

# Editorial

Imphal, Wednesday, September 14, 2016

## Welcome Mr. Amit Shah; we hope you understand our problem

Welcome Mr. Amit Shah. Your party is in power at the Centre and we are hopeful that your party's popularity spread far and wide across the country and hope your visit to Manipur will be a blessing rather than a scourge.

We expect your sincere concern for the people of this state who are being treated as second class citizens in free India after the draconian Armed Forces Special Powers Act- 1958 (AFSPA) has been imposed in the region since the early 1980s. It is a matter of records, that evidences of heinous incidents perpetrated against the public in the state for as long as one would care to recollect had already shown how inhuman the act is which had slaughtered, forcibly made to disappear and rendered multitudes of youths to physically remain handicapped for the rest of their lives.

The story does not end with such inhuman excess, unfortunately, committed under the draconian legislation, but it is also worth reminding that because of the killings and atrocities many women are left to lead their lives as widows and many more children are left orphaned.

The society has been adversely affected after AFSPA came into force in the state and your government have every details of the crimes being carried out under the shadow of this dreaded inhuman and barbaric legislation which empower security forces to act on mere suspicion. It might perhaps prove to be a waste of time to remind you yet again how the act has been used by some vested interested individuals in the security force as a tool to eliminate any person on their will, but we need to give it a try anyway. There are many instances of the kind, but one thing worth drawing your attention is the killing of 11 person including women and a child bravery award winner at Malom Keithel in Bishnupur district back in 2000. It was the shocking incident that compelled a Manipuri lady from Chanu Sharimila to undergo a fast unto death protest for repeal of the act.

Don't know whether it should be termed as a blessing or loss of credibility to the Indian nation as the preferred means of protest resorted to by the Father of the nation to such pathbreaking effect seem to lost its impact, and by blessing, it is only to mean that your visit is timely as the AFSPA crusader had stopped using the weapon used by Mahatma Gandhi and have decided to follow people like you.

Mr. Amit Shah, in this 21st century when India began dreaming of becoming the most powerful nation in the world, when India is aiming to take a leadership role in the world politics, it is time that your kind self ponders upon whether it is right to impose a draconian act to rule a group of people which looks, feels and acts differently from those of mainland India. By imposing AFSPA India now have two classes of citizens - one citizen with complete freedom as well as the right to remedial measures against state excesses, and the other citizen who were deprived of living a free life and without the guarantee of even the most basic rights such as the right to representation in a law court. Mr Amit Shah, it is also worth mentioning that the ASFA that we at Imphal Times is bringing to your notice has been universally acknowledged as an "inhuman Act". Prime Minister Mr. Narendra Modi had in his heart throbbing speech delivered at Madison Square Garden in New York promised that his government will scrap all outdated laws. AFSPA is no doubt an outdated law used by the British Colonial regime to suppress the Indian Freedom struggle. The contents of the ordinance, now legislation is suppressive, inhuman and unbearable. If our great country India is targeting and aiming to become the one time Britain of 18<sup>th</sup> Century and consider Manipur as a colony than imposition of AFSPA may be justified. Then the true picture will be known by not only the people of Manipur but also by all the people across the globe. If the army is the cause for the government's reluctance to repeal the outdated draconian act, then why the discrimination by imposing it in only certain parts of the country? The world knows the kind of violent activism in Naxal hit areas of Northern and Southern India. Why AFSPA is not imposed in such states? It is on record that a Central government Minister had once stated that AFSPA cannot be imposed in Northern and Southern Naxal hit areas as we cannot kill our own people. If the government knows that AFSPA is to kill people who impose here in Manipur and at few other states? Is it the hidden agenda of the India government to kill all the people of certain states utilizing AFSPA as a tool? If your visit to the state is to be seen as one to inspect and look after the welfare of the people and not just to shore up the numbers of supporters of your political party, the public need an irrefutable evidence by repealing AFSPA from Manipur.

By: S.K. Mendiratta

India is a sovereign, socialist, secular democratic republic. Democracy is one of the inalienable basic features of the Constitution of India and forms part of its basic structure (Kesavanand Bharati v State of Kerala and Others AIR 1973 SC 1461). The concept of democracy, as visualized by the Constitution, presupposes the representation of the people in Parliament and State Legislatures by the method of election (N P Punnuswami v Returning Officer Namakkal AIR 1952 SC 64). For democracy to survive rule of law must prevail and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country (Gadakh Yashwantrao Kankarao v Balasahab Vikhepatil AIR 1994 SC 678). And for the best available men to be chosen as people's representatives, elections must be free and fair and conducted in an atmosphere where the electors are able to exercise their franchise according to their own free will. Thus, free and fair elections form the bedrock of democracy.

India has adopted the British Westminster system of parliamentary form of government. We have an elected President, elected Vice-President, elected Parliament and elected State Legislature for every State. Now, we also have elected municipalities, panchayats and other local bodies. For ensuring free and fair elections to these offices and bodies, there are three pre-requisites: (1) an authority to conduct these elections, which should be insulated from political and executive interference, (2) set of laws which should govern the conduct of elections and in accordance whereof the authority charged with the responsibility of conducting these elections should hold them, and (3) a mechanism whereby all doubts and disputes arising in connection with these elections should be resolved. The Constitution of India has paid due attention to all these imperatives and duly provided for all the three matters.

The Constitution has created an independent Election Commission of India in which vests the superintendence, direction and control of preparation of electoral rolls for, and conduct of elections to the offices of President and Vice-President of India and Parliament and State Legislatures (Article 324). A similar independent constitutional authority has been created for conduct of elections to municipalities, panchayats and other local bodies (Articles 243 K and 243 ZA).

The authority to enact laws for elections to the offices of President and Vice-President and to Parliament and State Legislatures has been reposed by the Constitution in Indian Parliament (Articles 71 and 327). Laws relating to conduct of elections to municipalities, panchayats and other local bodies are framed by the respective State Legislatures (Articles 243 K and 243

## Electoral Laws of India

ZA). All doubts and disputes relating to the elections to the office of President and Vice-President are dealt with by the Supreme Court (Article 71), whereas the initial jurisdiction to deal with all doubts and disputes relating to the elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

The law relating to the elections to the offices of President and Vice-President of India has been enacted by Parliament in the form of Presidential and Vice-Presidential Elections Act 1952. This Act has been supplemented by the Presidential and Vice-Presidential Elections Rules 1974 and further supplemented by the Election Commission's directions and instructions on all aspects.

Conduct of elections to Parliament and State Legislatures are governed by the provisions of two Acts, namely, Representation of the People Act 1950 and Representation of the People Act 1951.

Representation of the People Act 1950 deals mainly with the matters relating to the preparation and revision of electoral rolls. The provisions of this Act have been supplemented by detailed rules, Registration of Electors Rules 1960, made by the Central Government, in consultation with the Election Commission, under Section 28 of that Act and these rules deal with all the aspects of preparation of electoral rolls, their periodic revision and updating, inclusion of eligible names, exclusion of ineligible names, correction of particulars, etc. These rules also provide for the issue of electoral identity cards to registered electors bearing their photographs at the State cost. These rules also empower the Election Commission to prepare the photo electoral rolls containing photographs of electors, in addition to their other particulars. In exercise of these powers, the Commission is now preparing the electoral rolls for all parliamentary and assembly constituted in India with the photographs of electors containing therein, apart from the issue of individual identity cards to them.

All matters relating to the actual conduct of elections are governed by the provisions of the Representation of the People Act 1951 which have been supplemented by the Conduct of Elections Rules 1961 framed by the Central Government, in consultation with the Election Commission, under Section 169 of that Act. This Act and the rules make detailed provisions for all stages of the conduct of elections like the issue of writ notification calling the election, filing of nominations, scrutiny of nominations, withdrawal of candidatures, taking of poll, counting of votes and constitution of the Houses on the basis of the results so declared.

The superintendence, direction and control of elections vested by the Constitution in the Election

Commission empowers the Commission even to make special orders and directions to deal with the situations for which the laws enacted by the Parliament make no provision or insufficient provision. The classic example of filling such vacuumous area is the promulgation of the Election Symbols (Reservation and Allotment) Order 1968 which governs the matters relating to recognition of political parties at the National and State level, reservation of election symbols for them, resolution of disputes between splinter groups of such recognised parties, and allotment of symbols to all candidates at elections, etc. Another such vacuumous area where the Election Commission exercises its inherent powers under Article 324 of the Constitution is the enforcement of the Model Code of Conduct for guidance of political parties and candidates. The Model Code is a unique document evolved by the political parties themselves to govern their conduct during elections so as to ensure that a level playing field for all political parties is maintained during elections and, in particular, to curb the misuse of official power and official machinery by the ruling party(ies) to further the electoral prospects of their candidates.

All post election matters to resolve doubts and disputes arising out of or in connection with the elections are also dealt with in accordance with the provisions of the Representation of the People Act 1951. Under this Act, all such doubts and disputes can be raised before the High Court of the State concerned, but only after the election is over and not when the election process is still on.

The above mentioned Representation of the People Acts 1950 and 1951 and the Registration of Electors Rules 1960 and Conduct of Elections Rules 1961 form complete code on all matters relating to elections to both Houses of Parliament and State Legislatures. Any person aggrieved by any of the decisions of the Election Commission or the authorities functioning under it has to find a remedy in accordance with the provisions of these Acts and Rules. These Acts and Rules enable the Election Commission to issue directions and instructions to deal with various aspects of the preparation/revision of electoral rolls and the conduct of elections and leave all such matters of detail to be dealt with by the Commission. Pursuant thereto, the Commission has issued a plethora of directions and instructions which have been consolidated by the Commission in various compendia and the handbooks for the Electoral Registration Officers, Returning Officers, Presiding Officers, candidates, polling agents and counting agents.

The laws enacted by Parliament and supplemented by the Rules and by the Commission's directions and instructions there under have come for scrutiny of the Supreme Court in several important matters from time to time and a significant contribution to supplement those laws and to reform the electoral system have

been made by the Apex Court. To give a few important examples, the Supreme Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner (AIR 1978 SC 851) laid down that the Election Commission, being a creature of the Constitution, can supplement the laws made by the Parliament wherever the enacted law did not make a sufficient provision to deal with a situation arising in the course of the conduct of elections in a vast democracy like ours. It is in the exercise of such powers, that the Commission is enforcing the Model Code of Conduct which is a unique contribution to the cause of free and fair elections by the political parties themselves. Again, in the case of People's Union for Civil Liberties (AIR 2003 SC 2363), the Supreme Court mandated that every candidate contesting an election to Parliament or a State Legislature must furnish, on affidavit, all details with regard to his criminal antecedents, if any, his assets and liabilities as also of his spouse and dependent children, as well as his educational qualifications so that electors, the ultimate rulers in democracy, can make an informed choice while electing their representatives.

Further, in the case of Resurgence India [LAWS(SC)-2013-9-35], the Supreme Court has recently laid down that if any candidate fails to furnish the requisite information in the abovementioned affidavit, dispute being reminded by the returning officer to do so, his nomination paper will be liable to be rejected by the returning officer at the time of scrutiny of his nomination papers. Another significant contribution to the election law made by the Supreme Court has come in the case of People's Union for Civil Liberties [LAWS(SC)-2013-9-87], that a voter has a right to express his dissatisfaction with all the candidates in the constituency and to cast a negative vote. To operationalise this judgment of the Supreme Court, the Election Commission has provided an additional button on the voting machines with the inscription 'NOTA' (None of the above) by pressing which the voter has a right to express that he does not wish to vote for any of the candidate. This enables the voters to express their desire in secrecy but the law does not say that if the number of votes recorded for the NOTA option is more than the highest number of votes recorded by any of the candidates, it will adversely affect his election. In yet another landmark judgment in the case of Dr. Subramanian Swamy [LAWS(SC)-2013-10-20], the Apex Court held that the Electronic Voting Machines should have the provision for Voter Verifiable Paper Audit Trail (VVPAT) so that when a voter cast his vote, a paper slip is printed showing the name and symbol of the candidate for whom he has recorded his vote. This will enable the voter to satisfy himself that the vote cast by him has been properly recorded and accounted for the candidate of his choice.

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## National & International News

### 3rd BRICS Urbanisation Forum Meet begins in Vishakhapatnam

**Visakhapatnam , Sept 14:** The 3rd BRICS Urbanisation Forum Meet begins today Visakhapatnam this afternoon. Union Minister for Urban Development, Housing, Urban Poverty Alleviation and Information and Broadcasting M. Venkaiah Naidu inaugurated the session of the three-day summit. Andhra Pradesh Chief Minister N Chandrababu Naidu also attended and delivered the keynote address in the summit. The summit will deliberate on the transition and challenges being faced in urbanization in the partnering countries-Brazil, Russia, India, China and South Africa. It will also discuss issues like climate change, sanitation management, smart cities, financing urban infrastructure and inclusive

housing besides on how to increase the productivity, and to make a separate urban finance system and creation of employment opportunities. About 100 delegates from BRICS. 400 delegates from various places across the country are attending the summit. Visakhapatnam is hosting the BRICS summit after successfully engaging Partnership Summit and International Fleet Review in the recent past. AIR correspondent reports that based on the discussions and deliberations during the three days, 'Vizag Declaration' will be prepared, which would play a vital role in the ministers' conference of BRICS to be held on October 15 and 16 in Goa.

### China warns Taiwan against allowing Dalai Lama to visit

**Beijing, Sept 14:** China on Wednesday warned Taiwan's new government against allowing exiled Tibetan spiritual leader the Dalai Lama to visit, after a high-profile Taiwanese legislator invited him to the self-ruled island that Beijing claims as its own. China regards the 80-year-old monk as a separatist. Taiwan's former president Ma Ying-jeou, who favoured closer economic ties with China, refused the Dalai Lama entry several times since his last visit to Taiwan in 2009. On that occasion Ma did allow him in, but did not meet him. Taiwan's new President Tsai Ing-wen, elected in January, has not said whether the government would allow a visit by the Dalai Lama, who

congratulated Tsai on her "remarkable" victory. Freddy Lim, one of Taiwan's most famous heavy-metal singers and an outspoken China critic who was elected to parliament in January, invited the Dalai Lama when he met him in India last week. Ma Xiaoguang, spokesman for China's Taiwan Affairs Office, told a regular news briefing in Beijing that the Dalai Lama "wears religious clothes to carry out separatist activities". "The intention of some forces in Taiwan to collude with separatists seeking 'Tibet independence' and to create disturbances will have a severe impact on relations across the Taiwan Strait," Ma said.