

NORTHERN INDIA  
**PATRIKA**

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## US-China Red Alert against Pak

Pakistan is being screwed from all sides. While both the USA and China have sounded the Red Alert for their nationals planning to visit the terrorist-infested country or are already there, the Army chief Gen Bajawa has said something about the 'Madrasas' which must have stunned the ultras in that Islamic country. He has questioned the very relevance of these schools and said the students coming out from there would either become Maulvis or join the ranks of terrorists. There is no third avenue of employment for them. What he has tried to impress upon the people of his country is that if the nation is to progress and make a mark for itself among the comity of nations, its education must stress on producing scientists, engineers, technocrats, doctors and the rest of it. Bajawa said that Lakhs of products coming out of the Madrasas will find themselves jobless as the total number of mosques in the country are not sufficient to provide jobs to all.

This is indeed the truth whether Hafiz Saeed likes it or not.

And now, as regards America's stand, it has been hardened following the anti-US demonstrations against Washington's decision of according recognition to Jerusalem as the capital of Israel and its plans to relocate the US Embassy from Tel Aviv to Jerusalem. Alarmed by this, the Department of State on Thursday issued a fresh advisory warning to American citizens against all non-essential travel to Pakistan. It may be recalled that the US Department of State had also issued travel warning to its citizens on May 22, 2017. As part of the guidelines, the US Embassy in Islamabad has also advised American citizens to maintain high level of vigilance and take appropriate measures for personal safety against possible attacks.

The Chinese embassy in Pakistan has also advised its citizens residing in the country to remain vigilant and take precautions to ensure their safety. It has alerted all Chinese organisations and citizens in Pakistan to stay vigilant, safeguard personal security, reduce time spent outside and avoid going to crowded places as much as possible. According to an estimate, as many as 20,000 Chinese are in Pakistan, where China and its companies are involved in 300 projects. More than 9,000 of them are working under CPEC, which has been declared the flagship project of Beijing's 'Road and Belt Initiative'. Despite fresh advisory by the embassy of China in Pakistan, Chinese nationals residing in Pakistan consider it their second home. That may be true. But, unfortunately, the Pakistani ultras don't think that way. They are not just terrorists. They are brutes, savages, demons and evil incarnate. China will realize this sooner than later when they find the beheaded bodies of their nationals waiting for them at the doorsteps of their Embassy in Pakistan.

## SNIPPETS

Dr Manmohan Singh asked Modi as to how many BJP members had been hauled up for corruption as was done by them? Modi will say: There is no case of corruption against BJP personnel. There would be a chorus of protests!

Tennis star Sania Mirza was asked who was her favourite Indian batsman, She replied, 'Virat Kohli and Mahendra Singh Dhoni'. Apparently her choice is everybody's choice!

But why did she refer to two favourites and not just one? Was she afraid that mentioning one name might have linked her with him and given rise to another scandal even when it did not exist?

But it is possible that these two batsmen might be the favourites of husband Soab too.

Five more sex-related CDs of Hardik Patel were released by rivals. But Hardik says this bothers him not. No wonder the impact of this was negligible on the people.

In Rajasthan a Muslim youth was killed brutally, unimaginably. He was accused of rape which he had never committed. This is what's called the justice of Love Jihad!

A reputed daily reported that Patidars were divided and that not all would vote for the Congress. Congress will say, 'Wishful thinking'

## JUDICIAL PANORAMA: Parmanand Pandey

# Strong Message to Forum-shoppers and Aberrant Judges

An eminent jurist Benjamin Cardozo has said that 'the judge is not a knight-errant, roaming at will in pursuit of his own ideal of beauty and goodness.' Another jurist Felix Frankfurter has said that 'for the highest exercise of judicial duty is to subordinate once personal pulls and private views to the law of which all are guardians-those impersonal convictions make a society a civilized community and not the victims of personal rule.'

These two quotations are apt in the present circumstances when the judicial discipline was thrown overboard by the Lucknow bench of the Allahabad High Court resulting into the huge erosion in the image of the judiciary. Thanks to the timely and bold intervention of the Supreme Court, the rot that was spreading very fast in the name forum shopping and extracting favourable justice was stemmed otherwise, brokers and blackmailers would have brought further disrepute to the Institution. The controversy arose in the Supreme Court of India when a group of lawyers created an unsavoury effort for impeaching the authority of two judges namely; the Chief Justice of India and Justice A.N Khanwilkar. The root of the controversy lies in the medical admission scam or simply MCI scam. In September this year, the CBI arrested a retired judge of the Orissa High Court and five others for allowing a private medical college enrol students despite a ban by the Supreme Court on the same.

According to the CBI investigation, Justice IM Qudusi, a judge with the Orissa High Court between 2004 and 2010, and his alleged accomplice Bhawana Pandey helped the Prasad Education Trust that runs Lucknow-based Prasad Institute of Medical Sciences to enrol students in different courses. The Prasad Institute of Medical Sciences of Lucknow was among 46 colleges barred by the government from admitting students. These colleges were found to have sub-standard facilities and non-fulfilment of the required criteria. Justice Qudusi and Bhawana Pandey allegedly assured the Prasad Education Trust that they would ensure that their matter was settled in the Supreme Court. The CBI said that Qudusi and Pandey roped in a middleman identified as Biswanath Agrawala of Bhubaneswar.

Besides, Justice Qudusi, Bhawana Pandey and Biswanath Agrawala, the CBI also arrested BP Yadav, Palash Yadav (both from Prasad Education Trust) and an alleged hawala operator Ramdev Saraswat.

Agrawala claimed to have contacts with influential people. The CBI seized Rs 1 crore during searches from Agrawala soon after he got the money from Saraswat in Delhi's Chandni Chowk area. The CBI later recovered another Rs 90 lakh from the places owned by him.

The Supreme Court came into the picture after the Prasad Institute challenged the government's decision to debar it from admitting students for medical courses. Some other medical colleges too had filed petitions in the Supreme Court. In August this year, a Supreme Court bench headed by CJI Dipak Misra directed the Centre to review its order to debar medical colleges if found having sub-standard facilities. On August 10, the government heard the arguments of the Prasad Institute. But, it refused to

lift the restriction till 2018-19. It also asked the Medical Council of India (MCI) to encash its bank guarantee of Rs 2 crore. The FIR registered by the CBI states that BP Yadav of the Prasad Education Trust contacted Justice Qudusi and Pandey through another person identified as Sudhir Giri of Venkateshwara Medical College of Meerut. The CBI FIR says they 'entered into a criminal conspiracy for getting the matter settled.'

The Prasad Institute challenged the government order in the SC afresh. However, a few days later, on the advice of Justice Qudusi, the petitioner withdrew the plea from the Supreme Court and moved the Allahabad High Court. The Allahabad High Court provided temporary relief to the petitioner staying the

SIT probe. Two of the judges, however, recused themselves from the bench. The five-judge bench annulled the order passed by Justice Chelameswar.

Later the matter was heard by the bench of the Chief Justice and it scathingly attacked the conduct of the judges of the Allahabad High Court by saying that, obviously, the Division Bench of Allahabad High Court had abandoned the concept of judicial



The Author

'Judicial Panorama' will appear every fortnight, wherein important legal issues will be discussed and analysed by Parmanand Pandey, an Advocate-on-Record in the Supreme Court of India' - Editor

debarment order. It also stayed encashment of bank guarantee by the MCI. The medical college regulator, in turn, challenged the Allahabad High Court order in the Supreme Court. Now, the Prasad Institute also filed a writ petition in the Supreme Court. The CBI says that it is at this point of the legal battle, Qudusi and Pandey roped in Agrawala, who was engaged to influence the judges of the Supreme Court. Most of the accused of the case are out on the bail.

Meanwhile, the Campaign for Judicial Accountability and Reforms filed a petition in the Supreme Court seeking setting up of an independent probe by a SIT headed by a retired chief justice of India. The petitioner, Kamini Jaiswal, contended that such a probe is urgently needed as it involved charges of corruption in the highest judicial bodies - the High Court and the Supreme Court. The petition was first put up on 8th of November before the bench of Justice J Chelameswar, who posted the matter for hearing on 11th November but the petitioner's counsel-Dushyant Dave and Prashant Bhushan - again mentioned the matter on 9th November once again before the bench of Justice Chelameswar, who agreed to hear the matter. Admitting the petition, Justice Chelameswar passed an order to set up a constitution bench of five senior-most judges of the Supreme Court for hearing the petition seeking a probe by a SIT. The bench also issued notices to the Centre and Medical Council of India.

The petitioner contended that CJI Dipak Misra should not be on the constitution bench as he was on the bench that dispensed with the case relating to Prasad Education Trust in the past. Justice Chelameswar, however, left the matter to be decided by the constitution bench itself.

While Justice Chelameswar was about to pass the order, another draft order was delivered to him. The draft order was apparently issued by CJI Dipak Misra, who listed the same matter in another court.

Justice Chelameswar interpreted the draft order differently. Citing Article 145(3), he observed that the matter relating to the SIT probe can be heard by a constitution bench without the CJI passing a specific order. As per existing practice and law, setting up a constitution bench is the administrative function of the CJI.

The matter took another turn when the CJI set up a seven-judge bench to hear the order passed by Justice Chelameswar bench in the matter of

propriety by quashing the ban order of the Central Government and the Medical Council of India. More so, when at the time of the withdrawal of the Petition, the Supreme Court had very clearly directed that 'the High Court, while entertaining the Writ Petition shall not pass any interim order pertaining to the academic year 2017-2018'

The Supreme Court said that, 'it is as the cloudless sky that the judgement of the High Court shows unnecessary and uncalled-for hurry, unjustified haste and unreasonable sense of promptitude being oblivious of the fact that the stand of the Medical Council of India and the Central Government could not be given indecent burial when they were the parties on record. Such a procedure cannot be countenanced in law.' The Supreme Court debarred the Institution from continuing the Course and said that although students cannot be fully compensated, yet it ordered the Institution to refund their fees besides paying Rs ten lakh to each. The Court also imposed the cost of Rs 25 lakh on the Institute.

The drama that was played out by the Commission for Judicial Accountability and Reforms (CJAR) is saddening and cover it with bad light. Firstly, it made the egregious mistake of filing two identical petitions in the Supreme Court. One in the name of its member Kamini Jaiswal and other in the name of the CJAR itself. Secondly, it pressed the immediate hearing of the case, which should not have Chief Justice Dipak Misra on the bench. It amounted to eroding the authority of the Chief Justice, who is the master of the roster and has got the sole right to constitute the Bench of the Supreme Court. Another bench consisting of Justice R. K. Agrawal, Arun Mishra and A. M. Khanwilkar heard the petition of Kaman Jaiswal and dismissed with scathing comments on the conduct of the concerned advocates. The second petition was also dismissed but this time a hefty cost of Rs 25 lakh was imposed on the CJAR for its misadventure of forum hunting and tarnishing the majesty of the judiciary.

There is no doubt, that those who are in the Judiciary particularly in the higher judiciary, which includes Bar and Bench both must conduct themselves in the manner, which could serve as the role model for others and instill the unshakable faith in the institution of justice.

## Rahul takes centre stage

The inevitability of Mr Rahul Gandhi succeeding his mother Sonia to the party presidency and hence titular national leadership demonstrates both the strength and the weakness of the Congress.

The Nehru-Gandhi family has always been the focus of the party in independent India starting with the pioneering days of Jawaharlal who set the country on a modern secular course the preset dispensation is seeking to undo. Other members of the dynasty have made their contributions although Indira, who evolved to become a determined leader, won plaudits for her role for steering the country through the 1971 Bangladesh War and condemnation for imposing the Emergency.

The experience of national movements assuming power after gaining freedom is depressing. After an initial phase, the new rulers are too often corrupt and the lure for power of armed forces too hard to resist. Budding institutions are simply too weak to be able to cope. By that yardstick, India has done reasonably well until now.

There have been aberrations, apart from the Emergency and the antics of Indira's younger son Sanjay. Corruption grew and the Congress under Rajiv sought to rule by making too many compromises, particularly on the great religious divide. The long spell of rule the Congress had enjoyed made it opportunistic and too many yielded to the temptation of making money.

In this brief recounting of Congress history, Sonia's Italian birth did not deter the single-minded devotion she showed in ensuring family succession. Her own ability to keep the party floating for 19 long years of political turmoil and change was a remarkable feat. Since Rahul was not ready to assume national responsibilities, she resorted to the unfortunate experiment of calling the shots while giving Dr Manmohan Singh the titular office of Prime Minister.

The surprise was in the Congress winning a second five-year term as the leader of the UPA. But the weaknesses of a Prime Minister without substantive power became apparent in the second term. Yet when the history of these days gets to be written, Sonia's key role will deserve a long chapter. Her ability to keep the party together despite being reduced to 44 MPs in the Lok Sabha in 2014 was no mean feat.

What then are the prospects for Rahul's leadership? His early forays in politics were stumbling. Older readers will recall his grandmother Indira's

awkward initial period on assuming leadership; she was derided for relying on advisers popularly dubbed the kitchen cabinet. Whether Rahul can acquire anything approaching his grandmother's determination

### S Nihal Singh

and political skills is too early to tell.

Judging by Rahul's campaign performance in Gujarat, he seems to have learnt a few lessons, perhaps flowing from his realisation that he is fated to continue his family's legacy whatever his own preferences might be. He has picked a few tricks of the political trade: one-liners, rather than ponderous responses, win headlines.

Judging by the formalities he observed before filing



his nomination paper by calling on two senior leaders, the former President and PM, he has signalled his intention to seek their advice. Above all, he has shown during the Gujarat election campaign that he has given up his stand-offish ways to greet his party men with warmth and affection and taken to adopting a more open face towards the public.

Above all, Nehru-Gandhi dynasty succeeded in keeping the Congress together, despite its dismal showing in the 2014 general election. Immediately after Indira's assassination, the party had sought to seek shelter in relying on son Rajiv.

It would be an understatement to say that Rahul

has a mountain to climb. He will obviously bring in a new executive team to represent a generation change but he will have to take care not to hurt the vanities of the senior leaders. His most essential task, irrespective of the results of the Gujarat and Himachal Assembly elections, will be to inspire and build the party.

It is universal knowledge that the once famed Congress network reaching out to small towns and villages has atrophied. The party needs an army of workers who are inspired enough to undertake a new outreach to match anything like the dedication of workers of the Sangh Parivar, particularly the RSS, come election time.

We are, of course, living in very different times since the days of Congress ascendancy. In a bow to the changed atmosphere with the propagation of a majoritarian theme, Rahul has been visiting temples in Gujarat and calls himself a follower of Shiva. It will be recalled that his father earned many brickbats in the Shah Bano case.

Patently, the BJP's beating of drums for the Hindu cause has sharply brought out the end of the phase of Western-oriented leaders who had operated in an open environment, with Mahatma Gandhi linking the Congress with the masses and peasants. The present rulers, on the other hand, revel in a largely mythical past and want to assert their right to do business primarily in the interest of the majority.

Rahul therefore has to negotiate a delicate path by being mindful of the country's new sensibility without sacrificing the creed of secularism. His temple pilgrimages in Gujarat were in the nature of guarding his religious flank, as demonstrated by the song and dance the BJP sought to make of his allegedly signing a 'not Hindu' temple register. Rahul and the entire Congress leadership have to draw the line. It is a work very much in progress.

Apart from the predictability of Rahul's succession, many in the party were waiting for the generational change because while senior leaders have their place, youth need young leadership they can relate to. In earlier stages, Rahul was awkward in making this transition to the annoyance of elders.

The danger he faces is not to be obliged to an exclusive coterie in making decisions. While he learns the ropes of the political game, he must embrace the merits of building a consensus within the party as much as well as in the country.