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Legality of Yogi Adityanath's Appointment as Chief Minister — Quartz.pdf

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UP BLINDSIDED

Would Sonia Gandhi have been accepted as PM in 2004 if she'd tricked us like Adityanath did in 2017?

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Quartz India



📷 On the sly. (AP/Rajesh Kumar Singh)

Imagine an alternative history of 2004.

The fourteenth general election is imminent. The National Democratic Alliance, the ruling coalition in New Delhi, has unleashed an “India Shining” campaign. It has people swaying to a new rush of patriotic pride. Sonia Gandhi, leader of the opposition Congress party, unsure of India’s appetite for an Italian-born prime minister, crafts a sly plot. She will marshal her electoral soldiers only from a distance, feigning apathy for the ultimate political office.

Results roll in, and they hand the Congress an abrupt win. Now Gandhi unveils her deceit. She takes the oath of office and finagles herself on a stunned nation. She didn’t run; citizens didn’t elect; India didn’t know. But there she was: prime minister of India.

If true, pundits would chronicle a faithless Gandhi subverting the electoral process and stomping on the people’s will. A tale of breathtaking abuse of the constitution if ever there was one.

There is one. This recent one: furtively foisting Adityanath on the people of Uttar Pradesh (UP).

The versatile Adityanath

Adityanath, previously Ajay Kumar Bisht, is a rainbow of uneven, often ugly, hues. He is a mathematics diplomate, ordained monk, Hindutva icon, venomous orator, veteran parliamentarian, and criminally accused. On March 19, 2017, he donned a new shade: chief minister of UP.

Adityanath, clearly, is many things. Is he a trespasser, too?

His uncouth anointment provoked a tempest of rebukes. The commentariat in India and beyond savagely flailed the move: assault of the Bharatiya Janata Party’s (BJP) “fringe”; “hubris” of the ruling party; an ode to “Hindu supremacy”; a “defiant assertion” of Hindu nationalism; an “embrace of Hindu extremists”; and much else.

These misgivings overlooked an elemental issue: The legality of the appointment. Currently, a member of parliament, Adityanath became chief minister of a state overnight. No notice, no vote, no mandate.

Is that constitutional?

Foisting an electoral boondoggle

Notice some facts.

One, Adityanath was available. He campaigned sedulously. He could have contested. He didn't. Two, the BJP marched 384 warriors to combat, of which 312 returned triumphant—more legislators than the party needed to form a government. Three, Adityanath has a venomous past. His vile speeches often thundered past the line of decency and, occasionally, criminality, too. Many had much to fear in this man. Four, in India's first-past-the-post system, small swings in votes massively alter seat tallies.

Put these together, and ask: Why Adityanath after the elections? Why not before?

Writing on NDTV.com, Chandan Mitra, a party spokesperson, catalogued his credentials. "The best man for the job," Mitra concluded. So, when did he become the best man? After the elections?

Party president Amit Shah, and, presumably, prime minister Narendra Modi, too, oversaw candidate selections. Their recruits won. But none worthy of the chief ministerial chair? That defies logic; it speaks ill of their choices, too.

Perhaps Adityanath was always the "best man." Perhaps Modi and Shah had settled on him long before the election. [A report](#) in *The Times of India* suggests as much. Months before campaigning began, Amit Shah broached two names: union home minister Rajnath Singh and Adityanath. Singh declined, leaving the

field to Adityanath. Internal surveys revealed his popularity among party cadres. That helped him, too. A surprise to the outside world, “Yogi [had become] a strong CM contender much before UP’s voters delivered a massive verdict for BJP.”

Why, then, wasn’t he paraded before the polls?

Confirming Adityanath may have unleashed a ferocious polarisation against the BJP—a proposition no serious student of Indian politics will deny. We mustn’t forget: more than 60% of UP voters didn’t favour the BJP.

Settling on Adityanath prior to the polls, but masking him is an outrageous piece of deceit: the electorate misdirected, the process undermined, the verdict gamed. This isn’t the mundane politics of intrigue. Instead, the humbug is mounted on a willful misreading of the constitution. Therein lies the legal rub.

The parliamentary system for dummies

India has a parliamentary system. It is largely modelled after Westminster in the United Kingdom. A key feature of this system is the fusion, not separation, of the legislative and executive branches.

The legislative branch is an elected body. The party (or coalition) with a majority in the legislature forms the government. Some legislators become ministers. The executive, in a way, emerges from the legislature, and is collectively accountable to it.

Consequently, parliamentary systems pivot around an iron law of fusion: Ministers must be legislators, too.

How does this affect Adityanath?

On March 19, he became CM. But he isn’t a member of the UP legislature. Doesn’t the iron law apply to him?

A constitutional exception: preliminaries

The iron law isn't directly in the constitution. No provision commands ministers to be legislators. Instead, an exemption spells it out implicitly.

Article 75(5) reads: "A minister who for any period of six consecutive months is not a member of ... Parliament shall... cease to be a minister." Article 164(4) recites the same for the states.

The provisions reveal two things. One, the iron law is the norm in India: Ordinarily, ministers must be legislators. Two, a slim exception also exists: Occasionally, legislative outsiders may assume ministerial posts. But six months is all they have: Become legislators by then, or vacate the ministries.

Political parties took to the exception with glee. The first direct deployment came in January 1957. Kailash Nath Katju, defence minister in Jawaharlal Nehru's cabinet, was parceled to Madhya Pradesh as its chief minister. Article 164(4) helped install him.

The long line of outsider chief ministers that followed puts Adityanath in the clear. He is treading a familiar path. An electoral formality within six month will resolve whatever ambiguity remains of his constitutional status.

End of matter? Far from it.

Negotiating the iron law of fusion

Broad and direct: That's how Article 164(4) reads. "A minister who for any period of six consecutive months is not a member of the legislature of the state shall ... cease to be a minister."

Does the provision really mean how it reads? *Any* person may be appointed minister? Not at all.

In May 2001, the All-India Anna Dravida Munnetra Kazhagam (AIADMK) won a massive verdict in Tamil Nadu. The party leader, Jayalalithaa, didn't contest the polls. Convicted on charges of bribery, she stood disqualified. Still, the AIADMK installed her as CM.

The supreme court dismissed her. Why?

Normally, persons must satisfy a passel of conditions to become legislators: age, citizenship, sanity, solvency, and more. Some are catalogued in the constitution; other are found in legislations. Jayalalithaa fell short; she couldn't be a legislator. But here she was: the CM.

Absurd, the court proclaimed. Only persons qualified to be legislators may invoke Article 164(4). Otherwise, it would defeat democracy itself.

The court has invalidated other ministerial misadventures, too. In 1995, one Tej Prakash Singh became an unelected minister in Punjab. Not a member of the legislature after six months, he resigned. During the life of that assembly—ordinarily, legislative assemblies are elected for five years—he was reappointed an unelected minister.

The court wouldn't have it: A person may invoke Article 164(4) only once during the life of an assembly, it concluded. Repeat appointments undermine democracy and the iron law of fusion.

These verdicts reveal a vital idea: Article 164 has *hidden* limits. It means much less than it says. The provision is tethered to—and constrained by—constitutional principles. They lessen its reach.

The real question, then: Is there a hidden limit that precludes Adityanath from riding the exception?

Trespassing on Article 164

There is: Political parties cannot summon Article 164 to undermine the *integrity of the electoral process*. The provision isn't a contraption to hoodwink the electorate or ambush their choices with. Such machinations defeat democracy, too.

But Adityanath's concealed anointment does just that.

The man made a choice: He didn't contest. The choice must matter. Nothing justifies foisting him on UP now. The "best man" argument doesn't wash, not at all. Nor do coalition compulsions—or, intra-party jostling—demand his elevation. There are no good reasons.

We are left with only one possibility: He was installed earlier but purposefully unveiled later.

But remember: We are forbidden to employ constitutional provisions to further deceitful ends, particularly those damaging to democracy and constitutionalism. They amount to a "fraud on the constitution." A well-articulated concept in public law, the supreme court has often invoked it to invalidate unlawful doings.

The idea squarely applies here. The BJP has effectively rented Article 164 to unlawfully house a CM. It's a fraud on the provision: It's unconstitutional.

But is there any more to this odd appointment?

Atal Bihari Vajpayee and Lal Krishna Advani, in November 2001, headhunted one Narendra Modi from New Delhi and returned him to Gujarat to put the local BJP unit in order. Not a state legislator then, chief minister Modi got himself elected

a month later. Is Adityanath's anointment, headhunted from parliament and returned to UP, Modi's hand for future India?

We welcome your comments at ideas.india@qz.com.