth noting that the Court did not use words such as “motivated” or “encouraged” but said “forced”!

The problem has been with implementation of the judgment. The Election Commission of India decided, in its wisdom, to implement the letter of the judgment while overlooking its spirit. It provided a NOTA button on the EVMs but did not change the process of deciding the winner. The result is that even if the NOTA button gets more votes than any of the candidates, the candidate with the highest number of votes after NOTA is declared elected. This goes completely against the “will of the people” to which the Supreme Court gave primacy.

Another factor that has prevented NOTA from achieving its full potential is that political parties and their leaders have been actively campaigning against NOTA. They have been asking people not to opt for NOTA because these votes have no impact on who gets elected. This, when the votes polled by NOTA have continued to increase gradually. Several constituencies have seen NOTA getting more votes than the winning margin, the difference between the votes polled by the winner and the candidate who came second. There have also been some, very few, cases where NOTA came at number 2, getting more votes than any of the candidates except the winner.

State Election Commissions (SECs) who are responsible for conducting elections to panchayats and local bodies and are constitutional bodies independent of the Election Commission, have shown remarkable initiative in this regard. The SEC of Maharashtra issued a notification on June 13, 2018, saying: “If it is noticed while counting, that NOTA has received the highest number of valid votes, then the said election for that particular seat shall be countermanded and fresh elections shall be held for such a post.” While this was a very progressive step, it stopped short of giving NOTA the teeth that the Supreme Court intended. It would be possible for the same candidate to contest the fresh election and the situation could repeat itself indefinitely, frustrating the “spirit” of the Supreme Court’s judgment.

Another SEC stepped in and took the matter further. Just a few months after the Maharashtra notification, the SEC in Haryana issued a similar notification on November 22, 2018. This one said that if “all the contesting candidates individually receive lesser votes than ... NOTA ...,” then not only “none of the contesting candidates will be declared as elected” but “all such contesting candidates who secured less votes than NOTA shall not be eligible to re-file the nomination/contest the re-election”.

This is what makes NOTA what the Supreme Court wanted it to be. One hopes the ECI will follow the example set by the two SECs, honour the spirit of the Supreme Court’s judgment and the “will of the people”, “forcing” political parties “to field candidates who are known for their integrity”.

The Hypocrisy of Politicians' Outrage Over Rape

This article was published in The Wire on 13th December 2019.

Three of the members of the Lok Sabha, where shouts to lynch rapists rang loud, have rape charges pending against them.

The rape and burning of the victim in Hyderabad are indeed a matter of shame for the whole country. However, the outrage expressed in the parliament about a week ago seemed surprising.

The honourable MPs who called for “summary execution”, seemed to be blissfully ignorant of what their own political parties have been doing for a rather long time.

Editorials in print newspapers named six political parties whose leaders, all of whom are or have been in parliament, called for “lynching” of rapists or something to that effect. The parties named are Samajwadi Party, DMK, Trinamool Congress, BJP, BSP, and Congress.

Out of these, two (BJP, Congress) gave tickets for the 2019 Lok Sabha election, to candidates who had declared in their self-sworn affidavits that they had charges of rape pending against them. These two were not alone, NCP, YSRCP, and the Shiv Sena also fielded a candidate each with rape charges.

Coming to other parties whose leaders called for lynching or similar actions, BSP has the unique distinction of fielding one candidate with rape charges in each of the three consecutive elections to the Lok Sabha: 2004, 2009, and 2014. The Samajwadi Party gave its ticket to what an honourable MP would call a ‘rapist’ because a rape charge is pending against him, in the 2014 Lok Sabha election.

Of course, the current Lok Sabha has the dubious distinction of having as three of its so-called honourable members men with rape charges pending against them. The parties they represent are BJP, Congress and YSRCP.

The numbers for state assemblies are of course, larger, and the numbers for charges for ‘offences against women’ even larger.

Why is it hypocritical?

The outrage expressed by members of parliament and other political leaders sounds hypocritical simply because we have been down this path often in the past without anything serious or worthwhile being done about it.

It was exactly seven years ago, in 2012, when late in the evening on a terrible December day, a not-too-dissimilar gruesome act was perpetrated in Delhi. Being in the national capital, it created possibly an even bigger outrage not only among the politicians but more so in the public.

Under intense public pressure, the government of the day constituted a committee chaired by a retired Chief Justice of India, Justice J.S. Verma, “to look into possible amendments of the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals, accused to committing sexual assault of extreme nature against women.”

The Committee worked with great dedication and produced a report with a large number of very important recommendations within 30 days. There have been some changes in laws but nothing seems to have changed on the ground as the Hyderabad incident shows.

What is important while considering whether political parties and their leaders are being hypocritical or not, is that fact that the Verma Committee devoted a full chapter of 44 pages to 'Electoral Reforms'.

The Committee was "of the opinion that electoral reform within India is integral to the achievement of gender justice and the prevention of sexual offences against women."

The Committee was "concerned about the integrity of the legislative process, in particular with regard to the reform of the criminal justice system, if lawmakers themselves have serious charges – of which cognizance has been taken by a court of competent jurisdiction – pending against them" (italics added).

The Committee was "shocked" and "surprised" to learn that "six MLAs (had) declared that they (had) charges of rape against themselves in the affidavit" and that "political parties (had) given tickets to twenty-seven (27) candidates who contested the State elections in the last 5 years who (had) declared that they have been charged with rape."

While tracing the efforts to reduce the impact of criminalisation on politics, the Committee noted "an attempt on the part of Parliament to undo the effect of the judgment of the Supreme Court passed in *Union of India v. Association for Democratic Reforms*" which required candidates to disclose pending criminal cases against them.

The Committee also noted the Supreme Court's observations that

"...even parliament in the debates on 50 years of independence and the resolution passed in its special Session in August, 1997 had shown a great concern about the increasing criminalisation of politics; it is widely believed that there is criminal nexus between the political parties and anti-social elements which is leading to criminalisation of politics, the criminals themselves are now joining election fray and often even getting elected in the process. Some of them have even adorned ministerial berths and, thus law breakers have become law makers".

Towards the end of the chapter, the Committee said "this requires the cooperation of political parties for its translation into an effective law and then into consistent, reliable practice. We can only request political parties to take all steps necessary in this light."

And at the very end, the Committee observed "a parliament which consists of persons with criminal records is unlikely to pass any effective Criminal Law Amendment reform. There is a distinct conflict of interest... We can do no more than appeal."

Such appeals have not worked and political parties and their leaders keep expressing outrage while not doing anything to remedy the malady.

If this is not hypocrisy, one wonders what is.

RTI amendment: A case of people's power compromised

This article was published in Deccan Herald on 26th July 2019.

The passage of the Right to Information (Amendment) Bill, 2019 by both houses of Parliament is a very significant event. It has implications for several critical areas of governance in the country. It can be interpreted in the following ways: It is (a) a struggle of power between the Executive and the Legislature, (b) dilution of peoples' power over government, (c) move away from a democratic towards an authoritarian society, (d) a shift from the direction of 'open' government towards an opaque or confidential government or (e) the stranglehold of the political establishment (consisting of all political parties) over the affairs of the nation.

Technically, or in theory, what the amendment does is that the service conditions (tenure and salary) of all Information Commissioners (central as well as in the states) which were so far to be decided by Parliament will henceforth be decided by the government of the day, without any approval from the Parliament. What it does in reality, or in practice, is to bring Information Commissioners completely under the direct control of the government of the day.

The preamble to the RTI Act, 2005, states that the purpose of the act is to set out a "practical regime of right to information for citizens to secure access to information under control of public authorities, in order to promote transparency and accountability in the working of every public authority...", and that "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed." Hence, the only *raison d'être* for the existence of Information Commissioners was to ensure that public (essentially, government) authorities make such information available to citizens which will help citizens to protect their fundamental rights and avail of public services which may be denied to them and to which they are legally entitled.

What the above long and complex sentence means in simple English is that Information Commissioners, by the very nature of their jobs, are required and expected to make decisions that are not to the liking of the government of the day. If the tenure and salary of Information Commissioners is dependent on the pleasure of the government, expecting them to make decisions that the government does not like, just cannot be expected. This is a straight-forward case of perverse incentives!

Passing of this amendment also highlights the insidious hypocrisy of political parties. It is worth noting that when the Bill was introduced in the Lok Sabha, only nine MPs voted against it. And when it was put to vote in the Rajya Sabha, the combined opposition could garner only 95 votes for sending the Bill to a select committee, against 117 who opposed sending the Bill to a select committee. This is when the total strength of the ruling coalition is 112 out of a total of 240 members of the Rajya Sabha. Only 212 members were present in the House at the time of voting.

After the motion to send the Bill to a select committee was defeated, the Opposition seemed to give up entirely. Members of several opposition parties staged a 'walkout', and some others supported the ruling coalition.

The history of political parties being averse to the RTI law is almost as long as the life of the law. The first attempt to weaken it under the garb of strengthening it was made in 2006, just a year after it was passed, by the same ruling coalition that piloted it. That attempt, and two others made by the same ruling coalition, were vehemently opposed by the community of, what has come to be called, RTI activists, and therefore did not succeed.

The current ruling coalition tried the same trick in its first tenure but did not succeed. That it decided to do it now, with great determination, is now obvious.

Another proof of this aversion is the disdain with which the six national political parties have treated a full-bench decision of the Central Information Commission (CIC) for the last six years. It was on June 3, 2013 that a full-bench of the CIC declared six national political parties (BJP, Congress, NCP, BSP, CPI, CPM) to be 'public authorities' under the RTI Act, and ordered them to appoint Public Information Officers, as required under the RTI Act, and respond to requests for information made under the Act.

In blatant and arrogant display of disdain for the highest statutory authority in the country for the RTI Act, they refused to implement the decision of the CIC. When the CIC sent notices, including show-cause notices, to all the six parties asking them why they had not implemented the decision, all of them ignored the notices and did not respond at all. Some refused to accept the notices!

Finally, on March 16, 2015, the CIC, in frustration, wrote, "...the respondents (the six national political parties) are not in compliance with the Commission's order of 03.06.2013 and the RTI Act. The respondents, as public authorities, have not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so...." Calling it an "unusual case of wilful non-compliance", CIC said it "is bereft of the tools to get its orders complied with." The issue is now in the Supreme Court.

With this kind of political dispensation, expecting the RTI to survive or to revive it, is a daring hope. It is now left to the civil society at large, and the community of RTI activists in particular to continue to struggle so that the power that the people have tasted over the last 14 years, is not lost forever.

Why Does Our Political Process Produce Rotten Leaders?

This article was published in Forbes India on 15th August 2013.

By resisting reforms and efforts to introduce transparency in their functioning, the political establishment is defeating the purpose of democracy

The question asked in the title of this piece is obvious, even embarrassing. But it is unequivocal. It says, without any hesitation, that our political process produces rotten leaders and corrupt folk. This is a strong statement, but true. The more complex question is: Why? The answer is not easy but I will attempt an answer. But first, a clarification: The title does not apply to all political leaders obviously there are exceptions, politicians who are not rotten or corrupt but those are few and far between.

Now it is quite common to put the entire blame of the current state of affairs on the so-called political class. But those who would have us believe that all that is wrong has been caused by the political class overlook the fact that it does not exist or develop in vacuum it emerges and evolves out of society. Therefore, society at large, of which all of us are a part, cannot escape responsibility. However, the political class cannot be entirely absolved of it either.

I will come to this later but first, as a student of human behaviour for over 40 years, I would like to suggest that a substantial part of the behaviour of the political class can be explained as a logical response to the broader social system within which they have to operate. The political and electoral aspects form a major and immediate component of this system that applies to them.

The link between common citizens and individual politicians is mediated by the political parties. It is obvious that a democracy—particularly a parliamentary and a representative democracy—is inconceivable without political parties. Even the Supreme Court has said that political parties are integral to the governance of a democratic society. They perform the critical function of mobilising and organising public opinion, and function as a link between the public at large and the government, particularly its political wing.

A democratic political system is inconceivable without parties

Some of us might find it surprising that the term 'political parties' is not to be found in the Constitution that came into effect on January 26, 1950. India has the longest written constitution in the world and it is completely silent on the issue of functioning of political parties. We may wonder why the Constituent Assembly did not deem it necessary to mention anything about this. In my opinion, this is because the Constitution was drafted by a group of principled and high-minded people. In their deliberations for the future of the nation, they were perhaps influenced by their idealism, particularly in the immediate after-glow of independence. I assume they must have thought that people similar to them will lead the country even in the years to come.

The Indian genius has certainly evolved over the last 60-plus years and, at least in some ways, the socio-political milieu has changed almost beyond recognition. Some of the assumptions and expectations of the members of the Constituent Assembly are, therefore and unfortunately, not valid today.

The appropriate question to ask, therefore, is "What is wrong with our political system?" The direct answer is: The way our political parties function.

While political parties are the pillars on which the entire structure of the 'democracy' rests and works, and political parties never tire of claiming to be defenders of democracy, it is ironic that none of them is truly democratic in its internal functioning. It is this anomaly that made the Law Commission of India write the following in its 170th report titled 'Reform of the Electoral Laws' submitted to the government in May 1999: "On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is, therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside." (Para 3.1.2.1 italics added.)

The report has been around for almost 14 years but nothing has been done. On the other hand, every single effort to introduce some transparency is strongly opposed by the entire political system.

For example, political parties first prevented the income tax (IT) department from providing copies of their returns in response to a request under Right to Information (RTI) Act from a civil society group, Association for Democratic Reforms (ADR). Then they contested the appeal that ADR filed in the Central Information Commission (CIC). The CIC finally decided in 2008, after a two-year struggle, to make the IT returns public.

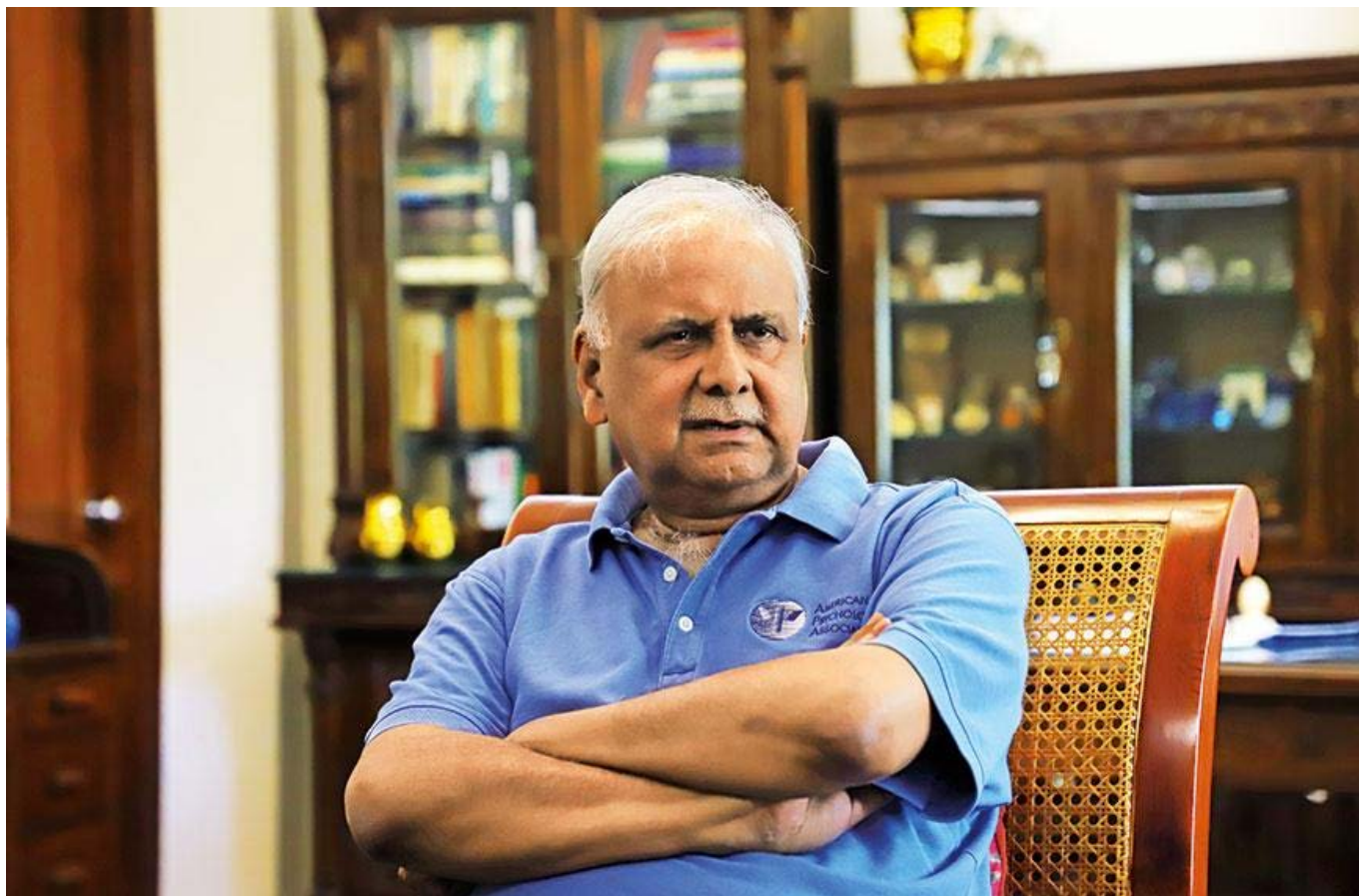
The latest example is the CIC decision of June 3, 2013, declaring six national political parties to be "public authorities" under the RTI Act. This was because they wanted parties to fulfil all the conditions laid down in Section 2(h) of the RTI Act, which gives the definition of a public authority. There has been a hue and cry about it. There were reports that the RTI Act will be amended by issuing an Ordinance which, according to Article 123 (1) of the Constitution, is to be issued when both Houses of Parliament are not in session, and "the President is satisfied that circumstances exist which render it necessary for him to take immediate action". The key words are "necessary" and "immediate". This proposal seems to have been dropped and there are reports that the RTI Act will be amended in the forthcoming session of Parliament.

These examples show how the political establishment resists reform. It seems there is comfort in familiarity and fear of the unknown, or "a known devil is better than an unknown devil".

Politicians seem to think that any change in the current political system may have unforeseen outcomes which may be unpleasant to them personally.

The political class has to realise that it is in their own interest to initiate real and effective changes because the status quo is not going to be acceptable to citizens at large, as events of the last couple of years have amply demonstrated. What is needed is legislation on how a political party should function. The Parliament is free to pass whatever it thinks appropriate but once it does so, all political parties will have to observe and honour it, and not try to amend it each time, as they are now trying to do with the RTI Act.

Select Tributes for Prof. Jagdeep Chhokar



Jagdeep Chhokar: a relentless pursuer of democratic reforms

Tributes pour in for the teacher, activist and researcher who co-founded the Association for Democratic Reforms

Updated - September 12, 2025 10:40 pm IST - New Delhi



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Jagdeep Chhokar, whom India turned to when it wanted to fight for electoral reforms, is no more

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Jagdeep Chhokar (1944-2025): Crusader for clean politics lays down the torch



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Chhokar, who holds a Ph.D. from Louisiana State University, USA, served as professor, dean, and director-in-charge at IIM Ahmedabad before devoting the last 25 years of his life to the cause of free and fair elections.

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Jagdeep Chhokar: The Mozart of Indian democracy

अलविदा जगदीप छोकर, जनता के मुख्य चुनाव आयुक्त



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लोकतंत्र की लड़ाई लंबी और अकेली होती है। आसान नहीं होती। इस लड़ाई को लड़ने वालों में एक नाम जगदीप छोकर साहब का भी है। एक ऐसे समय में जब भारत के लोकतंत्र पर हमले बढ़ते गए तब इस देश की संस्थाओं और सरकारों को जवाबदेह बनाने में उनकी भूमिका क्या थी उसे एक एपिसोड में दर्ज कर पाना संभव नहीं है। आप नहीं जानते होंगे मगर पच्चीस साल से प्रोफेसर छोकर और उनके साथ उनकी संस्था ADR ने लोकतांत्रिक सुधारों के लिए जो काम किया है उसकी वजह से आज भारत का लोकतंत्र और मज़बूत हुआ है। 12 सितम्बर की सुबह दिल का दौरा पड़ने के कारण उनका निधन हो गया। वे अस्सी साल के थे। प्रोफेसर छोकर के जाने ने उनके चाहनेवालों को बहुत उदास किया है। लोकतंत्र के इस अवैतनिक सिपाही को हमारा सलाम। अलविदा, छोकर साहब।



Pawan Khara
@Pawankhara



Rest in peace, Jagdeep Chhokar. I will fondly remember our frequent sparring at events, where your voice was always fierce and uncompromising. The last time we met, at a book launch in May, remains a cherished memory.



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"The loss of Prof Jagdeep Chhokar is tragic," Former Election Commissioner Ashok Lavasa said. "He spearheaded the Association of Democratic Reforms, which has rendered yeoman service in maintaining high standards of electoral democracy."



Director, LHM
@DirectorLHM



Dept of Anatomy humbly acknowledges the voluntary body donation of Late Jagdeep Singh Chhokar- founding member of Association for Democratic Reforms & former Dean, IIMA. Our gratitude to Ms. Kiran Chhokar & family for their invaluable contribution to advancing medical education.

Prof. Jagdeep Chhokar Fought Tooth and Nail to Save Democracy - His Most Powerful Excerpts



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In memory of Prof. Jagdeep Chhokar who raised voice against the system fearlessly to save the democracy.



Manoj Kumar Jha ✓
@manojkjhadu



Cannot believe this news!!!

The passing of [@JagdeepChhokar](#) is not just the loss of a man; it is the silencing of a conscience that spoke relentlessly for the integrity of India's democracy. As founder of the Association for Democratic Reforms, he forced the nation to look into the mirror of its electoral practices and confront the cracks beneath the surface of its democratic edifice.

He believed that democracy is not sustained by the noise of elections, but by their fairness, transparency, and accountability. He reminded us, time and again, that clean politics cannot emerge from tainted processes.

His departure leaves behind a void, but also a legacy—an unfinished task that belongs now to all who care about democracy. We must also renew our pledge to the cause he lived for: that elections in India be not just contests of power, but rituals of trust.

RIP Sir

Jai Hind



Harsh Mander
@harsh_mander



Immensely saddened by sudden passing of Jagdeep Chhokar, ADR founder

Chhokar was a gentle giant

One of our foremost defenders of democracy

He leaves us at a time when democracy is most in peril

Our best tribute to him is to carry forward his battle to clean India's elections



Milan Vaishnav
@MilanV



What an awful week. Jagdeep Chhokar was a fearless advocate for cleaner politics in India. He fought each and every second for campaign finance reform and decriminalizing politics. Condolences to his family and everyone [@adrspeaks](#)



Nitin Sethi ✓
@nit_set



We have lost an indefatigable defender of Indian democracy. One who worked endlessly to improve its electoral processes. Jagdeep Chhokar. Travel well sir.



Neha Rathi
@neha305



Mr. Jagdeep Chhokar's passing away is a huge loss to the country and a deep personal loss. Who would I call after every hearing to discuss what we could achieve and what more needed to be done? A champion of democracy and transparency.



Dipankar ✓
@Dipankar_cpiml



Deeply shocked to hear of the passing of Prof. Jagdeep Chhokar, co-founder of Association for Democratic Reforms and a tireless campaigner for free & fair elections and political transparency. His fight against the SIR threat of mass disenfranchisement in Bihar inspired us all.



Anjali Bhardwaj ✓
@AnjaliB_



Jagdeep Chhokar's passing is a colossal loss for the nation. He was a fierce crusader for democratic reforms in the country. Jagdeep ji was a dear friend and a co-traveller in the right to information movement. We worked closely on many issues, ranging from electoral bonds to transparency in the working of the Election Commission. A wonderful human being, he was completely dedicated to the cause of preserving democratic norms and institutions. He will be deeply missed. May he rest in power.



Arvind Kejriwal ✓
@ArvindKejriwal



I was shocked to hear about the sad news of Prof Jagdeep Chhokar's demise this morning. I have personally worked with him in the past. A very humble person. Made significant contributions to electoral reforms and making elections transparent. May his soul rest in peace.



Seema Chishti
@seemay



Jagdeep S. Chhokar, Champion of Electoral Reforms and Transparency, Passes Away.

He did not take no for an answer, remained steadfast and committed to the end.

He donated his body for medical research ❤️



Sravasti Dasgupta
@SravastiDasgup2



Always ready for a conversation on any issue of electoral reform, transparency, asking the most pointed questions in demanding accountability, offering invaluable guidance and simple explanation of complex issues and their implications.

RIP Jagdeep S. Chhokar



Maddila Gurumoorthy ✓
@GuruMYSRCP



Jagdeep S. Chhokar Ji, co-founder of the Association for Democratic Reforms and former professor at IIM Ahmedabad, dedicated his life to strengthening Indian democracy through transparency and accountability.

He played a pivotal role in landmark Supreme Court cases that mandated the disclosure of candidates' criminal records, assets, liabilities, and educational qualifications, and was instrumental in the striking down of the Electoral Bonds scheme, ensuring greater transparency in political funding. Through [@adrspeaks](#), he empowered citizens with vital information to make informed electoral choices, tirelessly advocated for clean politics, and became a respected voice for electoral reforms, leaving behind a lasting legacy in India's democratic journey.

His demise is a great loss to the nation, and I extend my heartfelt condolences to his family, colleagues, and all who were inspired by his work.



Vihar Durve
@ViharDurve

Unfortunate Jagdeep Chhokar , champion of transparency accountability electoral process..is no more..

Defended
Indian Democracy
Basic Structure..

Irreplaceable loss to Indian democracy...

Confident ADR team will carry forward legacy he established.

RIP [#JagdeepChhokar](#)



Supriya Shrinete ✓
@SupriyaShrinete



In Jagdeep Chhokar Ji's passing we have lost a fierce crusader for democracy, transparency and accountability in public life.

Rest in peace Sir. 🙏



Maneesh Chhibber
@maneeshchhibber



RIP, [@JagdeepChhokar](#) . This nation will be poorer without you. You & [@adrspeaks](#) have contributed immensely in trying to keep our electoral democracy transparent and our institutions independent.



Saba Naqvi ✓
@_sabanaqvi

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The remarkable [#JagdeepChhokar](#) has passed away. At the forefront of every good fight for democratic rights and reforms, he shall be missed. But he leaves a legacy in the ADR (Association for Democratic Reforms) of which he was one of the founders. A thorough gentleman and committed activist, his passing so suddenly is a loss for all who imagine our nation in keeping with its constitutional values. Goodbye Sir.



S Irfan Habib एस इरफान हबीब عرفان حبیب ✓
@irfhabib



[Show translation](#)

जगदीप छोकर साहब का निधन एक बहुत ही दुखद समाचार है। वे वर्षों से देश की विभिन्न संस्थाओं को बचाने के लिए संघर्ष करते रहे। देश के नागरिकों के अधिकारों को बचाने में उनकी संस्था ए डी र का योगदान सराहनीय रहेगा। अलविदा 🙏🙏



Kapil Sibal ✓
@KapilSibal



Jagdeep S Chhokar

We lost in the passing away of Jagdeep S Chhokar a relentless votary for a clean and transparent electoral system

A great humanist of unquestionable integrity

I salute him for what he stood for

Farewell my friend



Md. Fujail Ahmed ✓
@MdFujailAhmed



Sad news: **Prof. Jagdeep Chhokar**, a tenacious fighter for Democratic/Electoral Reforms, co-founder of **Association of Democratic Reforms (@adrspeaks)** has **Passed Away**.

His courage, integrity and relentless commitment to democratic reforms will remain an inspiration to the warriors who fighting for Electoral Reforms and Strengthening of Democracy.

Indian Democracy could do with more such conscientious citizens. **RIP**

[@JagdeepChhokar](#)



Atishi ✓
@AtishiAAP



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प्रो. जगदीप छोकर जी का जाना बेहद दुखद है। उन्होंने ADR के माध्यम से भारत के चुनावी तंत्र को पारदर्शी और मज़बूत बनाने का जो काम किया, वह हमेशा याद रखा जाएगा।

लोकतंत्र को बचाने की इस जंग में उनका योगदान आने वाली पीढ़ियों को प्रेरित करता रहेगा।
विनम्र श्रद्धांजलि।



Office Of Digvijaya Singh ✓
@OfficeOfDVS



Shocking!! I met him only 15 days back. A great loss to the Free and Fair Elections Movement in India. Chhokar Saheb we shall miss you. Our Heartfelt Condolences to the Family.

[#ADR](#)



Rajdeep Sardesai ✓
@sardesairajdeep



Sad news: Jagdeep Chokhar, a tenacious fighter for democratic/electoral reforms, co-founder of Association of Democratic Reforms has passed away. Spirited and knowledgeable, Chokhar saab will be much missed: Indian democracy could do with more such conscientious citizens. Om Shanti.



Dr. S.Y. Quraishi
@DrSYQuraishi



Extremely sad to know that Prof Jagdeep Chhokar, founder of ADR passed away this morning. A crusader for clean elections and electoral reforms. He has donated his body for medical research. May his soul rest in peace.



SANJAY HEGDE ✓
@sanjayuvacha



Jagdeep Chhokar of the Association for Democratic Reforms and formerly of IIM-A, passed away early this morning after a massive heart attack. Rest in Power sir, you fought well to preserve India's democratic institutions and kept them on the right track. [#JagdeepChhokar](#)



Yogendra Yadav

@_YogendraYadav

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spsmedia.in/celebrity/jagd...

क्या ADR के बिना हम जान पाते कि संसद और विधानसभाओं में कितने करोड़पति-अपराधी बैठे हैं?

क्या हम 'None of the Above' दबा पाते?

12 सितम्बर को प्रो. जगदीप छोकर चले गए, पर उन्होंने चुनावी राजनीति का आईना हमारे हाथ में दिया।

उन्होंने दिखाया कि पारदर्शिता सत्ता के लिए असुविधा है, लेकिन लोकतंत्र के लिए अनिवार्यता।

उनका जाना एक शून्य है, पर उनकी छोड़ी विरासत ही हमें पूछने की हिम्मत देती है: क्या बिना ADR लोकतंत्र आज जैसा दिखता?

राकेश दीवान जी के इस लेख से समझें कि क्यों प्रो. छोकर हमारे लोकतंत्र के लिए अनमोल थे।



CHAMPION FOR ACCOUNTABILITY

Jagdeep S Chhokar's work helped voters make informed decisions

PRASHANT BHUSHAN

JAGDEEP S CHHOKAR, co-founder of the Association for Democratic Reforms (ADR), and an incisive, indefatigable, and fearless champion of democracy, passed away at the age of 80 on September 12. He is survived by his wife Kiran, who remembers fondly the 50 wonderful years they had together, as also his relentless pursuit of socio-political causes that formed their way of life. Those who were not in regular touch with him were not aware that he was suffering from respiratory problems, especially after Covid, when he was hospitalised for pneumonia. He never complained about ill health nor let it come in the way of his commitment to the public causes he was engaged in. Before he founded ADR, Jagdeep was a railway officer of the mechanical engineering service. He resigned after many years, pursued a doctorate, and then joined the IIM-Ahmedabad as a professor. He is reverentially remembered by his colleagues in the Railways and his students and co-faculty at IIM for his intellect and commitment to public good.

Under his leadership, ADR achieved many milestones in making our democratic polity more robust, transparent, and accountable. I had the privilege of a long association with Jagdeep, as we were co-travellers in many of ADR's cases and causes. ADR was instrumental in securing the landmark Supreme Court judgment that mandated candidates of political parties to furnish affidavits regarding their criminal antecedents, assets and liabilities, and educational qualifications. Before every election, ADR's team

would scour affidavits filed by candidates of state assemblies and Parliament and publish reports informing the people about the percentage of candidates with criminal antecedents, the political parties and their candidates with the largest assets. This was an invaluable service to help voters make informed decisions.

More recently, ADR secured another victory when the Supreme Court quashed the anonymous Electoral Bonds Scheme and directed the State Bank to disclose who had purchased the bonds and given them to which party. This opened the floodgates of information and analysis on how most electoral bonds were given to parties by way of bribes as quid pro quo. Thereafter, ADR challenged the law brought in by the government for the selection of election commissioners, which removed the Chief Justice from the selection committee and replaced it with another minister alongside the Prime Minister. Unfortunately, that challenge remains pending, with the government having a free hand in such appointments. ADR has also challenged the amendments to the Foreign Contribution (Regulation) Act, made in 2016 and 2018, which have effectively allowed political parties to accept foreign funding. It also filed a petition to make political parties answerable under the Right to Information Act. This was because, despite an order of the Central Information Commission, political parties were not complying. Unfortunately, these two petitions also re-

main pending in the Supreme Court.

ADR has also been at the forefront of challenging the Special Intensive Revision (SIR) of electoral rolls by the Election Commission, and especially the hurried implementation in Bihar. The case has succeeded in securing some degree of transparency in the process, but there are still many problems with SIR that need to be addressed.

Jagdeep closely monitored the submissions made by ADR before the court. After the last hearing, when the Election Commission issued instructions regarding the acceptance of Aadhaar cards as proof of identity, pursuant to the Supreme Court's direction, Jagdeep wrote to a colleague: "Isn't it ridiculous how much has to be done by how many, to achieve so little. And how much more is still left to be done, to make the slightest difference. I know we should all be happy. But I feel like saying, what a sad situation we and our country are in".

Jagdeep was fearlessly outspoken and raised his voice against the ills plaguing our country and against the ruling establishment. Many of his activist friends were emboldened to speak out because of the example he set. With his passing, India has lost a true champion of democracy and a significant voice for public causes at a critical juncture in our country's social and political life.

The writer is a public interest advocate and has been counsel for ADR in many of its cases before the High Court and Supreme Court



18 सितंबर, 2025

प्रति,

श्रीमती किरण छोकर जी,

ललने नमस्कार!

श्रद्धेय जगदीप एस. छोकर जी के निधन की सूचना अत्यंत दुखद और व्यथित करने वाली है। उनके देहावसान से न केवल आप सभी परिवारजनों ने, बल्कि संपूर्ण देश ने एक सच्चे मार्गदर्शक और लोकतंत्र के प्रहरी को खो दिया है।

चुनाव सुधारों के प्रखर पैरोकार, एडीआर के सह-संस्थापक प्रो. छोकर जी ने शिक्षा और अकादमिक क्षेत्र में उत्कृष्ट योगदान देने के पश्चात स्वयं को पूर्णतः चुनाव सुधारों और जनहित कार्यों के लिए समर्पित कर दिया। उन्होंने राजनीति में पारदर्शिता, जवाबदेही और नैतिकता को स्थापित करने का जो बीड़ा उठाया, वह सदैव अनुकरणीय रहेगा। उनका व्यक्तित्व विनम्र, सादगीपूर्ण और कर्मनिष्ठ था। उनके निधन से उत्पन्न हुई शून्यता की पूर्ति संभव नहीं है। लेकिन उनके विचार, आदर्श और कार्य हमें निरंतर प्रेरित करते रहेंगे।

इस कठिन घड़ी में मैं ईश्वर से प्रार्थना करता हूँ कि दिवंगत आत्मा को अपने श्रीचरणों में स्थान प्रदान करें। आप सभी प्रियजनों को यह गहन दुख सहन करने की शक्ति दें।

ॐ शान्ति!

विनोद तावडे

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Thank you, Professor Chhokar!

