



Date: 03-12-16

Making A Quick Black Buck

To really tackle dirty money the government must take a hard look at India's labour laws

It is like a political neutron bomb: demonetisation picks up the cash but leaves the sources of black money intact. Election funding and stealth purchases of gold and property can be sorted out easily. What is difficult to correct is the Industrial Disputes Act (IDA) which, quite candidly and inadvertently, generates the maximum dirty money.

Decreeing political parties receive donations only by cheque, never cash, needs but a stroke of the pen. Why make heavy weather of this? Gilding unaccounted money can be resisted by lifting customs duty on gold. This would render smuggling and dual pricing of this precious metal unattractive. In addition, if PAN cards are compulsory for major deals over the counter, it will be hard to pass money under it. Cleaning up property transactions is not a tough one either. Just equalise the circle rate with the market rate and watch how it impacts real estate like an instant whitener. Bleaches will be bleaches and will cause some corrosion, but the net result is worth it. Add a twist to it by merging GST with stamp duty and you can dry your clean linen in public.

The main, and persistent, source of black money is the Industrial Disputes Act. Of all the founts of illegal wealth, it is this that is most responsible for making good people bad and white money black. This is how it happens. The IDA allows management to fire workers at will if the unit has less than a 100 employees. Further, it need not pay compensation to those dismissed if they have served for fewer than 240 days in a row. All of this is ready made to encourage corruption and one has to be a saint, a fool, or an alpha dud not to play the system. It is almost as if the law is tempting entrepreneurs to keep their units small and flip labourers before they have done 240 days on the job. Of course, none of this can happen unless the workforce is informal.

It is now easy as pie to deal in cash and conceal incomes as no records need be kept. This is why making a quick, black buck becomes so embarrassingly elementary in Indian businesses. If dirty fingers and corporate mischief are a natural fit, blame the thresholds in our labour laws. The worst offenders are the provisions regarding the numbers employed and the duration of employment. Together these keep workers informal and vulnerable to job insecurity. They also make financial accounts opaque and necessitate two sets of books with differing ledger entries. Under these circumstances, playing clean and employing formal labour would be recklessly foolish; your enterprise might jump off the rails. The smart thing to do is to keep your head down, flog casual workers and amass big money. When the commercial climate discourages formal labour and transparency, to make a mistake and forget to cheat is just not on. The law, by its irrational thresholds, promotes cash transactions which make black money in full, frontal view. Predictably, even large companies have become wise to this tack. More and more of them are employing informal labour down their supply chain.

There are just a few tricks one should learn, one for each threshold. The first is to hire less than 100 workers. This releases employers from needing government permission to fire anybody. Next, it should be second nature

never to keep an employee for more than 239 consecutive days. Stay below this bar and free yourself from paying compensation, or severance wages, to the dismissed worker. There is also a third. The Payment of Bonus Act applies only to those who earn below Rs 21,000; get a rupee more and wave this entitlement goodbye. It requires perverse, low cunning, nothing else, to work around these thresholds and make a killing in black. To stifle this flow of filthy lucre, one has to demolish all thresholds, both in the IDA as well as in the Payment of Bonus Act. There is little point in fiddling with thresholds, as the Rajasthan administration has done, for that does not solve the problem – it only pushes it to another day. Instead, regardless of the size of the unit, or the number of days employed, all workers should be entitled to benefits and bonus. Contrary to some presumptions, many serious entrepreneurs would not balk at this measure. They may even welcome it, provided they have the freedom to fire employees without going to the government. If they were now given this power, with the proviso that those turned out be paid severance wages, then that alone would check wayward bossism.

Under these altered circumstances, both workers and managers benefit and cash transactions get little, or no, institutional support. As long as the existing laws stand, informal labour will dominate, making black money the perfect lubricant to turn the moving parts. Surgical strikes that cut off thresholds from our statutes need not be painful. At times like these a little anaesthesia can help. Tax benefits, for one, can incentivise companies to turn formal, invest in R&D, raise production standards and grow big. Demonetisation may come and go. But unless we change our labour laws the urge to scratch that itch will stay, and so will black money.

THE ECONOMIC TIMES

Date: 03-12-16

High time for users to be more careful about access controls in digital world



On the night of November 30, the verified Twitter handle of Congress vice-president Rahul Gandhi, @officeofRG, was hacked and some abusive comments were posted. This went on for some time before it was 'restored' to Gandhi. While Congress spokespersons lost no time to blame the opposition for the episode even before a police case was filed, little did they know that the next day the Congress' Twitter handle @INCIndia, its website and email system would be the next target of hackers. Incidentally, while Gandhi's Twitter account has 1.22 million followers, the Congress account has 1.38 million. This clearly shows the impact on the digital community who follow Twitter for first-hand news.

While the attacks are clearly hacking — in cyber parlance, 'unauthorised access' — the source of the attacks could be from various points that could be both from domestic and international internet protocol (IP) addresses. The motives for such attacks could range from internal sabotage to the thrill of techies or attempts from political adversaries. Hence the need for proper investigation to find the actual identity of the perpetrators with certainty. Instead of making political noise, it would be prudent for the Congress to check its own ecosystem that handles the two prominent Twitter handles, as well as its overall digital infrastructure involving websites, emails and WhatsApp groups. This way, future lapses or sabotage can be identified and addressed.

Linking this issue to the security of the present infrastructure to facilitate digital payments and ring in a more cashless economy is diversionary. Such blame games will lead to nowhere as it would be hard to convince anybody that such attacks have anything to do with the government or the ruling dispensation. For the government and the law enforcement system, it is essential to investigate the incidents thoroughly and also

push Twitter leadership to provide information on the IP addresses and other qualifiers from where those intrusions happened. The procedures are clearly laid out for addressing such breaches, and should be carried out by the department of telecom (DoT) under the current licensing conditions for service providers. Likewise, the department of electronics and IT should push the 'intermediary' within its jurisdiction.

Hacking is a very common form of cyber attack that happens in various forms. The larger issue is if there are procedures laid down to address them and if there is the capacity to investigate them when such attacks are reported. In the current case, the accounts were with Twitter, which in the context of the Information Technology Act (IT Act), 2008, is an 'intermediary' defined under Section 79 of the Act. Twitter maintains a reasonable level of security infrastructure to protect its millions of users. But it also keeps dynamic levels of security measures in place so that untoward attempts of intrusion and intrusions are detected. Likewise, the account user is encouraged to maintain reasonably 'strong' passwords so that they cannot be broken into. Twitter, on its part, also allows for a 'two-factor' authentication. As only Gandhi's and the Congress' accounts were known to be hacked — and there wasn't a fulltime breach of databases of Twitter — these are cases of either internal sabotage or external hacking. Today, Indian agencies have the capability to investigate such cases and the legal edifice is also there in the provisions of Section 66(C) and 66(D) of the IT Act — which deals with imprisonment up to three years and a fine that may extend to up to Rs 1 lakh. Even people involved with the management of the Twitter accounts should be investigated for their practices to secure those passwords if no external linkages are found to be implicated.

However, many cyber attacks often spoof the source of the actual attackers. Until the preliminary investigation results are known, the episode will simply serve to cast aspersions on others. It is also pertinent to note here that celebrity account hacking is also a phenomenon. In June, Twitter accounts of the late Beatle George Harrison and Rolling Stones guitarist Keith Richards were attacked. There are also websites that provide databases of stolen accounts and their passwords. Even Facebook founder Mark Zuckerberg was once not spared. Now that Delhi Police has started the investigation, it will be prudent to wait for the outcome. However, it is worthwhile for all users to be more careful about their access controls and growing digital presence in the form of Twitter, Facebook and email addresses. Also, law enforcement and judicial systems have to be more oriented and trained to keep pace with hacking trends and investigation capabilities. Clearly, these incidents raise concern around cyber security whatever be the affiliation of the perpetrators.

Subimal Bhattacharjee

बिज़नेस स्टैंडर्ड

Date: 03-12-16

नोटबंदी का हासिल

इस सप्ताह की शुरुआत में मैंने केमिकल कंपनी चलाने वाले एक कारोबारी से पूछा था कि उसके कामकाज पर नोटबंदी के फैसले का क्या असर पड़ा है? मुझे उसका जवाब सुनकर बहुत हैरत हुई। उसका कहना था कि इस फैसले ने तो उसकी बिक्री बढ़ा दी है। अधिकतर प्रतिस्पर्धी मझोले और छोटे स्तर के कारोबारी हैं और अधिकांशतः नकदी में ही कारोबार करने से इस समय बुरी तरह फंस गए हैं। लेकिन इसी वजह से उस कारोबारी का धंधा बढ़ गया। भारतीय अर्थव्यवस्था की जटिलताओं को समझने की कोशिश में आपका स्वागत है। पीतल उद्योग के लिए मशहूर मुरादाबाद, होजरी उद्योग के लिए चर्चित तिरुपुर, साइकिल और होजरी के लिए विख्यात लुधियाना और शीशे के उत्पादों के लिए मशहूर फिरोजाबाद से आई रिपोर्टों का मिला-जुला संदेश यही है कि कारोबार में बड़ी गिरावट आई है।

लेकिन नवंबर महीने के खरीद-फरोख्त सूचकांक (पीएमआई) से पता चलता है कि भले ही यह अक्टूबर की तुलना में कम है लेकिन पिछले महीनों से खास अलग नहीं है। वैसे समाचारपत्र मजदूरों के काम नहीं मिलने से परेशान होकर अपने गांवों का रुख करने और बैंकों की कतार में लगने से मजदूरी गंवाने की खबरों से भरे हुए हैं लेकिन सेंटर फॉर मॉनिटरिंग इंडियन इकॉनोमी (सीएमआईई) ने बेरोजगारी की दर में कमी की रिपोर्ट दी है। (संभवतः रबी की बुआई का मौसम होने से मजदूरों को अस्थायी रोजगार मिला है।) डाबर और गोदरेज जैसी उपभोक्ता उत्पादक कंपनियां अपने कारोबार में 40 फीसदी गिरावट की बात कह रही हैं लेकिन सीएमआईई उपभोक्ताओं के मिजाज में सुधार की बात कह रही है। हमें लगातार ऐसी रिपोर्ट और तस्वीरें देखने-पढ़ने को मिल रही हैं जिनमें खाली पड़ी कृषि मंडियों का विवरण दर्ज है। इन मंडियों में न तो खरीदार हैं और न ही विक्रेता।

इसके बाद भी कृषि उत्पादों के दामों में खास असर नहीं दिखा है। कुछ अंतर्विरोधों की व्याख्या बाकियों की तुलना में थोड़ी आसान होती है। ऑटोमोबाइल कंपनियों ने नवंबर में बिक्री बढ़ने के आंकड़े पेश किए हैं लेकिन इसका मतलब है कि इस दौरान कंपनियों से डीलरों तक वाहनों की आवाजाही बढ़ी है। दीवाली की बंपर बिक्री के बाद डीलरों के पास स्टॉक बहुत कम बच गया था। कार लोन के मामले में देखने को मिला है कि उपभोक्ताओं को खुदरा बिक्री में करीब 40 फीसदी की जबरदस्त गिरावट आई है। सकल घरेलू उत्पाद (जीडीपी) में एक से लेकर दो फीसदी की गिरावट का अनुमान लगाने वाले विश्लेषक सही हो सकते हैं और अर्थव्यवस्था पर इसका असर होने लगा है। शेयर बाजार तो शायद ऐसा ही सोच रहा है। क्या यह कवायद अदा की जा रही कीमत के लायक है? इसका जवाब स्वाभाविक तौर पर इस बात पर निर्भर करता है कि नोटबंदी अभियान के घोषित लक्ष्य को किस हद तक हासिल किया जाता है?

मौजूदा स्तर पर यही लगता है कि शुरुआती अनुमानों से कम प्रतिदान ही मिलेगा। शुरुआती अनुमान था कि करीब तीन लाख करोड़ रुपये के नोट बैंकिंग प्रणाली में लौटकर नहीं आएंगे और वे विमुद्रीकृत रह जाएंगे। उसमें से एक हिस्सा जनधन खाताधारकों के बीच बांटने की भी योजना थी। यह अमीरों के धन को गरीबों के बीच बांटने की रॉबिनहुड शैली होती। लेकिन अब इसके लिए बहुत कम रकम ही रह जाने की आशंका है, शायद एक-दो लाख करोड़ रुपये ही विमुद्रीकृत रहेंगे।

फिर तो इस पहल पर आने वाली एक लाख करोड़ रुपये से अधिक की लागत को देखते हुए इसका पूरा मकसद ही अधूरा रह जाएगा। हाल ही में सरकार की तरफ से लाई गई नई स्वैच्छिक आय घोषणा योजना से मिलने वाला राजस्व भी होने वाला शुद्ध मुनाफा इस अभियान के चलते हुई आपाधापी की तुलना में काफी कम होगा। इसके साथ ही काले धन पर भी इसका खास असर पड़ने की संभावना नहीं दिख रही है। मसलन, पिछले कुछ हफ्तों में रियल एस्टेट क्षेत्र में धुआंधार तरीके से नकदी को खपाने की कोशिश की गई है। लागत और लाभ के बीच के नकारात्मक संतुलन की स्थिति में बदलाव आ सकता है अगर सरकार व्यापक स्तर पर डिजिटल भुगतान को बढ़ावा देने में सफल रही। इससे भविष्य में कर राजस्व बढ़ने में मदद मिलेगी। कर वंचना और गुप्त लेनदेन पर रियायतों को भी वस्तु एवं सेवा कर और स्टॉप शुल्क में कटौती जैसे व्यवस्थागत तरीकों से कम करना होगा। हालांकि मुद्दा यह है कि इन कदमों को तो नोटबंदी के अभियान के बगैर भी स्वतंत्र रूप से लागू किया जा सकता था। नोटबंदी शुरू में एक बुरा विचार लगा था लेकिन इसे अधूरी तैयारियों के साथ अंजाम भी दिया जा रहा है।

Date: 02-12-16

Citizens into subjects

SC's mandating of nationalism and patriotism threatens to turn the wheel of constitutional history backwards.



The enterprise of teaching and instilling patriotism is fast picking up. India has fought wars before and both during those wars and in peace time, the citizens of this country have never shown any trace of disloyalty or disaffection toward this country. But suddenly, we seem to be collectively succumbing to this phobia about a shortage of nationalism and patriotism among the public. And so, pills and injections containing vitamins N and P are being forced on to the unsuspecting citizenry.

Every day, there is a new demand on our patriotism. If you complain of the queues at ATMs, you are reminded of the soldier and told that standing in a queue is the measure of your loyalty to the nation. Recently, the UGC issued a fatwa that on November 26, Constitution Day, all educational institutions must instill knowledge of not the Constitution generally, but of Fundamental Duties specifically. Now, the Supreme Court has chosen to instruct the government on how to ensure that nationalism and patriotism are instilled in the citizenry — playing the national anthem at the beginning of movie screenings in cinema halls with the national flag displayed on the screen.

The politics of patriotism and nationalism is not new and in many countries across the world, it has unfolded at different points in time, but often with very similar effects — harassment of minorities, blackmailing of dissenters and closure of intellectual freedoms. But what happens when the highest judiciary also begins to believe that the vital vitamins are in short supply and need to be injected forcibly?

Playing the national anthem in cinema halls is not a new move. Judicial overreach, too, is not a new phenomenon. In this case, for instance, the court could have chosen to wait till the government responded (the next hearing on this petition is scheduled for February 2017). Instead, it chose to hurriedly pass this order. In giving an interim order, the SC bench has sought recourse to three interconnected arguments and it is the logic employed by the court that merits critical discussion.

First, the court has transformed the national flag and national anthem into fossilised and statist signatures of power and authority instead of allowing these to be imbricated in popular affection and creative imagination. Because the court says that dramatisation of the national anthem is “inconceivable”. Also, it says that those using the national anthem should not derive any benefit from it. While this would only give rise to controversies over the use of the flag or anthem in creative performances, including their depictions in “commercial” cinema, the idea of transforming symbols of affection and pride into the legal-bureaucratic fangs of the state is equivalent to turning love into fear. Nationalism grounded in a punitive bureaucratic mindset often tends to give way to unruly vigilantism or authoritarian state machinery or both. The court arrives at this statist interpretation because it concludes that the notion of “protocol” is associated with the anthem and flag. It is a pity that popular symbols are thus turned into instruments to frighten and discipline the citizen.

Two, the bench chose to rely on Part IV A of the Constitution, the Fundamental Duties, in order to justify a forced show of respect. This is an explosive arena as far as interpretation of the Constitution is concerned. So far, rights constituted the core of the Constitution. Now, both inside the courtrooms and outside them, a shift in the discourse seems to have begun by invoking “duties”. In this order too, the court chooses to counterbalance rights with duties. This is unfortunate and problematic. Does the order imply that duties are more sacrosanct than rights? Does it imply that rights are conditional on fulfilling certain moral obligations? In fact, the court order has literally thrown open the doors for a new phase in interpreting the Constitution. While the order makes a reference to the “ideals engrafted in the Constitution”, it turns to the Fundamental Duties as instances of those ideals. Showing respect to the national anthem is one such ideal. While there cannot be two opinions on the importance of the anthem or the flag, to state that showing respect to them constitutes “ideals” enshrined in the Constitution is almost rewriting the document; changing it from a document based on welfare and liberalism to one based on authority, patriotism. Three, the order mentions in passing the idea of constitutional patriotism. It is not clear from the short order of the bench what exactly the honourable judges mean by it. Constitutional patriotism could be seen as a great idea, exhorting citizens to commit to a liberal democratic ethic. It could, alternatively, be seen as an ideological tool for reordering the cognitive universe of citizens and thereby leave behind other loyalties — linguistic, ethnic, regional, etc and place national loyalty above everything. In the former sense, it would operate in the realm of values and moral principles — that citizens must abide by the fundamental values of the Constitution above all. It is doubtful if contemporary proponents of majoritarian nationalism would endorse this idea of constitutional patriotism.

In its latter sense, the idea of constitutional patriotism could privilege uniformity of ideas and ways of life — something Indian nationalism and constitutionalism sought to avoid. From the wording of the SC order, it can be deduced that the honourable judges have probably leaned on the latter meaning of constitutional patriotism. Why else would they say that, “It (constitutional patriotism) does not allow any different notion or the perception of individual rights, that have individually thought of have no space. The idea is constitutionally impermissible.” This approach of the court might not be very surprising. The courts have normally given rulings and interpreted the Constitution in tune with the overall political-moral ethos of the time. So, the thinking behind the order is consistent with the current ethos.

These three arguments of the bench make for disturbing reading. The order engages in a redefinition of citizenship, wherein the holding of rights is not the hallmark of citizenship; the discharge of certain obligations is the new sine qua non of being a patriot-citizen. Their lordships have taken away from us our cherished right to love our country, our society, our right to be nationalistic and patriotic; in one stroke, our rights are converted into legally enforceable duties — nationalism as compulsion is indeed a pitiful condition. The order of the court has pushed us into that pitiful condition. This is not exactly in tune with the specific history of India’s constitutionalism nor with the more general history of constitutionalism. Constitutionalism evolved through struggles for rights of ordinary men and women. But when state appropriates the language of nationalism and blatantly sets aside citizenship rights in favour of duties, the wheels of history turn backward. India’s nationalism gave us democracy and converted subjects into citizens. Are we now contemplating to turn citizens into subjects?

Suhas Palshikar The writer taught political science at Savitribai Phule Pune University, Pune and is chief editor of, ‘Studies in Indian Politics’.

Date: 02-12-16

Big gains to come

After short-term disruptions, the benefits of demonetisation will be immense.

The government's bold decision to demonetise Rs 500 and Rs 1,000 notes to curb black money has set in motion a tectonic shift. The move, in a single stroke, aims to annihilate the omnipresent shadow economy, while paving the way for safer and superior "cash-less" way of transacting. The prelude to the announcement can be traced to a series of complementing stepping stones laid out systematically over the last 2.5 years by the government in the form of the Jan Dhan Yojana, DTAA amendment with Mauritius and Cyprus and the most recent Income Disclosure Scheme.

From an impact perspective, there is no doubt that the process of "demonetisation to remonetisation" would involve some short-term pain as economic agents struggle to cope with the sudden liquidity shortage. Some sectors will face deeper challenges, but these should be viewed as teething troubles. The multitude of benefits I expect the economy to accrue in the medium-to-long term, will far outweigh the near term consequences of the demonetisation drive. As such, I expect the Indian economy to follow a "tick-mark" shaped recovery over FY17-18 characterised by a 1-2 quarter slowdown, followed by the attainment of an inflection point or local minima, to be chased by exponential growth in quick succession.

The first long-term gain will be a swelling of the deposit and savings base. Global agencies have pegged the size of the parallel economy in India at close to 23 per cent as of 2007. Unaccounted cash in the economy is estimated to at Rs 4,500 billion of which a certain proportion will make its way to the banks. Banks' deposit base will receive a fillip of 0.5-1.4 per cent of the GDP. Savings will rise by a similar proportion, due to a switch from unproductive physical assets to financial assets.

Second, there will be an improvement in monetary transmission accompanied by reduced lending rates. A rise in the deposit base will allow banks to lower the blended cost of funds as higher CASA deposits help to replace the high cost of borrowing and lower the overall cost of funds. I expect banks to reduce deposit rates by 75-100 bps over the next six months. The new regime of MCLR will immediately take into account the lower cost and will thereby lead to a decline in lending rates, which will boost economic activity in the medium term. The demonetisation move will also provide a fillip to Jan Dhan accounts and financial inclusion. Over the last two years, while the number of Jan Dhan accounts has recorded a stellar growth, the share of these accounts in the total deposit base of the banking system has remained under one per cent. The demonetisation drive should give a push to cash deposits in Jan Dhan accounts, of which close to 43 per cent have remained dormant. In addition, the move will help to inculcate banking habits among the large unbanked population. Finally, with some part of unaccounted money making its way into the formal channel the government stands to benefit from higher income tax collections. This should help cushion the government's FY17 fiscal deficit target, especially post the shortfall in anticipated spectrum revenues. Demonetisation will move the economy from the unorganised to organised sector, dovetailing into GST architecture that is expected to come on board next year. This will stand to enhance the government's ability to tax commercial transactions.

With 85.2 per cent of the currency in circulation as Rs 500 and Rs 1,000 notes ceasing to be a legal tender, currency for transactional purpose has plunged in the economy. Some of the sectors are which are cash-intensive — such as real estate, retail trade, gold, hotels, transport and communication — are likely to witness short-term disruptions. In addition, the demand for both consumer durables and non-durables will see a pullback owing to liquidity constraints. Cumulatively, GDP growth for FY17 could see a downside to the tune of 40-50 bps. Having said so, I believe that in the process of building long-term benefits, the economy will have to endure a few near term pain points. In fact, demonetisation offers a unique opportunity to reform the way business is done in India in many sectors. For instance, microfinance institutions that have been struggling to

inculcate the habit of cashless transactions could well use this window to hasten the move towards electronic mode. Likewise, banks and business correspondents in rural areas could encourage opening of fresh accounts under the Jan Dhan to further financial inclusion.

Taking forward the words of outgoing US President Barack Obama that “change is never easy, but always possible”, I believe that change can be made easier, if we all strive towards it. In this context, government’s efforts over the last one week to continuously assess the progress of implementation and announce incremental measures to ease the operational burden on citizens is heartening. Importantly, the role being played by my banker colleagues also deserves a special mention, for the national service they are rendering to actualise the government’s vision. As responsible economic stakeholders, we must prepare ourselves to endure the short-term pain, for long run positive externalities of demonetisation. The positive spillovers for growth will be immense, with a sustainable 8 per cent GDP growth now seeming more of a reality than an aspiration.

Rana Kapoor The writer is MD & CEO, Yes Bank, and chairman, Yes Institute



Date: 02-12-16

सिनेमा से पहले राष्ट्रगान, कुछ सतर्कता जरूरी है



देश के सिनेमाघरों में फिल्म शुरू होने से पहले राष्ट्रगान और इस दौरान मौजूद हर इंसान के खड़े रहने का सुप्रीम कोर्ट का आदेश न्यायिक सक्रियता के उसी उदाहरण की अगली कड़ी है, जिसकी समय-समय पर विभिन्न कारणों से आलोचना होती रही है। इस बात से अहसमत होने का कोई कारण नहीं कि देश के सभी नागरिकों को राष्ट्रध्वज और राष्ट्रगान का सम्मान करना ही चाहिए। हालांकि अदालत ने राष्ट्रगान के किसी भी रूप में व्यावसायिक और अशालीन इस्तेमाल करने की आशंका पर विराम लगाकर भी उचित ही किया। अदालत ने कहा कि, ‘यह किसी भी नागरिक का मौलिक कर्तव्य है कि वह संविधान में प्रदत्त सिद्धांतों का पालन करेगा। राष्ट्रगान और राष्ट्रध्वज के प्रति सम्मान प्रदर्शित करना इन्हीं कर्तव्यों में से है।’ लेकिन शायद अदालत इस बार ज्यादा आगे चली

गई। अदालती आदेश के अनुसार देश भर के सिनेमाघरों में शो शुरू होने से पहले राष्ट्रगान का प्रदर्शन जरूरी है और इस दौरान मौजूद सभी दर्शकों का खड़े रहना बाध्यकारी होगा। आदेश के क्रियान्वयन में भी तमाम मुश्किलें हैं। इसका पालन करवाना कानून के रक्षकों के लिए किसी दुःस्वप्न से कम नहीं होगा। इस बात की पूरी आशंका है कि इस मामले में बड़े पैमाने पर नियम-उल्लंघन दिखाई पड़े और कानून-व्यवस्था के लिए एक नई चुनौती बन जाए, क्योंकि इससे एक तरह का ‘अतिसतर्कतावाद’ बढ़ने का भी खतरा है।

अदालत ने नागरिकों के मौलिक दायित्वों के संदर्भ में संविधान के अनुच्छेद 51-ए का हवाला दिया है, जो कहता है कि ‘यह भारत के हर नागरिक का कर्तव्य होगा कि वह संविधान व इसके सिद्धांतों-संस्थाओं, राष्ट्रध्वज और राष्ट्रगान का सम्मान करेगा।’ हालांकि इन कर्तव्यों का पालन न होने की स्थिति पर संविधान में कोई प्रावधान नहीं है। यह पहली बार नहीं है, जब शीर्ष अदालत ने सिनेमाघरों में सरकारी फिल्मों के

प्रदर्शन को अनिवार्य करने का आदेश पारित किया है। 1999 में भारत सरकार बनाम मोशन पिक्चर्स एसोसिएशन के मामले में भी सर्वोच्च न्यायालय ने सिनेमाघरों में शैक्षणिक, वैज्ञानिक या ताजा घटनाक्रमों पर डॉक्यूमेंट्री फिल्मों का प्रदर्शन अनिवार्य बताया था।

शीर्ष अदालत का ताजा आदेश जेहोवा गवाही केस में दिए गए फैसले की भावना से भी अलग है, जिसमें उस संप्रदाय विशेष के स्कूली बच्चों को स्कूल की प्रार्थना सभा के दौरान राष्ट्रगान गाने से छूट दी गई थी, क्योंकि इससे उनकी धार्मिक भावनाओं का हनन होता था। हालांकि राष्ट्रगान के दौरान इसके सम्मान में साथी छात्रों की तरह ही खड़े रहने से उनकी कोई असहमति नहीं थी। यहां यह नहीं भूलना चाहिए कि लोग मनोरंजन के लिए सिनेमा देखने जाते हैं, न कि देशभक्ति का पाठ पढ़ने के लिए। जिस तरह राष्ट्रगान की अपनी मर्यादा और गरिमा है, उसी तरह देशभक्ति के प्रदर्शन का हर नागरिक का अपना तरीका है। हर फिल्म का हर शो शुरू होने से पहले राष्ट्रगान और इसके सम्मान में प्रत्येक व्यक्ति के खड़ा होने की बाध्यता कोई दिशा नहीं देती। अब यह मांग भी तार्किक कही जाएगी कि अदालतों की कार्यवाही शुरू होने से पहले वहां भी राष्ट्रगान अनिवार्य कर दिया जाए।

सामूहिक अवसरों पर राष्ट्रगान को लेकर अतीत में तमाम विवाद हुए हैं और इन्हें मर्यादा और गरिमा से जोड़कर देखा गया। कई दशक पहले तक सिनेमाघरों में चलने वाली इस परंपरा के धीरे-धीरे समाप्त हो जाने के पीछे भी ऐसे ही कारण रहे होंगे। इसी वर्ष 20 अक्टूबर को गोवा में व्हीलचेयर पर सिनेमा देख रहे एक व्यक्ति को कुछ 'अतिसतर्क' लोगों ने इसलिए पीट दिया था कि वह राष्ट्रगान के सम्मान में खड़ा नहीं हुआ। 2014 में मुंबई में एक विदेशी महिला के साथ भी ऐसी ही अभद्रता की बात थाने तक पहुंची थी, जब वह सिनेमाघर में राष्ट्रगान के दौरान खड़ी नहीं हुई थी। 2015 में उस वक्त भी विवाद हुआ था, जब तमिलनाडु की मुख्यमंत्री जयललिता के शपथ ग्रहण समारोह में राष्ट्रगान को संक्षिप्त करके प्रस्तुत किया गया। यह राष्ट्रगान का 20 सेकंड का आधिकारिक संक्षिप्तीकरण था, लेकिन इसे केंद्रीय गृह मंत्रालय की नियमावली का उल्लंघन माना गया। राष्ट्रगान के दौरान विवादों का लंबा अतीत है और भविष्य में भी ऐसी आशंकाओं से इनकार नहीं किया जा सकता।

सत्य प्रकाश, लीगल एडीटर, हिन्दुस्तान टाइम्स

**राष्ट्रीय
सहारा**

Date: 02-12-16

राष्ट्रगान की गरिमा

सिनेमाघरों में हर बार फिल्म दिखाने के पहले राष्ट्रगान बजाए जाने से संबंधित सुप्रीम कोर्ट के आदेश का अमूमन सभी ने स्वागत किया है। देश के हर मानस में हमारी राष्ट्रीय भावना के संचार और राष्ट्रीय प्रतीकों के प्रति सम्मान जगाने के हर कदम का स्वागत होना भी चाहिए। फिर भी कुछ लोगों ने इसके अमल में पर्याप्त सावधानियों की ओर ध्यान दिलाया है और कुछ ने शंकाएं भी जाहिर की हैं। कुछ न्यायविदों ने राष्ट्रप्रेम और राष्ट्रीय भावना और राष्ट्रीय प्रतीकों के प्रति सम्मान को वैधानिक नियम-कायदों में बांधने की अनिवार्यता पर भी सवाल उठाया है। सोली सोराबजी जैसे जाने-माने न्यायविदों ने इसे लोगों को जबरन राष्ट्रप्रेम की घुट्टी पिलाने जैसा माना है। उनके मुताबिक यह हमारी राष्ट्रीयता के मूल विचारों के ही खिलाफ है। संविधान में प्रदत्त निजी स्वतंत्रताओं के अधिकार भी इस आदेश से टकरा सकते हैं। इसके पहले सुप्रीम कोर्ट ऐसे ही मामले में अपना फैसला सुना चुका है, जो न्यायमूर्ति दीपक मिश्रा और अमिताभ राय की दो सदस्यीय पीठ के मौजूदा फैसले से मेल नहीं

खाता है। मौजूदा न्याय पीठ ने संविधान के जिस अनुच्छेद 51 (ए) के तहत यह आदेश सुनाया है, इन्हीं अनुच्छेदों की व्याख्या अगस्त 1986 में न्यायमूर्ति ओ. चिन्नपा रेड्डी और एम.एम. दत्त ने विजोय इम्मानुएल व अन्य बनाम केरल राज्य मामले में एकदम अलग ढंग से की थी। कानूनविदों के मुताबिक अनुच्छेद 51 (ए) संविधान के उस हिस्से में है, जो न्यायिक समीक्षा के दायरे से बाहर है। अनुच्छेद यह तो कहता है कि “संविधान का पालन और राष्ट्रीय झंडे और राष्ट्र गान के प्रति सम्मान जाहिर करना हर नागरिक का कर्तव्य होगा” लेकिन यह हमारे हर अधिकार और कर्तव्य की तरह ही बिलाशर्त नहीं है। कुछ नेताओं और फिल्मकारों ने तो यह सवाल भी उठाया है कि यह सिनेमाघरों के लिए ही अनिवार्य क्यों हो, संसद-विधान सभाओं और अदालतों के लिए क्यों नहीं? दरअसल कोर्ट के मौजूदा फैसले से सादर असहमति जताने वाले शायद उस असहिष्णु माहौल से चिंतित हैं, जो राष्ट्रवाद के नाम पर कई बार देखने को मिला है। असल में राष्ट्रवाद की स्थूल परिभाषा कुछ हद तक असहिष्णुता, कट्टरता की ओर ले जा सकती है, जिसकी कामना राष्ट्र-निर्माताओं ने नहीं की थी। इसलिए राष्ट्रीय प्रतीकों को सम्मान देने के मामले में अतिशय संवेदना के साथ विचार करने की दरकार है, और हर हाल में उनकी गरिमा बनाए रखने की जरूरत है।



Date: 02-12-16

Patriotism by diktat

Patriotism is a value that most people cherish without being required to demonstrate it in visible ways. Unfortunately, a notion has emerged in the country that it ought to be articulated frequently, demonstrated publicly and enforced in such a manner that it will be an object lesson to the odd dissenter. Given this, it is hard to understand the rationale for the Supreme Court's order that every cinema hall should play the national anthem before the exhibition of a film. India has given itself an anthem easily recognised as a lofty and moving rendering of the country's oneness amidst diversity. It hardly requires judicial promotion. The singing of the national anthem on special occasions, especially in schools and colleges, is sufficient to help citizens identify the anthem with something larger than their daily concerns. There are clear rules on when the anthem should be played. Any misuse of the anthem or any wilful insult to it is legally prohibited, and those aggrieved by any such incident can take recourse to the law. Beyond this, in a mature democracy such as India, there really is no need to make the playing or the singing of the anthem mandatory through a judicial order.

It is not clear why cinema halls were singled out for special treatment by the Supreme Court. The only possible explanation is that they were required to play the national anthem some decades ago, a practice that has been largely given up. But if the logic for playing the national anthem at places where a sizeable number of people congregate is taken to its logical conclusion, they should be extended, for example, to dance and music recitals as well. To take this line of reasoning even further, why not to every sitting of the legislature, or the court itself? Playing the national anthem in theatres at the end of the film was given up some three decades ago in most parts of the country, largely as a result of the tendency of a section of the audience to walk out. To reintroduce it now gives the impression that cinemas should forever be the main sites for the demonstration of patriotism. Matters such as commercial exploitation and dramatisation of the anthem cannot be the subject of blanket interim orders in a public interest petition. The appeal to a sense of 'constitutional patriotism' is also intriguing, as the only reasonable interpretation of the term is that of having allegiance to the values underlying the Constitution. This is not something that can be enforced by judicial diktat, or by making cinema halls the playground for a misplaced sense of patriotism.
