**[Of the elephant in the courtroom](https://www.dawn.com/news/1815654/of-the-elephant-in-the-courtroom)**

[Jawed Naqvi](https://www.dawn.com/authors/280/jawed-naqvi) Published February 20, 2024

JAILED rights activist Umar Khalid withdrew his bail application from the Indian supreme court last week, preferring instead to try his fortunes at the lower courts. Implicit in the move was a wry statement. Seeking justice in India could be like joining the end of another long queue for a routine government service after waiting in vain for the first queue to move. Umar’s activist father said the lawyers believed there was a better chance of getting a hearing from the lower courts, where they feel the atmosphere has ‘improved’ in recent days.

The decision to give up on the supreme court was prompted by countless adjournments before its judges, right from Umar’s arrest in September 2020 on unproven terror charges that are widely acknowledged to be flimsy and only a ruse to keep him in jail. The prosecution hasn’t produced a shred of evidence to suggest Umar exhorted anyone to street violence during president Donald Trump’s visit to India.

The pro-government TV channels, always ready to connive with the state, went so far as to accuse Umar Khalid of visiting Pakistan several times given his critique of India’s Kashmir policy. The anchors shut up when informed that Umar didn’t have a passport and didn’t plan to apply for one when he is set free. A bevy of intellectuals, academics, and activists at home and abroad, led by the venerable Noam Chomsky, have petitioned the Modi government, in vain obviously, to free the much-admired student activist who earned his PhD at JNU studying India’s tribal societies, and who has campaigned to defend the downtrodden relentlessly.

Umar Khalid’s decision to withdraw the bail application from the supreme court comes with an underlying irony about the Indian judiciary. A high court in West Bengal has admitted for hearing a communally inspired petition [objecting to a lion and lioness being called Akbar and Sit](https://www.dawn.com/news/1815116/akbar-the-lion-cant-be-with-sita-the-lioness-petitions-vhp)a. Given the unconscionable number of undertrial prisoners languishing hopelessly in Indian jails and other forms of daily injustice meted out particularly to citizens in the lower echelons of society the sense of priority of the courts can be baffling.

India’s supreme court must step in to ensure that its own writ is honoured by the Indian state and government.

At the supreme court, meanwhile, an opposition chief minister who represents the vulnerable and perennially exploited tribespeople, was arrested but denied a simple bail hearing. The arrest of a serving chief minister is unusual as was the supreme court’s refusal to hear him. On the other hand, a pro-government TV journalist got bail from the apex court at unparalleled speed. Another day, a judge found time to hear the petition that paved the way for the premature release of Hindutva men convicted for rape and murder in Gujarat before yet another judge rescinded the order.

Similarly, in the eyes of many, the court argued one thing on the Ayodhya case and [delivered another](https://www.dawn.com/news/1515892). More recently, the fate of Kashmir’s special status was [sealed with a decision](https://www.dawn.com/news/1796946) from the apex bench, which, lawyers say, could threaten the federal rights of other states.

Umar’s dejected decision, however, came on the heels of celebration for Indian democracy when a constitution bench of the supreme court headed by Justice D.Y. Chandrachud [declared illegal](https://www.dawn.com/news/1814417) a law enacted by the Modi government that allowed secret transfer of funds from corporates to political parties. The court also ordered the State Bank of India to release by mid-March details of the money thus transferred to the parties of whom the BJP is believed to be the overwhelming beneficiary.

A revelation of the cash nexus between the government and business captains, including some leading ones who had campaigned before the 2014 polls to declare Narendra Modi as their prime ministerial candidate, has the potential to expose any quid pro quo, to damage the BJP. On the other hand, there is the sobering possibility that the BJP has accumulated enough capital over the years to outspend the opponents at the polls. But the elephant in the room — more correctly in the courtroom — is the fact that Prime Minister Narendra Modi thinks nothing of using religion for political gain. His own preferred TV channels have described his recent [inauguration](https://www.dawn.com/news/1807638) of half-built Ayodhya temple where the Babri Masjid once stood, as a masterstroke ahead of the May elections.

The desperation with which the BJP is poaching leaders from opposition parties to improve its chances suggests that the Ram temple gala may have fallen short as an election tool. However, there’s no gainsaying that the use of religion does polarise a sizeable chunk of gullible voters. This is where the supreme court must step in, not necessarily to deliver a new verdict but to ensure that its own writ is honoured by the Indian state and government.

It was only in 2017 that India’s highest court banned political candidates from seeking election based on religion, caste or language. It was described by the foreign media among others as a landmark ruling that could have far-reaching consequences for the way Indian politics is practised.

Albeit in a split decision, the supreme court had nevertheless ruled that India’s constitution allowed for the free practice of faith but could “forbid interference of religions and religious beliefs with secular activity such as elections”. Does seeking votes in the name of Lord Ram violate the apex court’s orders or not?

An election won by soliciting votes along the lines of identity politics could be considered corrupt practice and the result set aside, the court had said. The dissenting judgement accused the majority justices of overreach and “judicial redrafting of the law”. In this subjective squabble between judges, the formulation and execution of legal verdicts often looks like a lottery — for democracy, and for individual victims of an increasingly errant state’s machinations. The elephant in the courtroom bodes ill not just for Umar Khalid but for far too many equally talented and potentially innocent academics, journalists and ordinary folks who may be damned by the order of the day.

*The writer is Dawn’s correspondent in Delhi.*

[**jawednaqvi@gmail.com**](mailto:jawednaqvi@gmail.com)

*Published in Dawn, February 20th, 2024*