



सत्यमेव जयते

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Date : - - 200

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**H.E.The President
The Republic of India
New Delhi.**

Sub: Memorandum regarding BJP's false propaganda on Gujarat Lokayukta Appointment.

We wish to bring to Her Excellency's kind attention the false propaganda and smear campaign initiated by the BJP against Hon Governor of Gujarat. The Hon Governor of Gujarat in true spirit of the Constitution has done a commendable job by appointing a Lokayukta in the State where the ruling BJP government had been avoiding this appointment for last seven and half years. Scared that as in Karnataka, the Lokayukta in Gujarat will expose the massive wrong doings, irregularities and corrupt practices of the Narendra Modi government, the BJP has launched a smear campaign to discredit the Governor and is demanding her recall despite the fact that the Lokayukta appointment matter is sub judice.

We would like to point out.

- In the past Justice D H Shukla (1988-93), Justice I C Bhatt (1993-98) and Justice S M Soni (1998-2003) were appointed by the Governor with his own signature and warrant. No Cabinet Resolution was given to the Governor by way of suggestion or assistance in this regard.
- Sundarsinhji Bhandari who was Governor during BJP rule, vide his order dated 17 April, 2000, had made it clear to the then Leader of Opposition, Amarsinh Chaudhary that the name suggested by the Chief Justice was final and no change can be made in this. Shri Sundarsingh ji was a senior BJP leader before being appointed the Governor of Gujarat by the NDA Government.
- Before the Lokayukta bill was introduced in the state legislative assembly, during an all party meeting convened by the then Chief Minister, Shri Makrand Desai, who represented the BJP, strongly and unambiguously stated that the Governor should have the supreme authority and Governor only should be the authority to appoint Lokayukta. Subsequently, when the Lokayukta Act was enacted in the State Legislature, during the debate on the bill, senior BJP leader Suresh Mehta had vehemently asserted that the power to appoint Lokayukta should remain with the Governor only. Their contention was the Lokayukta is mandated to examine complaints of corruption and wrong doings against the Chief Minister, his Council of Ministers and other political appointees; the Chief Minister or the Government should not play any role in selection or appointment of Lokayukta. They stated



that in case, the Chief Minister or the Government is made a party in the appointment; it could sometimes lead to questions about the credibility of the Lokayukta.

- Thus a strong Lokayukta Act was enacted and section 3 of the Act states that the Governor has to appoint the Lokayukta and she would do so in consultation with Chief Justice of Gujarat High Court and the Leader of the Opposition.
- Even during the previous BJP government, Chief Minister Keshubhai Patel, had followed the same procedure and name suggested by the then Chief Justice was appointed as Lokayukta by the Governor.
- The BJP's campaign against Gujarat Lokayukta clearly exposes the BJP's double standards. It wants a strong independent Lokpal at the Centre and on other hand it wants a sarkari and convenient Lokayukta in Gujarat so that Narendra Modi's so called image of clean non corrupt Chief Minister can be protected.
- Chief Minister Modi does not want a neutral and unbiased Lokayukta. He was against even the name of Justice S D Dave which was suggested earlier. CM wants Lokayukta of his choice and when it was not possible he made all efforts to stall the appointment.
- After Chief Minister Modi stalled the appointment for seven and half years, a PIL was filed in the Gujarat High Court. This made it mandatory for the Chief Minister to take action. He attempted to amend the existing Act which has no role for the Chief Minister. He tried to inculcate a strong role for the Chief Minister and his Government in the Act.
- To avoid Lokayukta appointment, the Gujarat Government hastily appointed a commission of inquiry. Incidentally the Commission was headed by Justice M B Shah who had earlier been given the supervision of the task force to look into fake encounters cases in Gujarat. All allegations of corruption against Modi government amounting to over one lakh crore has been conveniently parked with this commission of the government's choice so that the Lokayukta cannot touch those very important cases which have been brought under purview of the commission.
- The Modi government also came out with an ordinance seeking amendment in the existing Lokayukta act so that the government gets power to determine who the Lokayukta in Gujarat can be and thereby appoint a person of the Chief Minister's choice and convenience on the prestigious post. This aborted attempt to bring an ordinance was meant to scuttle the role of Chief Justice of Gujarat High Court in suggesting name for the appointment of Lokayukta. What necessitated the ordinance seeking amendment in the Act if the Government had any role to play in the process of appointment of Lokayukta in the existing Act?



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- This insidious move of the Modi government prompted the Constitutional Head of the State to invoke her discretionary powers and issue a notification of Lokayukta. The Governor appointed Justice R A Mehta who name was suggested by the Chief Justice of Gujarat High Court and consented by Leader of Opposition. This name had been sent to Chief Minister also for his information long back but being a balanced name, the Chief Minister was not interested.
- It is unfortunate that the Chief Minister discarded the name of R A Mehta on the grounds that he is an activist and tried to discredit him labeling him as an activist judge. This despite the fact that Justice R A Mehta is known for his impregnable integrity and neutrality. It is more unfortunate that while BJP as a national political party also blindly toed their Chief Minister's line in discrediting Justice Mehta just because Chief Minister Modi happens to be one of the strongest fund raiser of the BJP. Justice R A Mehta is Anna Hazare's close associate and when Anna Hazare visited Gujarat, he stayed overnight at Justice Mehta's place. If Justice Mehta's integrity was an issue, would Anna Hazare let him host his visit?
- It is a blatant lie that Leader of Opposition (LOP) has not cooperated. In both the cases, Justice S D Dave and Justice R A Mehta, there was a consultation with the Governor. CM was informed in writing that LOP has given his consent to the name of these judges with express views that CM is not to be consulted in this matter. Still if the CM thinks that he has to be consulted, he should take the letter as the consent of the LOP and we are willing to remain present as LOP wherever needed.
- The BJP has been claiming the Governor has not consulted the Government and acted arbitrarily. This is a lie. If the Governor has to act on the advice of the Cabinet then why did the CM not send Cabinet Resolution about these names to the Governor?
- Five judge bench judgment of SC is applicable in this case. In the judgment in reported judgment (2004) 8 page number 788 the bench has dealt in detail with the discretionary powers of the Government and also explained the concept of Article 163 of the Constitution.
- Till the date the Chief Justice has suggested only one name and that has been accepted. Supreme Court has held that the name suggested by the CJ was a binding to council of ministers and the government (2009) 7 SCC Page 1. Despite this CM opposed the name of Justice S D Dave and dragged on a controversy and ultimately Justice Dave had to request for the recall of his name. Similarly efforts of CM to oppose the name of Justice R A Mehta are illegal.
- The Chief Minister of Gujarat is involved in corruption of crores of rupees and even Comptroller and Auditor General (CAG) has detected corruption and faulty administration of Rs.26,651 crore. As per the Lokayukta Act, it can investigate



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cases which are less than five years old. Anyhow Chief Minister Modi wants to buy time so that his corruption cases are not investigated.

- Gujarat is known for its human rights violation and a poor social development index. Traditionally the State has been economically progressive. In the name of development, justice has been eluding in Gujarat for tribals, dalits, minorities and the underprivileged. In fact, the State does not have a full fledged Human Rights Commission or a RTIC commissioner. Despite several appeals and over 10,000 RTIs pending, a RTI commissioner is deliberately not being appointed in Gujarat.
- Similarly, ever since Chief Minister Modi has taken over in Gujarat, the legislative tradition of the deputy speaker's post going to the Opposition has been flagrantly violated. The Modi government's period is also notorious for reducing the Legislative Assembly duration. Opposition is not given the required time to raise important public issues. After six months, the House is convened just for a day or two to meet the statutory requirements.
- The BJP has sought recall of Hon Gujarat Governor on the Lokayukta issue which is in complete contradiction to the provisions of the Gujarat Lokayukta Act, 1986.

We are seeking your valuable intervention to restore Constitutional and Democratic practices in Gujarat.

Regards,