

NORTHERN INDIA PATRIKA

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Nitish rebuffed by PM

Nitish Kumar must have felt badly hurt if not snubbed and rebuffed when the Prime Minister publicly turned down his request made 'with folded hands' to confer the Central status on Patna University while addressing a function in connection with the centenary celebrations of this temple of learning. Nitish was thus slighted in the presence of the vast gathering of students and others who had assembled there on this occasion. In a way Modi publicly humiliated Nitish Kumar, apparently conveying to him the secret message that this was to avenge the insults he had heaped on him when he had left their camp twice to join the rivals. He was back with them but what is the guarantee that he will not change sides again? This is not all. Modi bluntly told Nitish Kumar that measures like the grant of central status were "a thing of the past" and that instead his government has taken "a step forward" towards transforming 10 private universities and 10 government ones into academic centres of world class.

But there was no certainty that Patna University would be included in that lucky list either. Modi first wanted the University to pursue "learning and innovation" and give up old teaching methods which focused on "cramming students' minds with information". Lest Nitish Kumar should expect any favour, Modi bluntly clarified that the universities will not be selected by the prime minister or a chief minister or any other political figure but that their potential will be assessed by a professional, third party agency. Why was Modi so harsh? Apparently he had a sound reason for it too. How could he forget those damaging TV news channel reports showing even the so-called toppers of High School and Intermediate in Bihar fumbling for an answer when asked certain questions? It was due to the widespread corruption prevailing in the education system of Bihar, unleashed by the Copying Mafia right under the nose of Chief Minister Nitish Kumar, which had shamed the system and brought disgrace to the State. What was the guarantee that the Patna University was not full of students who had reached there through the Copying Mafia and not on merit?

To soften the blow, Modi did pay rich tributes to the rich and glorious history of Bihar, saying "the stream of knowledge that flows through this state is as ancient as the river Ganges itself". What he didn't say but conveyed indirectly was that this Ganga stood polluted today and it would need Herculean efforts to restore it to its old glory. Opposition leaders were enjoying the rebuff and even Shatrughan Sinha had a dig at the organizers. Both he and Yashwant Sinha had not been invited even though they were products of that University! Nitish might have saved himself from the humiliation if he had only spoken to Modi before the start of the meeting and gauged his mind on the Central status issue. In that case he would have been spared the humiliation. But apparently Nitish failed to realize that Modi had not forgotten his 'Dal Badlu' past, indirectly paying a compliment to Lalu who had said that a betrayer will remain a betrayer. Was Nitish paid back in his own coins?

SNIPPETS

In the near future, petrol and diesel will be included in the GST list, which will reduce their prices by half. But when will this future tense turn into present tense? Or is the announcement another 'Chunavi Jumla' to lure the Gujarat voters?

Mulayam and Akhilesh were seen together on stage in Lohia Park the other day when Mulayam Singh announced that 'our family is one, and will remain so always'. Critics may say: But Mulayam keeps on frequently backing out from the assurances he gives. What's the guarantee that he will not do so again?

During his Gujarat visit Rahul Gandhi entered a toilet meant for women by mistake as the signboard outside was written in Gujarati which he couldn't read. Was none knowing Gujarati around to escort him to the correct place?

BJP may quip: 'He must be knowing in advance about it but made Gujarati script the scapegoat.'

Allahabad High Court has rapped both the CBI and the CBI court which sentenced the Talwar couple for the alleged murder of their daughter. The CBI court's judgement has been trashed. Now will the CBI appeal against the order or go to the Supreme Court to have some of the remarks expunged?

A non-bailable warrant has been issued against Imran Khan. Nawaz Sharif will say: 'This is what happens when you go about flattering the generals. They play the monkey's role to clout the two fighting political cats!'

RSS says that if there is a prima facie case against Amit Shah's son, then an inquiry should be held. Now will Amit Shah also tell the RSS, 'Et tu Brute..?'

How Can a Feeble 'No' of the Woman be Her Consent?

Two recent judgements of Delhi and Punjab & Haryana High Courts resulting in the acquittal of accused persons, convicted by lower courts in rape cases, have created a flutter across the country. While the Delhi High Court has acquitted a high-profile filmmaker Mahmood Farooqui, who came into limelight for his film 'Peepili Live', which was themed on sensationalism in journalism. He was convicted by a lower Court of Delhi for raping a 26-year-old American researcher on the night of 28th March 2015. The logic for the acquittal of the accused filmmaker is highly unsettling because it has said that a 'feeble no' from the victim could be consensual one. The Punjab and Haryana High Court has even gone to the extent of shaming the victim by saying that she happens to be of 'promiscuous character'.

The Delhi High Court says, 'instances of woman behaviour are not unknown that a feeble 'no' may mean a 'yes'. If the parties are strangers, the same theory may not be applied, if the parties are in some kind of prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic 'no' would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble 'no', was actually a denial of consent.

Judgement reads like a fiction, which elaborates that the victim has come to the house of the accused on his invitation. Both the victim and the accused consumed liquor in varying measures. The accused was displaying highly emotional behaviour in a drunken state. Somebody else was also to join them in the drinking session but he did not turn up. The victim's inherent motherly love started overflowing towards the accused. Then the accused expressed his desire to make love with her. The victim initially says 'No' but ultimately goes along. In her mind, she remembered the case of Nirbhaya, a hapless girl who was brutally raped and killed and succumbed to the desire of the victim. She even made a mental move of feigning orgasm so as to end the ordeal and participated in the act. After completing the act, the accused asked her to do it again. In the meantime, the privacy was disturbed with the ringing of the doorbell and the arrival of the two associates of the appellant. The questions which arise are whether or not there was consent; whether the accused

mistakenly accepted the moves of the victim as consent; whether the feelings of the victim could be effectively communicated to the accused and whether mistaking all this for consent by the accused is

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genuine or only a ruse for his defence. At what point of time and for which particular move, the accused did not have the consent of the victim is not known.

To answer the aforesaid questions, it would be necessary to see what the word "consent", especially in relation to sexual activity, connotes. In normal parlance, consent would mean voluntary agreement of a woman to engage in sexual activity without being abused or exploited by coercion or threats. An obvious ingredient of consent is that, as consent could be given, it could be revoked at any time; rather any moment. Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape. There is a recent trend of suggesting various models of sexual consent. The traditional and the most accepted model would be an "affirmative model" meaning thereby that "yes" is "yes" and "no" is "no". There would be some difficulty in a universal acceptance of the aforesaid model of consent, as in certain cases, there can be an affirmative consent or a positive denial, but it may remain underlying/dormant which could lead to confusion in the mind of the other. The sermon of the Court on and says that 'in an act of passion, actuated by libido, there could be myriad circumstances which can surround a consent and it may not necessarily always mean 'yes' in case of yes or 'no' in case of no. Everyone is aware that individuals vary in relation to exposing their feelings. But what has to be understood is that the basis of any sexual relationship is equality and consent. The normal rule is that the consent has to be given and it cannot be assumed. However, recent studies reveal that in reality, most of the sexual interactions are based on non-verbal communication to initiate and reciprocate consent. Consent cannot also be analyzed without taking into account the gender binary. There are differences between how men and women initiate and reciprocate sexual consent. The normal construct is that man is the initiator of sexual interaction. He performs the active part whereas a woman is, by and large, non-verbal. Thus, gender relations also influence sexual consent because man and woman are socialized into gender roles which influence their perception of sexual relationship and expectation of their specific gender roles with respect to the relationship. However, in today's modern world with equality being the buzzword, such may not be the

situation'.

There is yet another aspect of the matter which has caught the attention of this Court. The wife of the appellant had a chance to read the communication between the victim and the accused and after coming to know about the alleged incident, she had corresponded with the victim wherein she had informed her that the accused had been under a rehabilitation regimen for his 'bipolar mental condition'. The victim rubbished such an explanation by stating that the occurrence had to do more with the physical power of the accused than the mental condition. Though the mental condition of the appellant may not be a ground to justify any act which is prohibited under law, the same can be taken into consideration while deciding as to whether the accused had the correct cognitive perception to understand the exact import of any communication by the other person. Under such circumstances, the benefit of the doubt is given to the appellant. This is bizarre logic and it has shocked the conscience of the legal community.

The Punjab and Haryana High Court, which acquitted three persons, who were convicted for having raped a woman at Sonipat is equally disturbing. It is a well-established principle of the criminal jurisprudence that the benefit of doubt is given to the accused when his/her crime is not proved beyond all reasonable doubts but here in the case the court has not only acquitted the accused persons but damned the victims by quoting her statements from examination like, 'it is correct that room was got booked by me on my own expense and I had also taken a pack of cigarettes, Viagra and condoms along with me' and then goes on saying that 'it is actually reflective of a degenerative mindset of the youth breeding denigrating relationships mired in drugs, alcohol, casual sexual escapades and a promiscuous and voyeuristic world'. It further condemned the allegations of the victim to be an act of blackmailing.

The Court went on to say that 'the testimony of the victim does offer an alternate story of casual relationship with her friends, acquaintances, adventurism and experimentation in sexual encounters and these factors would, therefore, offer a compelling reason to consider the prayer for suspension of sentence favourably particularly when the accused themselves are young and the narrative does not throw up gut-wrenching violence, that normally precedes or accompany such incidents'.

It is strange when there is growing awareness for the gender sensitisation these judgements have dealt a severe blow to victims by letting off the accused on such grounds as are not found at all in substantive or procedural criminal law.

Election time is here

TWO developments are likely to influence the future political landscape of the country. PM Modi has sounded the bugle for the Gujarat election and the 2019 general election. Second, the charges made by an Internet news site about the sudden wealth amassed by the commercial enterprises of Jay Shah, son of the powerful BJP president, since the party came to power at the Centre have added to the ruling party's woes.

Mr Modi mixed nostalgia with promoting development schemes while visiting his hometown. The signal that it is election campaigning time again was clear. He can no longer talk about development without Congress-bashing. There is never a whisper of the great dams and public institutions built by Nehru in the first decades of Independence.

Mr Shah's son's case is unique. The BJP president had to abandon his much-advertised padyatra to oppose the ruling Marxist regime in Kerala to rush post-haste to Delhi to consider the consequences of the revelations in the charges made by the news website. And the BJP decided to field a Cabinet minister — no less — to controvert the allegations with the injured party resolving to go to court to demand considerable compensation, with the Assistant Solicitor-General lined up to plead the case of a private citizen.

The timing of the controversy is particularly painful for the BJP because it has been Mr Modi's boast that unlike previous Congress-led administrations, there has not been a whisper of wrongdoing in the three years the BJP has been in power at the Centre. And there are reports of a minister of the BJP-led Maharashtra Government enriching himself by abusing his position.

More than the political arguments, Mr Shah's son's case will be decided by legal procedures, but the picture of the purity of the BJP administration has lost some of its lustre. Although Mr Modi is master of aphorisms, it was Congress vice-president Rahul Gandhi who beat the PM at his game by using the slogan of 'Beti bachao, beti padhao' by twisting it to 'beta bachao'.

Indeed, Mr Gandhi seems to be learning the game of political repartee. He also aimed his barbs

at the traditional mindset of the RSS leadership by pointing out the absence of women from the obligatory morning drill of the organisation. Information Minister Smriti Irani protested at the

S Nihal Singh

prospect of seeing Indian women in shorts.

There was a curious mismatch in Mr Gandhi making his remarks in the context of Gujarat going to the polls soon and Mr Shah's decision to hold a rally in Mr Gandhi's constituency in Amethi after cutting short his Kerala visit, with the parliamentary election still some time away. The object of the latter exercise seems to have been influenced by Mr Gandhi's likely elevation to his party's presidency soon.

all indications suggest that the AIADMK is eager to support the NDA for the loaves and fishes of office.

Taking aim at the Marxists in Kerala is a longer term objective. In Odisha, the BJP feels it is fast catching up with the Patnaik dynasty while in West Bengal, Mr Amit Shah's effort is to paint Trinamool Congress's Mamata Banerjee as an appeaser of Muslims to polarise Hindu votes.

These trends come in the wake of an increasing push to have combined elections to Parliament and state Assemblies. The Election Commission has declared that it is doable from the technical point of view by the end of 2018, but in political terms it would be a question of reconciling the demands of individual states with a fiat of when the next election would be held, depriving them of political flexibility. Obviously, such a major change would require a constitutional amendment.

Some political circles believe that Mr Modi's tendency to centralise power is leading him to his real objective of scrapping the parliamentary system for a presidential dispensation. But neither of these changes are likely to occur soon. The immediate aim of the BJP is to corner as many states as it can and form alliances with states such as Tamil Nadu, more specific in their identity and less sympathetic to the BJP's shibboleths of promoting Hindi and downgrading the sanctity of

Tamil. Mr Modi seems to be a man in a hurry, yet the ethos of a nation cannot be changed radically in a matter of years. Imbibing ideas of a Hindu rashtra from a young age takes time. While the youth of the country might not be fully aware of the role of the Independence generation and their sacrifices in gaining freedom in which the RSS had only a subversive role to play, 70 years are only recent history and cannot be brushed away under the carpet.

In practical terms, the question of changing India boils down to a simple equation. Despite slogans, how much store Mr Modi sets by placing the country's interests above those of the party? A tussle between the PM and the RSS leadership is inevitable in the timing, if not the substance, of the changes that are to be undertaken.

