

Freedom First

The Liberal Position

500
AND COUNTING

You moved to another city.
She understood.
You were too busy to call everyday.
She didn't mind.
When she cried, she cried alone.
Whenever you cried, she cried with you.
When you said 'Ma, this is important',
she prayed for you.

Your dreams are not yours alone



www.unionbankofindia.co.in



INDIAN COMMITTEE FOR CULTURAL FREEDOM

Publishers of

Freedom First

Dedicate
THIS 500TH ISSUE
TO ITS READERS

and

To All Those
WHOSE SUPPORT ENABLED

Freedom First

TO REACH THIS MILESTONE

Between Ourselves...

“In this era of ‘Breaking News’, it is a pleasure to wait till the end of the month and get a very balanced, intellectual and unbiased view of current affairs through FF. Your January issue gave a wonderful coverage from Global Recession to Terrorism, politics and homage to defenders of the nation – beautifully interspersed with some very thought-provoking fillers on various topics.

It is very nice to see FF keeping aloft the flag of objective reporting and lofty ideals. No wonder some of the most eminent personalities from different walks of life contribute in your esteemed publication.

My hearty congratulations to you on soon completing 500 issues, and may your tribe increase!”

What better reward can we, at *Freedom First*, expect than this letter from reader Dr. Ali Khwaja of Bangalore.

We have pleasure in presenting to you, Dr. Khwaja, and all our readers past and present, the 500th issue of *Freedom First*.

We also take the occasion to thank all those who supported us in one way or another to keep the journal going through these, often turbulent, 56 years. They include donors, advertisers and those who contributed their skills, their professional expertise, and above all, their time, as a labour of love.

And when I use the plural ‘We’, I include our Founder Minoo Masani; all the editors of this journal past and present. This is the occasion, perhaps the only one, when we can place their names on record: Editors: Adam Adil • Raman Desai • Geeta Doctor • Nissim Ezekiel • V. B. Karnik • Aziz Madni • Minoo Masani • Faiz Noorani • Narie Oliaji • Jehangir Patel • Dinkar Sakrikar • R. Srinivasan • K.S. Venkateswaran.

Distilling articles spanning 56 years of continued publication (barring 6 months in 1975 when we suspended publication during the so-called ‘Emergency’) was no mean effort. But our team of contributing editors rose to the challenge and this 500th issue is the result of their effort. Limitations of resources compelled them to keep the selection of articles to not more than forty, making this task even more difficult. We owe a debt of gratitude to our Contributing Editors **Sharad Bailur, Firoze Hirjickaka, Ashok Karnik, Farrokh Mehta, Jehangir Patel, Satish C. Sharma and R. Srinivasan.**

Editor

The Evolution of *Freedom First*

With the winning of independence, new tasks and responsibilities opened up for the Indian citizen and the elite. The dream of our political leaders who had led us to freedom was that, with independence our country would launch towards the winning of a new world where the ideals deeply cherished by the freedom movement itself would be realized – the creation of a new society, secular in its foundation, ensuring liberty of thought, belief and action and the realization of economic and social justice to all the citizens of the free republic.

Many among the younger political leadership had come of age during the economic and social experiments of Soviet Russia, and some saw in the Soviet experiment the dawning of a new world, where the dreams of social thinkers would be fully realized – the abolition of poverty, the extension of democracy, the ending of disabilities arising from religious beliefs, the furtherance of social and gender equality, full employment and realization of rights through elections. From the middle of the nineteenth century socialism has had its devoted adherents in the west, and socialism had become part of the intellectual baggage of Asians as well. In many parts of Asia, there were devoted nationalists who saw the Soviet experiment as worth emulating. Those who had grown up politically in the 1940s can recollect how the youth then had come under the spell of the experiments of the Soviet Union.

Young people then, no less than the congress leadership at the intermediate level, had no immediate or distant knowledge of the traumatic experiences of European history. Hitler was a far off figure, who comforted the Indian for the enormous privations that he had dealt to the hated British Imperial power, the ramifications of the Jewish problem with the pogroms and the concentration camps, did not get reflected in the Indian consciousness. On the contrary people like Tagore and Nehru who had visited the Soviet Union were impressed. Totalitarianism was entirely a novel experience in global history. What loomed large, was the potentialities and the promise of national planning. Even before India's independence, the Congress Party had established a planning commission with Nehru as Chairman. All were taken in by the siren voices of the Soviet Union, in blissful ignorance of the threat of Soviet Communism, its inhuman treatment of dissenters, the Gulag, the reach of the Secret Police and the forcible invasion of East European countries.

It was in this context that *Freedom First* began publication in June 1952. Its main thrust was the defense of cultural freedom, to expose the reality of Soviet communism and its mouthpiece in India, the Communist Party of India.

Freedom First was a journal with a difference. While politics was important other items were not neglected. It had a place for humour, cartoons and profiles of people. It championed the idea of an open society of the conflict of ideas, of matters cultural and intellectual besides politics. It began to champion alternatives to socialism, advocated free enterprise, propagated the cause of secular values, minority views and the culture of the minorities. Gradually it grew to be an advocate of Liberalism and its values, and soon evolved as the only journal in the country viewing and interpreting events and policies from a Liberal perspective.

It is said, that nothing is as dull as yesterday's newspaper. Like all truisms this needs modification. It was, while collecting items for inclusion that we realized as to how many good things there were to read in almost every issue. The spread is before you and you can judge this for yourself.

Founder: Minoo Masani • **Editor:** S. V. Raju • **Associate Editor:** R. Srinivasan • **Advisory Board:** Sharad Bailur, R. V. Chari, Firoze Hirjickaka, Ashok Karnik, Farrokh Mehta, Nitin Raut, Brig. (Retd.) S. C. Sharma, Kunwar Sinha, Sameer Wagle • **Cover Design:** Vivek Raju
Publishers: Indian Committee for Cultural Freedom (ICCF), 3rd Floor, Army & Navy Building, 148, Mahatma Gandhi Road, Mumbai 400 001.
Phone: +91 (22) 2284 34 16 • E-mail: freedom@vsnl.com
Published by J. R. Patel for the Indian Committee for Cultural Freedom (ICCF) and printed by him at Union Press, 13 Homji Street, Fort, Mumbai 400 001. Phone: 22660357, 22665526.
Typeset at **Shubham Print & Web** 59, Dr. V. B. Gandhi Marg, 1st Floor, Fort, Mumbai 400 001. Phone: 2284 2619 • Mobile: 96929 21277
Single Copy: Rs.25 • Annual: Rs.150 (Add Rs.50 for outstation cheques) • Overseas (Ind Class Air Mail) Annual: \$20 or £10
Cheques to be drawn in favour of **ICCF** and mailed to the publishers at the above address.

C O N T E N T S

Between Ourselves	1
The Evolution of <i>Freedom First</i>	2
<i>What Freedom First Stands For</i>	
The Open Society	June 1952 5
Rededication	January 1972 8
A Tiff with the Establishment	December 1956 9
Mill "On Liberty"	13
Incentives to Goodness	Jayaprakash Narayan September 1952 17
Stendhal	Narief Oliaji September 1952 19
M.N.Roy- Humanist Par Excellence	J.B.H.Wadia March 1954 20
The Role of English	J.B.H.Wadia April 1960 22
How Not to Ban a Book	Nissim Ezekiel July 1961 25
Reflections on Indian Secularism	R.Srinivasan October 1963 27
Untouchability – The Indian Apartheid	Arvind Deshpande May 1969 30
Some Suggestions	Jayaprakash Narayan April 1970 32
That Irrepressible Gadfly–A.D.Gorwala	J.R.Patel January 1972 36
The True Liberal	Minoo Masani April 1973 37
Salvaging Fundamental Rights	S.P.Aiyar March 1975 39
Dying With Dignity	Fredoon Antia May 1976 42
State of the Nation	Minoo Masani June 1976 46
India's Ballot Box Revolution	S.P.Aiyar June 1977 50
Torture and Preventive Detention	S.A.A.Pinto Nov. 1977 54
Our Trade Unions	VB.Karnik April 1980 59
Reservation – in Education & Public Service	H.M.Seervai July 1985 65
Wrong Law & Order Assumptions	K.F.Rustamji October 1989 76
The Mahabharata as a Study of the Problem of evil	A.N.Moorthy Rao April 1991 79
Criminal Politicians or Political Criminals?	S.V.Raju October 1993 85
Secularism Indian 'Ishtyle'	Sharad Bailur July 1994 89
Taslima Nasreen – A Profile in Courage	V.K.Sinha July 1994 93
"I Remain, Sir, Your Obedient Servant"	N.B.Grant January 1995 98
When Lawyers Did Indian Democracy Proud	M.A.Rane April 1995 101
Will India Survive as a Democracy	Gangadhar Gadgil July 1997 105
The Indian State v/s Its Citizens	J.B.D'Souza October 1998 112
The Tehelka Tapes – An Analysis	Ashok.Karnik April 2001 115
The Citizen's Right to Know	Jagdeep S.Chhokar July 2002 119

Two Freedom Struggles	Usha Mehta	October 2002	125
Increasing Intolerance & Suppression of Dissent	Soli Sorabjee	October 2005	129
Parliament v/s. Supreme Court	S.P.Sathe	January 2006	134
The Bane of Coalition Politics	Sharad Bailur	January 2006	138
The Reservation Conundrum	UshaThakkar	July 2006	142
The Chinese Chakkar	T.C.A.Rangachari	July 2007	146
Maoist Menace	Ashok Sahu	April 2008	150

Author Index

Aiyar, S.P.	39, 50	Nissim, Ezekiel	25	Rustamji, K. F	76
Antia, Fredoon	42	Masani, Minoo	8, 37, 46	Sahu, Ashok	150
Bailur, Sharad	89, 138	Mehta, Usha	125	Sathe, S. P	134
Chhokar, Jagdeep S.	119	Narayan, Jayaprakash	17, 32	Seervai, H. M.	65
D'Souza, J. B.	112	Oliaji, Narie	19	Sinha, V. K.	93
Deshpande, Arvind	30	Patel, J. R.	36	Sorabjee, Soli	129
Gadgil, Gangadhar	105	Pinto, S. A. A.	54	Srinivasan, R.	27
Grant, N. B.	98	Raju, S. V.	85	Thakkar, Usha	142
Jahagirdar, R. A.	13	Rane, M. A.	101	Wadia, J. B. H	20, 22
Karnik, Ashok	115	Rangachari, T.C.A.	146		
Karnik, V. B.	59	Rao, A. N. Moorthy	79		

A Note from the Contributing Editors

The articles are placed in chronological order which give an indication of the issues relevant during the year of their publication. This would also explain articles on the same topic occurring more than once in this list of contents. The author index is for your added convenience.

Freedom First

3rd floor, Army & Navy Building, 148, Mahatma Gandhi Road, Mumbai 400 001.
Phone: (022) 2284 3416 • email: freedom@vsnl.com

SUBSCRIPTION FORM (In Block Letters Please)

NAME : _____

ADDRESS : _____

_____ PIN

PHONE / MOBILE NUMBER :

EMAIL : _____

*SUBSCRIPTIONS PAYABLE BY CHEQUE / DD DRAWN IN FAVOUR OF ICCF AND PAYABLE AT PAR IN MUMBAI.
IF THIS IS NOT POSSIBLE THEN PLEASE ADD BANK CHARGES RS.50 FOR OUTSTATION CHEQUES WITHIN
INDIA. SUBSCRIPTIONS CAN ALSO BE PAID BY MONEY ORDER*

Subscription

Within India & SAARC countries

☐ 1 Year : Rs.150

☐ 2 Years : Rs.250

☐ 3 Years : Rs.375

Overseas

(By Second Class Airmail)

Annual: \$20 / £ 10

What We Stand For

THE OPEN SOCIETY

The Open Society is the Objective of our Movement

In 1913, the late Mr. Gopal Krishna Gokhale returned from an extensive tour of Europe and told the members of the Servants of India Society that the people of Europe were living under a strain and predicted an early snap down. Since then men have fought two great wars to alleviate, if not to end, the strain, but it has continued to grow and spread and today the whole world is weighed down.

Many complicated problems have emerged in our century and their solutions have not been easy. National antagonisms and class conflicts, economic development and social change have raised issues of such fundamental importance and bristling with such complexities that solution of some of them has not eased the crisis in any way. Man's spirit feels more pressed down than ever before.

The quest for solution has taken two different roads, one of broadening freedom and responsibility and the other of surrendering initiative and power to an external authority. Culture has generally been spelled in terms of broadening of freedom and deepening of responsibility.

In the past forty years the conflict between the free man with his autonomy of will and the anxious man seeking the embrace of a great Leviathan has become acute, and we now seem to

be preparing for the final round. In Europe men have moved up both the roads and cohorts on both the sides have gained in strength and confidence.

There is nothing original about the conflict except its global dimensions and the intensity imparted to it by modern knowledge. In previous rounds of the conflict freedom has more often won against authoritarianism than lost and that has led to the development of culture. Resilience is so natural to the spirit of man that no imprint of an authority has remained indelible.

In the past forty years the conflict between the free man with his autonomy of will and the anxious man seeking the embrace of a great Leviathan has become acute, and we now seem to be preparing for the final round.

Through the long travail man has learnt the value of keeping some arena free from tensions and trammels. And it is the domain of mind that has sought to retain such freedom.

In India, for centuries, thought has been free, for ever filled with the desire of the sky. Patterns of behaviour have been fixed; caste-bound society circumscribed man's actions, but his thought has soared freely. Thought has enjoyed an autonomy that few authorities have dared to encroach upon. Such a mental climate led to two advantages: (i) every idea had to confront its critics and free debate between them went on, and (ii) ideas were judged for their intrinsic worth, they often changed

Freedom First, June 1952.

This is the inaugural article encapsulating the philosophy of *Freedom First*. The name of the author is not available but we presume it was Mr. Dinkar Sakrikar, a democrat and a socialist whose imprint appears as printer and publisher.

not the course of thought alone, but of events too. Openness to ideas, refusal to discredit ideas by discovering some “interests” behind them and aversion to shifting controversies from the plane of ideas to the plane of interests were the hallmarks of our intellectual life.

That the voice of dissent should have free scope was a deep seated conviction. In describing the working of Buddhist assemblies, Dr. Radhakumud Mukerji writes in his *Hindu Civilization*, “Silence on Resolution put was taken as consent thereto; members in favour of it were asked ‘to be silent’ and ‘anyone against it to speak’.” This shows not merely a predilection for tolerance but the conviction that a proposition gains by the freedom given to its critics and challengers.

The Movement for Cultural Freedom has no fixed nostrums for the ills of our people. But it is convinced that the sickness of society cannot be cured outside a climate of freedom. To work for an open society, to keep the windows of mind and heart open, is the main purpose, the driving impulse of the Movement.

Life in India, in the picturesque phrase of Walter Bagehot, was a cake of custom, but thoughts were never mere currents in it. Social life was hide-bound, but even there it was possible to move into the margin of free life that provided a purposeful quest inspired spirits. Those who yearned to experiment with life, to explore its ultimate secrets were not bound to conform to the traditional mores and the established folkways. In the realm of thought, however, all were free. The windows of the mind were for ever open and the winds from all corners flowed in and out.

Regimentation of thought has been alien to

the genius of this ancient land; she has revelled in luxuriant foliation of the mind, much of this “tropical growth” being superficial, but a part of it has proved to be of abiding worth. A glorious achievement was the climate of tolerance that was realised and the habit of confronting every idea with its critics that was developed and esteemed.

An open society is one wherein not only thought is free but behaviour is unbound and “ideational”, that is capable of responding to the press and pull of ideas. In India ideas did not always alter the contours of conduct but its impact on other’s ideas was ceaseless. Ideas have freely impregnated and enriched one another. Such is our heritage of broad tolerance.

The Movement for Cultural Freedom builds itself upon these traditions and is anxious to enrich the heritage. The need for such a Movement has arisen because in the world today forces are growing that deem freedom to be a burden that is to be transferred to some authority. It is not realised that when wings are clipped, the sky becomes no more than a cage. Goblins of insecurity and anxiety are sought to be exorcised by seeking a tribal unity wherein man’s individuality and autonomy are submerged in the mass – where man is transformed into a mass-man.

In India we have had long experience of intellectual tolerance and of social regimentation. Such regimentation as we have learnt the hard way, has led to stagnation and decay. The National Movement, from the days of Rammohun Roy to those of Tagore and Gandhi, has sought to end the stagnation by strengthening the current of free movement. It is that current that is today threatened with destruction, and it is its unhampered flow that our Movement seeks.

The Movement for Cultural Freedom has no fixed nostrums for the ills of our people. But it is convinced that the sickness of society cannot be

What We Stand For

cured outside a climate of freedom. To work for an open society, to keep the windows of mind and heart open, is the main purpose, the driving impulse of the Movement. All choices are tentative and therefore the framework of free debate is the only condition that assures that wrong choices will be set right. To preserve that frame-work and not to impose any choice is the purpose of the Movement. Against strident voices of regimentation, forces of freedom have to rally not for the success of some sect or a cause, but for retaining for the people freedom to choose and to *change*.

The open society is the objective of our Movement. While it wants the sway of freedom in every segment of life, it feels that the realm of mind that is its heart and home is what it must safeguard with all its might.

Man's understanding of life is always tentative, and what is tentative has to be open. Progress is possible where the ultimate framework of reference is not some creed or party or authority but man's questing spirit, his ability to affirm, to challenge and to deny. Only then have facts and ideas objective reality. In a regimented society truth is

tailored and principles processed to suit exigencies, and therein man loses all measure. His search for meaning loses point and purpose.

The Movement for Cultural Freedom fully recognises the gathering anxieties and anguish of the modern man. And because of its awareness of the poignancy, it warns men against retreat into a cave, for such security is purchased at the cost of progress and growth. It tries to give men strength and confidence to face their anxieties in the open. Not by seeking the strength of those who assent does one silence the voice of doubt, for doubt has to be solved not suppressed. Suppression of doubt must lead to deeper anxieties to the worsening of the disease itself.

The open society is the objective of our Movement. While it wants the sway of freedom in every segment of life, it feels that the realm of mind that is its heart and home is what it must safeguard with all its might. In this stubborn allegiance to the liberties of the mind the Movement draws its strength and inspiration from India's glorious traditions. The crusade for open society has to be fought with widening mind and widening heart and all men who love to think freely and act openly are among its fighters.

The Greeks had a Way With It

Recent excavations by archaeologists in Greece have thrown fresh light on the ancient civilisation that was once the pride of the world. Among the finds of interest

is a marble tablet on which is inscribed a law that "anyone killing a person who attempts to establish a dictatorship is to be counted guiltless." This tablet was found in the *Agora* or market place of ancient Athens. This anti-dictatorship law expressly prohibits any anti-democratic measures, such as the giving of legal sanction to a dictatorship on the part of the members of the Council of the High Court, the *Aereopagus*, under pain of loss of civic rights and confiscation of their property.

At a time when the air was full of hysterical bleating by communists about the tyrannical nature of the Preventive Detention Bill then before the Indian Parliament, ancient Athens thus contributed to us a piece of the eternal verities. No one shall thrive by the Constitution of the Republic who strives to destroy that Constitution and establish a dictatorship.

The Preventive Detention Act is defective and objectionable not because it cripples the anti-democratic plotting of the communists but because it gives the Executive powers which may impinge on the Fundamental Rights of other citizens.

**Notes" in Freedom First No.4, September 1952*

What We Stand For

REDEDICATION

In June 1952, some of us established *Freedom First* as a little journal that would “work for an open society” and “keep the windows of mind and heart open”. On the front page of our first issue we had observed that “all choices are tentative and therefore the frame-work of free debate is the only condition that assures that wrong choices will be set right.... Against the strident voices of regimentation, the forces of freedom have to rally not for the success of some sect or a cause, but for retaining for the people freedom to choose and to change.”

It may well be that in the next few years it will be only small “rags” like Freedom First that will be able to keep the torch burning.

Elsewhere in our first issue we had described the new threat founded on the theory and practice of totalitarianism as “the gravest challenge man has faced in civilised history. Indifference or neutrality towards this totalitarian tyranny amounts to a renunciation of the Indian tradition and our human heritage and a betrayal of all spiritual values.” Two hundred and thirty-five months have passed since then and that threat is far more acute today. The fundamental freedoms of our citizens are under direct attack from those in authority and their followers.

A veritable Marxist counter-revolution is in progress taking away from the Indian people a great deal of the freedom they achieved in 1947. On December 2, 1971, Jayaprakash Narayan, whose passion to combat poverty and whose love of the poor shines in comparison with that of anyone in New Delhi, described the 25th Amendment to the Constitution as a “reactionary and totalitarian step”.

Freedom First, January 1972

“The Prime Minister and her colleagues”, Mr. Narayan said, “seem bent on destroying the foundations of democracy so clearly laid down by the fathers of the Constitution, including Jawaharlal Nehru..... It should be a matter of shame that even such fundamental freedoms as those of speech and association and movement are going to be subjected to the whims of the State on the plea of demands of socialist policy.”

The freedom of the Press in India is also in peril. Whether through legislation or by the mere threat of legislation, there is grave danger of the larger and better organised newspapers being made to conform more and more and the voice of dissent being stilled in so far as they are concerned. It may well be that in the next few years it will be only small “rags” like *Freedom First* that will be able to keep the torch burning.

Impelled by these considerations, I have agreed, with the encouragement of our young Associate Editor, to the plea of my old friend and colleague, Mr. V. B. Kamik, the veteran trade unionist, to relieve him of the burden of editorship which he has carried with such dedication for six years. In order to equip *Freedom First* for the more strenuous challenges that lie ahead we are, to start with, making a small increase in the number of pages as from this issue.

Freedom First brings greetings to its readers, many of whom are scattered in remote parts of the country and who, as we happen to know, look forward to its arrival to bring them not only information and comment but also the inspiration and courage to keep up their own efforts in the cause of freedom. We carry to our readers our pledge to rededicate ourselves to the task for which this journal has stood for nearly two decades.

Minoo Masani
Editor

What We Stand For

A TIFF WITH THE ESTABLISHMENT

- Echoes in the Lok Sabha

Prime Minister Nehru believes we are in bad company. In the course of his speech replying to the debate on foreign policy in Parliament he mentioned the Hungarian incident as having "gone into wrong hands" and complained of "interference" in such matters by associations such as the Indian Committee for Cultural Freedom and the Democratic Research Service (DRS). He accused these of being merely political organisations comparable to the fronts put up by the communists. According to him these organisations are "closely associated with the Praja Socialist Party" and they serve "as a convenient handle to run down our government."

The Prime Minister, when he brings down on the heads of small groups of Indian citizens the full weight of his authority and prestige owes an obligation to the country to be properly informed and to get his facts straight. It is a pity that he should have spoken on this occasion in ignorance of the facts. It therefore becomes necessary to enlighten him by a brief recital of the facts - about these two organisations.

To commence first with the Indian Committee for Cultural Freedom, it may be explained that this is the affiliate in India of the World Congress for Cultural Freedom, a world-wide non-partisan organisation of thinkers, writers, scientists and artists whose object is the defence of intellectual liberties against all encroachments on the creative and critical spirit of man. The headquarters of the organisation is in Paris. Among its Honorary Chairmen and members of its International Executive are men of the highest international renown such as Bertrand

Russell, Salvador De Madariaga, Karl Jaspers, Jacques Maritain, Reinhold Niebuhr, Denis De Rougemont, Raymond Aron, Sidney Hook, Ignazio Silone, Stephen Spender and Nicolas Nabokov, its Secretary-General. When some of these gentlemen have visited New Delhi, the Prime Minister himself has been good enough to entertain them at his residence.

The Prime Minister, when he brings down on the heads of small groups of Indian citizens the full weight of his authority and prestige, owes an obligation to the country to be properly informed and to get his facts straight.

Jayaprakash on the D.R.S.

In the course of a press statement issued from Madras (December 1956), the full text of which was published in only a few papers, Mr. Jayaprakash Narayan has commented as follows on the work of the Democratic Research Service:

"Mr. Nehru has particularly picked out the Democratic Research Service for his wrath. The object of this organisation is not to run down the Government as Mr. Nehru says, but to educate the people of this country in democracy.

"The D.R.S. has done particular service in exposing the dangers and nature of Russian communism, and curiously enough some of its exposures have now been endorsed by communist leaders themselves, such as Khrushchev, Gomulka, Imre Nagy and others.

"Every communist now talks of the 'mistakes' and 'crimes' of the past, but when the DRS talked of them some years back, it was condemned by the communists and by men like our Prime Minister as a fascist organisation or as an organ of foreign imperialism."

Freedom First, December 1956

Among members of the Executive of the Indian organisation are persons such as Dr. Sampurnanand, Chief Minister of U.P.; Mr. Asoka Mehta, M.P.; Mr. Jaipal Singh, M.P.; Mr. M. Bhaktavatsalam, a Minister in the Madras Government; Mr. Eric da Costa, Editor of *Eastern Economist*; Mrs. Rukminidevi Arundale, M.P., Mr. Laxmanasastri Joshi, Marathi writer; and Mr. V. B. Kamik, a veteran Trade Unionist. The Indian Committee is an independent body controlling its own policy and it does not accept either instructions or

In so far as the Democratic Research Service is concerned, it may be recalled that this organisation was established in November 1950 with the blessings of Sardar Vallabhbhai Patel, then India's Deputy Prime Minister and Home Minister.

funds from its international organisation beyond the payment it receives for literature supplied and other expenditure undertaken within India for the international organisation. The Indian Committee publishes a literary bi-monthly named *Quest*. It is concerned primarily with the problems of writers, educationists, and other intellectuals and with the maintenance of intellectual freedom. A few weeks ago, it joined the All India PEN Centre (of which Dr. Radhakrishnan, India's Vice-President, is the President and Pandit Nehru the Vice-President) and the Indian Institute for Intellectual and Cultural Cooperation in preparing a Memorandum on the Copyright Bill at present before Parliament and its representatives appeared before the Select Committee, which we are glad to see has accepted several suggestions made by the Indian Committee and the other two organisations for improving the Bill.

Just to show how ridiculous is the suggestion that the Committee exists to run down the

Government, it may be mentioned that a year or two back Mr. Jayaprakash Narayan conveyed to Mr. Nehru the unanimous invitation of the Committee to inaugurate its Annual Conference. The Prime Minister, however, excused himself on the ground that it would not be proper for him, in view of the official policy of non-alignment, to identify himself with an international organisation with a distinctive ideological orientation.

In so far as the Democratic Research Service is concerned, it may be recalled that this organisation was established in November 1950 with the blessings of Sardar Vallabhbhai Patel, then India's Deputy Prime Minister and Home Minister. Its purpose has been to contribute towards the education of public opinion in India to a fuller realisation of the need to defend India's national independence and her culture and of the possibilities of social and economic advance through democratic processes. Amongst its purposes also is the combatting of mendacious communist propaganda and infiltration in our national life.

The members of the Executive Board of the Democratic Research Service are Mr. Purshottam Kanji, a veteran Congressman and a Gandhian constructive worker, who is also currently Chairman of the Bombay State Industrial Financial Corporation and of the Wage Board; Mr. D. P. Sethna, a senior Solicitor of the Bombay High Court; Mr. M. R. Masani, author and publicist; Mr. L. Sawhny, a business executive; Mr. H. R. Pardiwala, Barrister-at-law.

Among the members of the Advisory Committee of the organisation are Mr. Purshottam Trikumdas, who was a member of the Indian delegation to the U.N. a couple of years back; Mr. Rohit Dave, editor of *Janata*; Prof. Anant Kanekar, Marathi writer and educationist; and Mr. J. B. H. Wadia, a film producer.

The Democratic Research Service has, apart

What We Stand For

from routine activities such as meetings and the publication of *Freedom First*, published a series of pamphlets, among the latest of which are *The Truth About Stalin*, which contains the full text of Khrushchev's secret indictment of Stalin. Other titles are *Chinese "Panchsheela" in Burma*, *How We Took Over Hungary* by Matyas Rakosi, *Why Communism Must Fail* by Bertrand Russell and others.

The organisation has also made available for the information of the Indian Government, press and public, the text of secret documents relating to the Madurai and Palghat sessions of the Communist Party of India, which have been quoted with approval by Congress Ministers in more than one State.

At the time of the Andhra election campaign, the DRS at the invitation of the AICC Secretariat prepared a series of leaflets which were widely used by the Andhra Congress organisation, who expressed their appreciation for the cooperation they had received from the Democratic Research Service.

It will thus be seen that the organisation has endeavoured, with the limited resources it possesses, to carry out its purposes. It does not "run down" the Government of India, nor is it primarily concerned with governmental policies. When – as in the case of Tibet, Hungary, or the glorification of Bulganin and Khrushchev during their visit to India – it has been felt that the policy of the Government has been such as to give comfort to international communism and unwittingly to aid its activities in this country, the Democratic Research Service and its journal have exercised their democratic right to criticise such policies.

The Democratic Research Service functions openly and says publicly what it feels on issues as they arise; its views and its activities are open for all to see and to assess.

The funds of the DRS are wholly raised within this country and none of them come from foreign sources or organisations. Our first Honorary Treasurer was Mr. Shantilal Shah, at present Education Minister in the Government of Bombay, who resigned because of his taking up a Cabinet appointment. The present Honorary Treasurer is Mr. N. R. Modi, a member of a respected firm of auditors. We do not disclose the names of our donors so as to protect them from vituperation from communist journals and harassment by the communists and trade unions controlled by them. But our funds come from the same patriotic sources from which the Congress Party obtains its contributions. If the Prime Minister cares to ask Mr. Dhebar, the Congress President, to satisfy himself on this score, we shall be glad to open our books to him after obtaining our donors' permission, which we feel confident will be given.

*The Democratic Research
Service functions openly and
says publicly what it feels on
issues as they arise; its views
and its activities are open for all
to see and to assess.*

In the present world crisis, we have unequivocally condemned in a public meeting in Bombay, aggression both in Egypt and Hungary. We are thus in the good company of the vast majority of the members of the U.N.

In so far as Hungary is concerned, we find ourselves in the company not only of the respected individuals in India and abroad whose names have been mentioned above, but of millions of decent human beings who have been outraged by the brutal massacre of thousands upon thousands of Hungarian men, women and children, whose only crime was the desire for freedom and their resistance to communist tyranny. We are in the company of Habib Bourgiba, Prime Minister of Tunisia, who has in-

What We Stand For

dicted Russia for "waging a pitiless war against a weak country" and of Mohammed Natsir, Masjumi leader of Indonesia. We are in the company of 123 members of the South Vietnam Legislative Assembly who paraded through the streets of Saigon wearing mourning white in sympathy for Hungary, and of Hugh Gaitskell, the British Labour Party leader who handed to the Soviet Ambassador in London a statement denying the lies with which Bulgarin's apologia was packed. We are in the company of the people of Denmark who expressed their anguish by five minutes of silence. We are even in the company of Jean Paul Sartre, till recently a consistent fellow-traveller, of the Budapest correspondent of the *Daily Worker* who threw up his job in disgust, and of Pietro Nenni, fellow-travelling Italian socialist, who has now returned his Stalin Peace Prize. We are in the company of the Pope who has declared "The blood of the Hungarian people cries vengeance to the Lord." We are in the company of the Burmese Prime Minister, U Ba Swe, who had no hesitation in saying "Russia has shot down hundreds of people whose only guilt was to ask the Russians to leave Hungary."

This is a goodly company. It is the kind of company we are proud to keep.



"Come On, Let's go wash our hands in the canal"

COURTESY: *Indian Express*

We apologise to our readers for inflicting on them this recital of facts, but we think it is due. For many months now, the Democratic Research Service has been the victim of vilification and slander at the hands of the Communist Party weekly *New Age* and the yellow crypto-communist journal *Ediz*. All kinds of fantastic nonsense has been published by them but, in view of the colour and character of these journals, we have treated these babblings with the contempt they deserve. This apart, these circles have, we understand, privately been showing some concocted document purporting to come from the DRS and entitled: "Pricon 6, 1956". We want to warn all concerned that no such document has been issued by the DRS and that it is a pure fabrication. It may be that there are others of a like nature. The Democratic Research Service publishes "no private and confidential" documents of this nature beyond its own progress reports which list its public activities and its publications. All its output is printed and made public.

It is distressing for those who are engaged in this work only to protect the free institutions this country enjoys and the democratic values on which our Constitution is based to be attacked by the Prime Minister of our country for doing what we consider to be in the national interest. We are therefore consoled to know that, in the course of a tribute to the work of the DRS, Mr. Jayaprakash Narayan has reminded the Prime Minister that "there are other men in India who love their country no less than he does and whose integrity of character is unquestioned."

World's Intellectuals Appeal to Pandit Nehru

We age your moral authority as the companion and disciple of Gandhi to stop the massacre of the Hungarian people. Your role as a mediator could contribute to a cease-fire and the withdrawal of foreign troops."

Signed: Don Salvador de Madariaga, Denis Rougemont, Stephen Spender, Nicholas Nabokov.

MILL "ON LIBERTY"

R. A. JAHAGIRDAR

By a happy circumstance February 2009 also happens to be the 150th Anniversary of the publication of John Stuart Mill's "On Liberty". *Freedom First*, which is celebrating the publication of its 500th issue, is, as its name suggests all about freedom and liberty. We therefore decided that we would make one exception in publishing an article that has not been published in our journal before and that is "On Liberty" by retired Justice Jahagirdar. It is not only appropriate but the right thing to do. Therefore as our tribute to a great Libertarian we give him pride of place in this, our 500th issue.

"If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if had the power, in silencing mankind".

This is the central theme of "On Liberty" by John Stuart Mill, the nineteenth century philosopher of England. The book was published in February 1859 thus 2009 marking 150th anniversary. "It saw six editions in the life time of Mill and has been issued in several editions later; it may have not formed a subject in college or university curriculum those days". But it has been almost a compulsory reading and study for political philosophers.

Mill never went to school or college but was educated entirely at home by his father, an eminent Utilitarian of his time. The experiment of domestic education has been characteristically described by Mill in his Autobiography which was unfortunately published after his death. The sheer precocity of Mill can be gathered. He read Greek by the age of three, had assimilated considerable body of classical literature before he was eight. By the time he was twelve years old he had mastered philosophy, political economy and mathematics. He was not only educated; he also educated his younger siblings. Though he modestly said that what he did could have been done by any boy or girl of average capacity and healthy physical constitution" (p.7 of Autobiography), it gave him a quarter of century

advantage over most of his contemporaries. By the time he was twenty he was a recognized philosopher of his time.

"On Liberty" was, as Mill has maintained in his "Autobiography" a joint product of his wife and himself. No discussion of "On Liberty" is possible as at any rate will be incomplete without describing Mill's relationship with Harriet Taylor.

Harriet Taylor was happily married to John Taylor, a prosperous businessman. He had no intellectual pretensions and as a result could not give intellectual companionship to Harriet. Harriet wrote for "*Westminster Review*" articles of philosophical import. She confided in a friend that she was worried about some philosophical problems which she wanted to discuss with some one. She was advised to meet Mill who by this time had already an established reputation.

They met in 1830. The introduction developed into companionship which in turn blossomed into friendship. When they first met, Mill was 24 years old, while Harriet was 23 and mother of two children. In a year she gave birth to one more child. But the intimate friendship with Mill continued. She went out with him, she travelled with him alone, some times with her daughter. Taylor acquiesced in all this, though cautioning her about a possible scandal. In those days divorce was not permissible.

Taylor died in 1849. Two years later John Mill and Harriet married – twentyone years after

JUSTICE R. A. JAHAGIRDAR is a retired judge of the High Court and a freelance writer.

A Brief Synopsis of "On Liberty".

The only end for which society can interfere in the liberty of individuals is to prevent harm to others either by their action or inaction. In what concerns himself the independence of the individuals is absolute, absolute over his body and mind. Liberty of conscience in the most comprehensive sense includes liberty of thought and feeling, of opinions on all subjects, of publishing one's views in all matters. This freedom is freedom of taste, to live one's own life by one's own lights. The right to form associations with free mature individuals all of their free volition. All these are subject to the proviso that these do not harm others. Men gain more by suffering others to live the life they want than by coercing others to live according to the larger community.

Coercing the thoughts of others is illegitimate. Even if a minority upholds an unpopular opinion it is better to leave them alone. For, in suppressing, you suppress what might be a right opinion. Even if the opinion is wrong it is better that the wrong opinion corrects itself by confronting the right one freely. History is full of right opinions suppressed by force and later experience vindicating the position of the oppressed. The persecution of Socrates and of Christ are examples. The evidence of history is that prosecution has put back by centuries right views. Very usual social stigma on unpopular heretical opinions result in their smouldering in limited circles.

If one wants great thinkers, they must be allowed to pursue truths to wheresoever it may lead. In a climate of mental slavery a few may survive but it never will encourage an active people. It is quite likely that the opinion suppressed may be wrong. But you need to know the grounds on which they are proved wrong. And they can be learnt only by freely contesting wrong opinions with the right and in the open. If contestation of opinions is not allowed, they become an unexamined creed. Also, an important point that ought to be remembered is that in social matters there is no one correct or incorrect position; very often they are in-between the two, in the interstices truth may reside.

Our political questions particularly, a party of stability and order needs to be continually in conflict with the party of reform both these are essential to a healthy political life. The rough and tumble of opinions are central to the attainment of truth.

While autonomy of opinions are important, equally important are actions. People should be encouraged to promote experiments in living; different people should live their own lives, guided by their own experiences and inspired by their own goals. In things that do not affect others individuality should be allowed to exert itself. And, equally, importantly, no one should unthinkingly copy another. It is the privilege of a mature man to use and interpret experience in his own way. No ape-like imitation but choosing one's own life, using one's own faculties, independent of others prodding is to be treasured for we are not automatons, but pulsating, living individuals, creative beings. Not by pruning away individual characteristics but by cultivating them, human beings become rich, diversified and interesting. Unfortunately the tendency is for mediocrity to be on the ascendant. Individuals are lost in the crowd and public opinion rules the world. And what passes off as public opinion is collective mediocrity expressed by mediocre men. We know that all creative initiatives come from individuals- those that stand on the higher eminences of thought.

It cannot be emphasized enough that to individuality should belong that interests the individual, to society what concerns society. Three arguments can be adduced for this. Individuals manage better what concerns them than the larger group or the state. Even conceding that individuals may not do as well as the state would yet individuals should do this for it is the only means of their mental education. Thirdly it is undesirable to add to the powers of the government. Even conceding that the government would do the job better, the chances are that they would inevitably degenerate into a pedantocracy.

There has to be a compromise between the individual and the State and this is indeed delicate and complicated question. The ideal to be kept in mind may be conveyed in these words: "The greatest dissemination of power consistent with efficiency, the greatest possible centralisation of information. And the diffusion of it from the centre. A State which dwarfs its men, in order that they may be docile instruments in its hands even for beneficial purposes – will find that with small men no great thing can really be accomplished.

(Paraphrased from J. A. Hammerton's 'Famous Books in Outline')

he had met and several years after he had fallen in love with her. Their marriage lasted only 7 years – though it was a very happy marriage. They interacted intellectually. ‘On Liberty’ was one of the twenty essays to be brought out in a book. That did not materialize. Mill has mentioned that the subject occurred to him when he was climbing the steps of the Capitol at Rome. Edward Gibbon also got the inspiration to write “Decline and Fall of Roman Empire” when he was at “Capitol”.

Harriet approved of the manuscript of “On Liberty” which was readied by Mill. As mentioned earlier, it was a joint product. Mill and Harriet left for France where she was taken ill and she died on 3rd November 1858. “On Liberty” was published in February 1859. The cover page of the book mentions only John Stuart Mills name. The book was dedicated to Harriet in superlative terms. Even in his Autobiography which appeared after his death, there are glowing tributes to her which were deemed extravagant by some. That she must have contrib-

uted to the thought though not to the writing, of “On Liberty” is a possibility because she herself had written an essay earlier on varieties of conformity – religious, political, moral and social – which are imposed by the society.

Mill argued that liberty must be absolute except where that it caused harm to others. On the other ground except harm to others could any individual or society presume to interfere with an individual. “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant”. (Introductory to ‘On Liberty’) over himself, over his own body and mind, the individual is sovereign. This thought has become very familiar to us. But in Mill’s time, it was a bold assertion.

A couple of things ought to be remembered. “On Liberty” is a philosophical dissertation, not a

John Stuart Mill’s influence (particularly his tract ‘On Liberty’) on Indian Intellectuals has been abiding. Bengal, Bombay and Madras had many acolytes of the philosopher. Agarkar summarised his books and brought them to a wide marathi-speaking public. In fact he said that if there was an after-life he would prefer to learn at the feet of the master. The later liberals used his book to good purpose. At a time when dissent is not only frowned upon but positively suppressed the book has an enduring message. For, we live in times when libraries and paintings are torched; unpopular yet true facts of history are denied and writers and artists are not only targeted but almost finished off, having to find refuge in foreign lands. This is not limited to any one region but is pan-Indian.

Yet in his own times the book was both reviled and welcomed. Charles Kingsley, the British author and divine finding it in a bookshop “read it then and there, remarking that it made him clear-headed, braver-minded man on the spot.” If Kingsley found the book bracing, Carlyle was furious with the book and went almost into a paroxysm when he talked of it. In Oxford undergraduates were to discuss it animatedly. Within two years of its publication it was to be translated into Russian, and if any country needed its message, it was Russia.

One of the curiosities is the use put to it by a novelist. In his last novel ‘Jude the Obscure’, Thomas Hardy has an interesting scene. Sue who is married to Phillotson wants to leave her husband and wants to live with Jude Farley. She quotes a sentence from Mill: “Should she (or) he who lets the world or his own portion of it, choose his plan of life for him has no need of any faculty than the ape-like one of imitation.” This statement of Sue is in Book IV – Ch.III.

The message of Mill was to reverberate throughout the decades of succeeding centuries. Norman Angell the champion and activist of world peace knew the entire book by heart and could recite the whole tract.

R. Srinivasan

topical treatise. The book does not deal with violation of liberty of the individual. It does not give any instances.

Secondly, though Mill was a Utilitarian and to some extent echoes libertarian views, it is not an essay on Utilitarianism. It is of much wider amplitude. Both in Mill's time and later, "On Liberty" has been commented upon, analysed, criticized, admired. Because it is philosophical, it is of relevance today. "That Liberty is likely to survive longer than anything I have written – because of the conjunction of her (Harriet's) mind with mine has rendered it a kind of philosophic text book of a single truth –". Thus Mill writes in his Autobiography. Whatever the reason, "On Liberty" has survived longer than anything Mill wrote.

Mill divides his book into five parts (1) Introductory, (2) Liberty of discussion, (3) Individuality, (4) Of the limits of Authority of Society (5) Applications".

One hundred and fifty years after 'On Liberty' and more than hundred years after Mill's death in 1873, society and the world has changed a great deal. Mill was a moral *laissez-fairist*. Today liberalism has become different. While the liberals of an early stage wanted the State to interfere in lesser and lesser areas of society, those of a later vintage saw the inevitability of the State legislating on a number of social areas and they did not think that it curtailed individual liberty significantly. Even if it did it was regarded as worthwhile. Dickens's novels cannot be left. In "On Liberty" Mill asserts to his own good the society cannot exercise authority –

called coercion – on an individual. Addiction to drugs, hours of work for women and children etc. will have to be tackled by the State. We may however remember that Mill dealt with social coercion and interference rather than those of the State. In his days the State had not become the leviathan that it is today.

"On Liberty" has been criticized by lawyers and judges. James Fitzjames Stephens then a judge of the High Court, though critical later, was first attracted by the book. He praised Mill for recalling Englishmen to the principle of Liberty which they had thought "established beyond the reach of controversy" Later in his book Liberty, Equality and Fraternity, he attacks Mill for confusing individuality with eccentricity. Stephen urges that there is nothing wrong with punishing immorality as such through law or by public opinion even if it involves no breach of assignable duties to others. Professor H.L.A. Hart has criticized Stephen's approach though he is quite willing to grant that Mill erred in making self-protection the only ground of interference. Mill abhorred the idea of interference even for a person's own good.

Whatever may be the criticism of "On Liberty" in the light of present conditions, one must concede that Mill has rendered great service to mankind by pointing out the value of liberty. One sentence from "On Liberty" has been reproduced in the beginning of this article. There are similar gems scattered throughout the book which the present generation of students, professors, politicians will do well to read and remember in daily personal and public life.

A free society is secure precisely because it embraces groups who hate each other: any privilege, conceded to intolerance fuels resentment and makes conflict more likely. When threatened by clashes of ethics and cultures, we should look for a solution in the realm not of the state but of human relationships. Tolerance is best treated as a problem of human psychology, even of human nature, rather than of politics. The state should, perhaps, have a role in arbitrating between mutually intolerant groups, but no right to intervene on behalf of some rather than others. The law should not endorse anybody's intolerance: not any minority's but not the majority's either. The limit of toleration are best left loose, unfixed by the state, to be negotiated in freedom than imposed by force.

Excerpted from the article "Don't be shy to raise your tolerance levels by Felipe Fernandez-Amesto in *The Spectator* and reproduced in *Asian Age* 8 January 2000

INCENTIVES FOR GOODNESS

JAYAPRAKASH NARAYAN

In days gone by men tried to be good, impelled by some higher moral force in which they believed; and goodness meant such things as truthfulness, honesty, kindness, chastity, unselfishness. Men felt that it was the highest moral duty to try to be good. Whether they succeeded in their trial, or whether they tried at all, was a different matter. The important point is that society provided every individual with the motive to be good: it was the command of religion, of God; it was necessary for one's highest growth, for self-realization; it brought peace and supreme happiness; it brought salvation and freedom from births and deaths.



tion any relevance at all to present facts, problems and ideals of human society?

I hold emphatically that no other question is more relevant to us today.

In spite of what may be broadly described as the materialist climate of present society, men everywhere are engaged, in their different ways, in creating a heaven upon earth – in remaking, refining, perfecting human society. These efforts, even the most idealistic and ambitious, such as communism of its original conception, seem, however, to be shipwrecking on one obdurate rock-human baseness. It is clearer today than ever that social reconstruction is impossible without human reconstruction. Society cannot be good unless individual men are good, and particularly those men who form the *elite* of society.

Social reconstruction is impossible without human reconstruction. Society cannot be good unless individual men are good, and particularly those men who form the elite of society.

In present society, with the hold of religion gone, faith in God shaken, moral values discarded as deadweights of the dark ages of history, in short, with materialism enthroned in men's hearts, are there any incentives to goodness left? Indeed, has the ques-

Here then is the crux of the modern problem. Men wish to create, if not an ideal, at least a good society. Modern science and technology make that task far easier than ever before. But men lack the tools with which to make themselves. And the ideas are forgotten, and they begin to fight for power, position, spoils, bringing down the whole edifice of the new society.

Therefore, the problem of human goodness is of supreme moment today. The individual asks today why should he be good. There is no God, no soul, no morality, no life hereafter, no cycle of birth and death. He is merely an organisation of matter, fortuitously brought into being, and destined

Freedom First, September 1952

LOKNAYAK JAYAPRAKASH NARAYAN, one of the tallest leaders of a generation that contributed to the making of the nation with a rare vision and commitment.

soon to dissolve into the infinite ocean of matter. He sees all around him evil succeed – corruption, profiteering, lying, deception, cruelty, power politics, violence. He asks naturally why he should be virtuous. Our social norms of today and the materialist philosophy which rules the affairs of men answer back: he need not. The cleverer he is, the more gifted, the more courageously he practices the new amorality; and in the toils of this amorality the dreams and aspirations of humankind become warped and twisted.

For many years I have worshipped at the shrine of the goddess – dialectical materialism – which seemed to me intellectually more satisfying than any other philosophy. But while the main quest of philosophy remains unsatisfied, it has become patent to me that materialism of any sort robs man of the means to become truly human. In a material civilization man has no rational incentive to be good. It may be that in the kingdom of dialectical materialism, fear makes men conform, and the Party takes the place of God. But when that God himself turns vicious, to be vicious becomes an universal code.

I feel convinced, therefore, that man must go beyond the material to find the incentives to goodness. As a corollary, I feel further that the task of social reconstruction cannot succeed under the inspiration of a materialist philosophy.

It may be asked if any social conditioning is at all necessary for men to acquire goodness. Is not man essentially good? Are not most men in every society decent?

Yes and no.

Man is a socio-organic being: he is partly the product of “nature” and partly that of society. What man is by nature cannot be said with certainty. Indeed, the very concepts of good and bad are supernatural or super-organic. There is nothing good

or bad in nature. Human nature, apart from the instincts of self and race preservation, is most likely of a neutral character which acquires moral tones in accordance to social conditioning.

*Decent Hindus and Muslims,
living peaceably together,
didn't hesitate, as we know to
our cost, to fly at each others'
throats when the social
passions were aroused.*

It is true that in every society most men are decent and good. These men go through life without being called upon to make any vital moral judgments. Their routine of life runs within narrow circles, and custom and tradition answer for them the questions concerning right and wrong.

But, firstly, these harmless decent men are apt under social stimuli to turn suddenly wild and vicious. Decent Hindus and Muslims, living peaceably together, didn't hesitate, as we know to our cost, to fly at each others' throats when the social passions were aroused.

Secondly, what is vital for the character of society, and for the direction of its growth, is not so much the character of the inert mass as that of the elite. It is the philosophy and action of this group of the select that determine the destinies of men. To the extent the elite become godless or amoral, to that extent evil overtakes the human race.

Let me hasten to remove a possible misunderstanding. I do not mean to suggest that all those who profess a philosophy of materialism are vicious nor that all non-materialists are good. But what I do assert is that there is no logic in materialism for the individual to endeavour deliberately to acquire and practice goodness. On the other hand, those who go beyond matter will find it difficult to justify non-good.

Non-materialism – I am using this negative phrase because I have no particular school in mind – by rejecting matter as the ultimate reality, immediately elevates the individual to a moral plane, and urges him, without reference to any objective outside of himself, to endeavour to realise his own true nature and fulfil the purpose of his being. This

endeavour becomes the powerful motive force that drives him in its natural course to the good and the true. It will be seen as an important corollary of this that only when materialism is transcended does individual man come into his own and become an end in himself.

STENDHAL

NARIE OLIAJI

In this month (March 1954) falls the 112th death anniversary of Stendhal, perhaps the most contradictory figure in the history of literature. One could fill a whole book in evaluation of his purely literary qualities, without bothering about his politics. He himself laid down the dictum more than once that the incursion of politics into a novel is a pistol shot in a symphony, but there is a whole cannonade of politics in his novels, and one aspect of the endless controversies raging around him has been the decision to the question: Was Stendhal a communist? Communists nowadays are always trying by all sorts of stupid arguments to 'assimilate' the great writers of the past. Sometimes it is vastly diverting to watch the Soviet literary pundits unable to make up their minds as in the case of Dostoevsky... But these attempts to prove Stendhal a communist have been as miserable failures as the attempts to prove him anything else.

There are two kinds of readers: Those who have read Stendhal and do not speak of him but with bated breath, and those benighted ones who have not heard of him. Of course there are a few who have read him without finding anything in him but – *non regium di loro, ma guarda e passa* – Dante.

Stendhal is the name of a little German village, the birthplace of Winckelmann, an art historian who fervently admired the age of the Italian Renais-

sance. Marie-Henri Beyle, born in Grenoble on January 23, 1842, and another lover of the Renaissance, made it immortal by adopting it as his *nom de plume* under which he wrote two of the greatest novels of the world, *The Red and Black* and *The Charterhouse of Parma*. It is well known that Andre Gide considered the latter the greatest novel ever in any language.

Popularity with the masses has never been a test of great novelists, though there have been rare cases of great writers being able to attract in large numbers the highbrow as well as the lowbrow. Somerset Maugham is a case in point today, and so were Dickens, Tolstoy and Gorky.... Of Stendhal Goethe said: "He attracts, he repels, he interests, he vexes us; and so... I read him, put him down, and take him up again, unable to let go." No one who has read Balzac's seventy page review of the *Charterhouse* can fail to be moved deeply at the generous tribute paid by the literary titan of his age to a rival. Taine, than whom there were few critics more difficult to please, compared Stendhal's powers of analysis to those of Spinoza. Nietzsche called him "the last of the great French moralists" and wrote in *Ecce Homo*: "Stendhal is one of the happiest accidents of my life, and is quite priceless, with his anticipatory psychologist's eye..." Baudelaire was fascinated by him, while St. Beuve, a clever and malicious critic was constrained to declare: This man who passes for a wicked character (to those who don't know him) how well he is loved by his friends! What thoughtfulness he shows towards them, what generosity of soul.

MR. NARIE OLIAJI was editor of *Freedom First*. This article is excerpted from his article in *Freedom First*, No. 22, March 1954

A HUMANIST PAR EXCELLENCE

J. B. H. WADIA



M. N. Roy

The death of M. N. Roy (1887-1954) has removed from our midst one of the most controversial figures of modern times. Those who had come into close contact with him knew him to be a fearless intellectual

who refused to differentiate between ends and means. Those who put the ideal of nationalism above everything else considered him to be out of touch with reality. To others who did not take more than a passing interest in his philosophy of life he was a man who always missed the bus. Be that as it may, Roy certainly rebelled against injustice and inhumanity wherever he found them. His keenly analytical mind could discern the causes of decay in a system or an idea even if they existed in embryo; and he never failed to expose them in a forthright manner. Although circumstances led him to jump in the forefront of politics, the philosopher in him always got the better of the politician.

A completely self-taught man, Roy started as an anarchist-nationalist at the age of twelve and soon got himself involved in terrorist activities. During the First World War he managed to reach the United States where he sought the aid of German arms with

a view to overthrowing the British rule in India. But the moment it dawned on him that a German victory would only mean the replacement of one foreign rule by another, he turned his face away in another direction.

He was then drawn towards communism and Marxism. Invited by Lenin, Roy managed to reach Moscow and among other things submitted his famous Thesis on the perspective of revolution in colonial countries. Such was the respect he commanded that Lenin himself moved the resolution for the twin adoption of Roy's Thesis along with his own.

But Promethean in his own right, Roy was no tool of the Moscow giants. Soon after the China episode he felt disgusted with Stalin's practice of communism. In his last letter to Stalin, Roy is said to have written that honesty, loyalty and integrity must have an important place in the catalogue of Bolshevik virtues. Roy had already started on his own way to go beyond communism.

In 1930, Roy came to India under the guise of Dr. Mahmud, risking his very life. But he was soon identified and imprisoned. On his release in 1936, Roy joined the Indian National Congress and was looked upon as the coming leader by the leftist elements. But Roy was too much of a radical to become a popular leader. The dominant Nationalist elements, found as much among the right wingers as the left, considered his outlook as unrealistic.

When the Second World War broke out, Roy advocated active participation on the side of the forces of Democracy. He held that the question of India's freedom was indissolubly linked up with the

Freedom First, March 1954

MR. J. B. H. WADIA was a well-known activist in the Radical Humanist movement. A well-known film producer, he was a founding member of the Indian Committee for Cultural Freedom and its Honorary Secretary.

question of world freedom; that a victory of the Allied forces could not but usher in an era of political independence for India; and that a Fascist victory would result in a second Dark Age for mankind. Roy's radicalism was once again misunderstood. The man who had been so far called by the communists "a lackey of Imperialism" had now to bear the brunt of being dubbed "an agent of Imperialism" by his own countrymen. The gathering tempo of the "Quit India" movement sealed Roy's fate as a politician.

As an ex-communist he still pinned his faith on the liberating possibilities in communism. But when at the end of the war he realised that his hopes had not fructified, he did not hesitate to become a militant anti-communist. Roy had now definitely gone beyond communism.

Roy's mind continued to move fast. He became convinced that in the context of party systems all politics could only be power-politics. He now gave another supreme example of the courage of his convictions. He dissolved the Radical Democratic Party and transformed it into a humanist movement. Always a non-conformist Marxist, Roy now went beyond Marxism. He changed the name of his philosophical journal from the *Marxist Way* to the *Humanist Way* and his weekly came to be called the *Radical Humanist*.

Roy now began to devote all his time to the propagation of New Humanism, his grand contribution to the world of thought. It is a synthetic philosophy based on a strictly scientific approach to the problem of mankind. Among other things, it repudiates the Economic Determinism of Marx. According to New Humanism, man is the archetype of society. His sovereignty is sacred and inalienable. The quest for freedom is a biological urge. Freedom, knowledge and society are its three planks. They are not autonomous but inter-related. Since man by nature is rational, he can also be moral. Therefore the task of the moment is to build up a society of rationally free and voluntarily moral men.

Roy's dream was to break the barrier between philosophy and physics. He did not live long enough to complete the Herculean task. But as can be seen from his prodigious writings, he has certainly shown the way. To Roy, Freedom was not just a goal but an unending path to be constantly traversed. He never worried about externals like power and prestige; nor did he envy the success of others. Politics interested him as "an art of living together" and economics as "a science of fulfillment". Even when his politics will be forgotten, Roy will still be remembered for his philosophical and intellectual contributions. He was a humanist *par excellence*.

Colette

Many a reader in this country must have learnt with deep regret of the passing away of Colette on August 4, at the age of 81, in her Paris apartment at the Palais Royal.

Sidonie Gabrielle Claudine Colette Gauthier-Villars de Jouvanel Goudekot is a name that would not attract attention except for its length, but the simple name Colette, was one of the most famous in France.

Her stature was recognised when she was elected the first woman president of the distinguished Concourt Academy. Her fifty-odd novels and scores of short stories were as popular with housewives, shop girls and labourers as they were with so called intellectuals.

But her writing was not intellectual. Her forte was delineation of women's problems of love and she lived as passionately as she wrote. Sex was never forced to take a back seat in her writings which were further embellished by a piquant style and sparkling dialogue. Speaking of the frankness with which she wrote of love, licit and illicit, one critic observed that an Englishman might feel she had lowered love to the level of sensuality, whereas a true Frenchman would feel she had elevated sensuality to the level of love.

From 'Notes' *Freedom First* No. 28, September 1954

THE ROLE OF ENGLISH

J. B. H. WADIA

The grand role which English has played in the making of modern India under an alien rule, which has happily ended, is a fact of history. No amount of casuistry, no amount of emotional outburst, will ever succeed in effacing that fact from the pages of Indian history.

Please note that I do not want to discount the immense hardships caused to us by our erstwhile alien imperialistic rulers. What I want to point out is this: that we should not ignore the valuable contributions made by them in many walks of life. As to whether they did so out of selfish motives or not is beside the point.

From Warren Hastings to Lord Mountbatten and from Sir William Jones to Sir Mortimer Wheeler, there is a magnificent procession of English savants and scholars, scientists and jurists, politicians and philosophers, missionaries and true democrats, who have given positive contributions to the making of modern India. It would not be fair if we were to develop blind spots and deliberately fail to see the light that has also been shed by them in many a dark corner of our ancient land.

A language lives so long as the people want it to live. Besides, a language of an era is an inalienable part of that era. And it is a tragic error both to foist a language on the people which they do not want as to deprive the people of a language

they have adopted. I am not at all against having a national language. Not to have one certainly creates a big hiatus, a big gap, in the life of the people. Our Constitution has decreed that Hindi should become our national language; and we need not enter in any hot-headed controversy about it here except stating this much: that the language meant to grow up as our national language should not be composed of a closed vocabulary but should be allowed to borrow freely from the various languages of the Indian people, including English, which I consider as one of our languages, be it by dint of history or fortuitous circumstances.

*It would not be fair if we were to
develop blind spots and
deliberately fail to see the light
that has also been shed by them
in many a dark corner of our
ancient land.*

To wit: We should make our national language as elastic and as broadbased as English itself. A living language is the result of cultural fusion. It is presupposed to be dynamic and evolutionary. Hence I do not see any bright future for Hindi if the present ingenious but none the less futile policy of coining words from Sanskrit roots were to continue. Did not Gandhiji himself used to quote often that classic phrase of Sheridan, "The way to hell is paved with good intentions"?

Coming back on the main line, as it were, from the side-tracking: As literacy increases, as education advances, more and more Indians are bound to be better and better acquainted with

Freedom First, April 1960

MR. J. B. H. WADIA was a well-known activist in the Radical Humanist movement. A well-known film producer, he was a founding member of the Indian Committee for Cultural Freedom and its Honorary Secretary.

English. No amount of artificially stirred-up emotionalism in the name of patriotism and no amount of pedantic sophistry evoked in the name of nationalism will ever succeed in stifling the growing interest of the Indian people in the English language and literature and thought – unless, of course, we get a communist rule, in which case our new rulers might foist another foreign language, say Russian, on us as the official international language of the country.

In the democratic set-up of our 20th century civilisation, English has become an integral part of our daily life. In the free countries of the world, English has become the language *par excellence* of international diplomacy and the medium of exchange of ideas. Historically, the position of English in the 20th century is more or less similar to that of French in the 19th century when in the wake of Bonapartism, French had become the necessary language of diplomacy; or say, that of Latin in the Era of Splendour that was Rome.

In the democratic set-up of our 20th century civilisation, English has become an integral part of our daily life.

Whether English has become so today due to fortuitous circumstances or not is again beside the point. There is no going back on that score, at least in our times, whether we like it or not.

This brings me to the other important reason as to why we should retain English. In the intoxicating wake of National Independence we ran away with our feelings. In the first flush of our awakening we subjugated our reasoning faculties and equated the desirable ouster of the alien English rule with the unreasonable overthrow of the English language itself. But it is by dint of history that English has become one of our Indian languages.

In the fascinating book of Mr. Panikkar called

A Survey of Indian History, the historian pays a unique tribute to three Englishmen. He states something to the effect that there are three Englishmen who will always be remembered in Indian history which he shrewdly distinguishes from the history of the English in India. And they are Edmund Burke, Sir William Jones and Lord Macaulay.

Lest I am misunderstood as an extreme advocate of English only, let me take this opportunity and rectify the misunderstanding. With all my love for English, with all my defence of English, it is far, far from my thought to stultify the growth of our own languages.

And then, what of the glorious heritage of English literature and English thought! It is a treasure house of which even the gods would become jealous. Far be it from me to belittle the importance of world literature and thought, for example, the French, the German, the Italian and others in West Europe and before the communist rulers stultified free criticism and creative art in the high-sounding but intellectually dishonest name of Socialist Realism, even in Russia.

So also in the ancient land of China. And, last but not the least, in our own glorious land. All this heritage belongs to the community of mankind. I have always said that whatever is cherished and is of abiding value in our own India by right belongs to the rest of the world. And whatever is cherished and of abiding value in the world by right belongs to us.

That is the correct evaluation of things. And so far as English is concerned, is it not much more ours than other European languages? Just give a thought to the amazing contribution of us Indians

to the Treasury of English. What a high standard of achievement! Volumes and volumes of English written by us Indians have already passed into the Elysian fields of classics. Books on all subjects and all themes under the sun; prose, poetry and literary criticism, history and politics, law, equity and Jurisprudence, anthropology and archeology, religion and philosophy, astronomy, physics, chemistry, biology and all the allied forty sciences and what not.

Lest I am misunderstood as an extreme advocate of English only, let me take this opportunity and rectify the misunderstanding. With all my love

for English, with all my defence of English, it is far, far from my thought to stultify the growth of our own languages. My only object is to point out that there is no sense, that it is sheer madness, to throw English overboard. Enlightened self-interest should prompt us to retain it as an important Second Language in the critical period of the Indian Renaissance through which we are passing. It is only on our healthy emergence from the throes of new birth that we shall be in a position to look in the face of the new world that is in shaping and walk hand in hand in the front line of the free and democratic countries of the world.

On Writing Plain English

An elderly member of an Indian delegation to the UK wanted to have a Savile Row suit stitched. Because of this delegate's political importance, the Chief Designer himself was in attendance. While taking measurements for the pant (trousers if that sounds better, i.e. two legged outer garment reaching from waist to ankle), the Designer politely asked: "Sir, how do you dress, left of the centre, or right of the centre?" The politician was angry and told the Designer that one's political leanings should not have any bearing on how a pant is to be stitched. The Designer employed alternative euphemisms to explain what he wanted to know but to know avail. The IFS officer in attendance tried to explain that the designer wanted to know the side of the seam towards which an allowance could be made for the comfort of a vital part of the man's anatomy. This too failed to nudge the VIP to reveal his political affiliation. The Designer finally lost his patience and asked: which side to you hang your...."

Any language where the unassuming word fly signifies an annoying insect, and a critical part of a gentleman's apparel is clearly asking to be mangled. Imagine being a foreigner and having to learn that in English a person who says "I could care less" means the same thing as someone who says "I couldn't care less"; that a sign in a store saying ALL ITEMS NOT FOR SALE doesn't mean literally what it says (that every item is not for sale) but rather that only some of the items are on sale, that when a person says to you "How do you do?" he will be taken aback if you reply with impeccable logic, "How do I do what?"

A.K.R.Hemmady, Excerpted from his article 'On Writing Plain English',
Freedom First, April-June 1996

HOW NOT TO BAN A BOOK

NISSIM EZEKIEL

It is not only freedom of expression that is at stake in the judgment on *Lady Chatterley's Lover*, in the Bombay Presidency Magistrate's Court, but also commonsense and intelligence. Here is a serious novel, brilliantly written, that has never been widely read. Whether it is obscene or not has hitherto been the concern of only a handful of litterateurs and lovers of literature. Even among those who have held the book to be obscene, that is, indecent by implied standards of decency, it is by no means invariably believed that such a work has no right to exist. That leaves us with a miniscule minority who would prefer it to be eliminated but are not all necessarily agreed on how this should be done. Some of them are shrewd enough to consider banning impractical and recommend the more effective method of silent censure. How many, then, actively urge its removal from circulation? Almost nobody.

It is not only freedom of expression that is at stake in the judgment on 'Lady Chatterley's Lover', in the Bombay Presidency Magistrate's Court, but also commonsense and intelligence.

Mr. M. Nasrullah, Additional Chief Presidency Magistrate of Bombay, acted on behalf of what maybe called this "lunatic fringe", when he fined a bookseller and his partners for selling a copy of *Lady Chatterley's Lover* and possessing another. The learned Magistrate held that "the ends of justice would be met by imposing a token sentence on the accused". Thus an act which he described

as in effect assisting in the rocking of the foundations of society, in spreading "a devastating effect on all our accepted morals and ethical values concerning the institution of marriage", and in corrupting the public, particularly the young, such an act called for no more than a fine of Rs.40/- to one partner of the offending bookshop and Rs.20/- each to two others!

Such an act called for no more than a fine of Rs.40/- to one partner of the offending bookshop and Rs.20/- each to two others! ... Mr. Nasrullah's judgment avoids almost completely any detailed analysis of Lawrence's book.

Mr. Nasrullah's judgment avoids almost completely any detailed analysis of Lawrence's book. His remarks on its theme and intentions are grotesquely-inadequate. We are told, for instance, that Lawrence wrote the novel when he was a "sick and dying man between 1926 and 1928". Lawrence published *The Plumed Serpent* in 1926 and as he usually wrote very fast this must have been produced in the previous year. In 1928, he brought out a collection of short stories which included *The Woman Who Rode Away* and a volume of essays entitled *Mornings in Mexico*. Although he was tubercular for several years, it cannot be said that he was a sick and dying man, except between September 1929 and March 1930. If Mr. Nasrullah is to be believed Lawrence was nearly five years a dying. Considering his voluminous output in this period, it is certain that Lawrence had more vitality in a dying state than most men, including geniuses, have displayed when living.

Freedom First, July 1961

MR. NISSIM EZEKIEL was a poet and writer. He was also contributor to *Quest and Freedom First*.

Mr. Nasrullah also needlessly committed himself to the view that Lawrence was obsessed with some urge, presumably morbid, “to shake the world” at any cost, “to throw a bombshell” for the sake of which he had “obviously indulged in certain excesses . . .”. To Lawrence himself, the Magistrate attributed the opinion that *Lady Chatterley’s Lover* “was not everybody’s book, but only for the intellectuals in universities”. While it is quite likely that Lawrence may have said that his book is not for everybody, it is *prima facie* impossible he could have said that it was for “intellectuals in universities”. This injustice, at least, Lawrence should have been spared.

The ignoramus is as likely to be corrupted as the average man by whatever is alleged to be corruptible, and is surely as much in need of protection from it.

What follows is worse. Mr. Nasrullah declared that his court was “primarily concerned with the reaction of the average man in society as distinguished from the intellectuals in universities on one hand and the libertines on the other.” This baffling triple division of humanity reduces the judgment to a farcical level. Some average men are also libertines and many are to be found among “intellectuals in universities” not only in India but all over the world. Then there is the ignoramus, whose response to *Lady Chatterley’s Lover* is said to be of no relevance. Presumably, Mr. Nasrullah meant that condemnations of the novel by the ignoramus did not influence his judgment. It was hardly necessary to confuse matters further by mentioning this additional category of human beings. It overlaps substantially with a dubious average and is in any case meaningful only within a specific context, unless used in a pejorative sense.

The ignoramus is as likely to be corrupted as the average man by whatever is alleged to be

corruptible, and is surely as much in need of protection from it. The same is true of “intellectuals in universities” as well as “libertines”. The questions that are begged are whether such protection is worth providing in an open society, whether it does not defeat its own ends, whether it does not eventually tend to extend its range without limit, whether it does not invariably become riddled with contradictions.

Mr. Nasrullah was not altogether oblivious of the fact that freedom of expression was an issue in the case before him. He resolved it by drawing the line where it is “exercised in such a way as to present a danger to society...” Here again, presumably, the danger operates through the “average” person, not the university intellectual, not the libertine, not the ignoramus. The virtual impossibility of having to take a decision on this basis, does not appear to have troubled Mr. Nasrullah. For the sake of mythical average, he glorifies “accepted morals and ethical values” and the “foundation on which society stood”. No inconvenient questions need be asked about the condition of all that is “accepted”.

The Bombay footnote, if it may be so called, to the history of *Lady Chatterley* case, is unfortunately an ignominious one. It does not even have the merit of serious intellectual content, and is likely to expose us to ridicule if it receives any attention outside India. That is why I started by saying that commonsense and intelligence are as much at stake, perhaps more so, in the judgment on Lawrence’s novel here, as freedom of expression. Even if none in India wish to exercise that freedom to the extent implied in this case; even if none is genuinely interested in witnessing it; even if the book is truly corrupting and subversive; even if there are sound reasons for banning it; even if all these circumstances exist, the Nasrullah verdict would still be atrocious for its sheer muddle-headedness. That is the most pathetic aspect of the case as it was settled in Bombay.

REFLECTIONS ON INDIAN SECULARISM

R. SRINIVASAN

A perusal of the book *India as a Secular State* by D. E. Smith gives rise to saddening reflections on the nature of Indian secularism. More than in any other country, secularism in India was the direct result of the challenge of the Muslim League to the claims of the Congress that it was truly national. The Karachi resolution of the Congress party in the thirties envisaged a secular stand which was a revolutionary step in the annals of Indian nationalism; for even after the rise of the Congress and of the Mahatma, Indian national movements having a mass appeal were not entirely non-secular but were quasi-religious. The independence of our country witnessed the birth of Pakistan

Our society has never been secular and it has always remained feudal and caste dominated throughout its history and continues to be so.

and underlined the strength of communalism. But the Congress Party and the government wanted to adhere to the Karachi resolution and proclaimed that secularism would be made a reality in independent India. Since then the mantle of Roger Williams, the great 17th century secularist, has fallen on the shoulders of Nehru. But can an Indian Roger Williams deliver our society from the bonds of reaction and communalism?

It looks as though this will be a superhuman

Freedom First, October 1963

DR. R. SRINIVASAN is retired professor Political Science, Bombay University.

task. This is because our society has never been secular and it has always remained feudal and caste dominated throughout its history and continues to be so. *Indian government became secular even before Indian society developed secular values.* The difficulties faced by the government have been due to this stark reality. Will the communal society swallow the secular state? While Mr. Nehru readily condemns the Jana Sangh for its anti-secular attitude, he should examine the activities of his government of the party which he leads. His party has often pandered to non-secular passions by patching up with reactionary forces founded on a denial of secularism. Its alliance in Kerala with the Muslim League is an instance. Individual Congressmen have played to the communal passions of the public in election time; both in Rajkot and in Amroha this happened. Here the party instead of educating the people of the country has fallen in line with their non-secular outlook.

A government then cannot be secular when the society remains non-secular.

A government then cannot be secular when the society remains non-secular. We find instances of ministers high in government taking more interest in the activities of the Bharat Sadhu Samaj than in academic institutions or in social welfare societies. Mr. Nanda's hopes and his proposal that the *sadhus* should carry the message of the plans to the villages has provoked more derision among the thoughtful than any respect. You may as well expect a Catholic Priest to advocate artificial birth control.

One of the dilemmas that the government is facing in our times is directly related to secularism. It has decided that the benefits of a modern planned society should percolate to all the sections of the population in the interests of social justice and that the privileged class alone should not have their fingers in the economic cake. But in all societies that are undergoing change, it is the well-to-do that initially take advantage of the new situation; and this is generally at the cost of the have-nots. To prevent this social injustice, the government resorted to solutions which it thought would meet the Indian situation admirably. The theory was that the backward classes had never been given any opportunity for bettering themselves and that given a chance they will do well. Therefore began the practice of re-

In secular India all men are equal but some are more equal than others when it comes to an admission in a medical college or when applying for a governmental position.

serving seats in the legislatures for them; similar reservations were made in the colleges and other professional institutions of higher education as well as in the civil service. In secular India, all men are equal but some are more equal than others when it comes to an admission in a medical college or when applying for a governmental position. For twenty years before independence, the non-Brahmin classes had exercised pressure on the governments and had won considerable advantages for themselves. The government of free India never deliberated upon the consequences of opening this Pandora's Box. It was soon realised that there was a vested interest in belonging to one of the backward communities; since this involved the advantage of office it was but natural that every community should be particular in wanting not to lose the privilege of belonging to the backward classes. If the

Brahmins could de-Brahminise themselves they would have done so. But while "sanskritisation" was easy the opposite direction was a difficult path to travel. Thanks to modern methods of communications, the backward classes could consolidate their castes and fight better for their privileges. They even went to the extent of changing their religion (as did the neo-Buddhists) and yet wrest their old privileges from the government. The effects of this reservation policy in the civil service and its damages to the administration, the lowering of the standards of excellence in the professions and in the world of scholarship are particularly due to this unfortunate phenomenon. The government of India realised too late that centuries of disabilities just could not be done away within one generation of privilege raj. This practice has perpetuated the classes and has made nonsense of realising the secularist dream. Nehru's secular government is unfortunately like the sorcerer's apprentice; it looks as though the greatest reverse to the cause of secularism will arise from the backward classes.

Wedded to the principle of secularism, the government is undertaking reforms that are patently unjust to the majority of the people for here too not all the sections of the people are treated alike.

Meanwhile the government is driving another nail in the secular coffin. Wedded to the principle of secularism, the government is undertaking reforms that are patently unjust to the majority of the people for here too not all the sections of the people are treated alike. In India a Hindu cannot marry more than once though his religion permits him to do so; even so does Islam and the Muslim in India is free to marry more than once – even four times should he think it necessary. But in Pakistan which is a theocratic state zealous to preserve the purity of

Islam, the same Muslim cannot marry more than once! Pakistan is more critical of Islam than India is! In the Lok Sabha, Acharya Kripalani observed: If we are a democratic state, I submit we must make laws not for one community alone. Today the Hindu community is not as much prepared for divorce as the Muslim community is for monogamy. . . Will our government introduce a bill for monogamy for the Muslim community? Will my dear law minister apply the part about monogamy to every community in India?... I tell you this is the democratic way; the other is the communal way. It is not the Mahasabdhites who alone are communal; it is the government also that is communal, whatever it may say.' (quoted, p.286-7.) The sentiments of the Acharya find a wide acceptance with the thoughtful. And the government has yet to satisfactorily reply to the charge.

In India there is emerging a built-in resistance to the secular forces; in the years to come these would strengthen and strike roots in our society too deep to be plucked out.

In a society where barbers refuse to ply their trade on certain persons because they happen to belong to a lower caste and where the washermen think it beneath their dignity to wash the clothes of their caste inferiors, the western ideals of secularism will remain for a long time ideals impossible of attainment. It is one of the paradoxes that in a country that is most committed to casteism and communalism so much as to become an inseparable part of the political process, the constitution is wedded to the secular ideal. Not that there is any thing wrong about the ideal; only it falls very much short of the aspirations thanks to the policies of the government and the attitudes of the majority of the people in our country.

In a state that is truly democratic there is no need for specially making secularism a political virtue, for it is part of the larger democratic tradition. In India there is emerging a built-in resistance to the secular forces; in the years to come these would strengthen and strike roots in our society too deep to be plucked out. While the classes claim loudly for their privileges curiously there is not one voice raised for secularism on questions of individual conscience. It is very doubtful if a case like the Flag Salutation Controversy will ever come up before our courts.

Professor Smith has done a magnificent service to the world of scholarship; for many years to come this, would remain the definitive book on the subject. It is bound to be on the reading list of many scholars interested in the problems of democracy in India. But this does not mean that the Indian intellectuals can sit back and repeat the conclusions of the book. Now, more than at any time they have a pressing obligation to fulfil. One of the important factors which will make secularism a reality is in changing the minds of the common people by persuasion and by working with the forces for change. It is here that our colleagues have an opportunity and a challenge that will be important in the building of a future democratic India. We will have to know how exactly our people in the various walks of life think on secularism. Here the only approach that will be able to guide us with any sense of reality and exactness will be in empirical research where a band of scholars from institutions of learning will go round finding exactly what the people think about secularism. It is only when we know their attitudes with any definiteness will we be able to think of a public policy on this problem more appropriate than the one followed by the government. Mr. Smith has done his work admirably; we must do our with an equal zeal. Perhaps the greatest opportunity for furthering the secular idea is at hand. Will our scholar-social-scientists rise up to the challenge?

UNTOUCHABILITY – THE INDIAN APARTHEID

ARVIND A. DESHPANDE

“Make no more heroes of God; only elevate the race”!

– Robert Browning

The Shankaracharya of Puri has done it again. This time he has raised a controversy over the subject of untouchability, the Indian apartheid. He made certain statements in the course of his address at the Vishwa Hindu Parishad recently held in Patna, which have created excitement and invited adverse comments from all sections of public opinion. Personally, my first reaction is to pay him the greatest of compliments, that is: refuse to take him seriously.

Even so, we must examine his reported statements on this important subject at least for the sake of those who have attached so much significance to his opinions. His Holiness made, according to the press reports, the following logical but amusing statements:

- (a) That the Hindu scriptures sanctioned the practice of untouchability and that as the Head of a Pitha upholding and believing in these ‘scriptures’ he had to approve of it;
- (b) That while as a religious Head he would defend the practice of untouchability, as a law-abiding citizen he could not disobey the law passed by the secular parliament;
- (c) That just as no one could stop him from serving or nursing a poor Harijan, so also no government could stop him from taking a bath after ‘touching’ a Harijan.

To make this appear more logical and clever, the Acharya issued a subsequent statement of clarifi-

cation at Vijayawada saying that he only wanted to convey that it is the birthright of every person to practice discrimination and discrimination could be practised even between members of the same family not to speak of group and castes. One wonders if any public prosecutor will succeed in proving against him the charge of violating the Untouchability (Offences) Act of 1955, in the face of such contradictory and amusing statements.

That just as no one could stop him from serving or nursing a poor Harijan, so also no government could stop him from taking a bath after ‘touching’ a Harijan.

Those who think that such deep-rooted and age-old prejudices can be removed by passing appropriate laws or by sending Heads of Pithas to jails are only being naive and deluding themselves. The prejudices will be ultimately overcome by the forbearance, tolerance, pride and self-respect of the Harijans or untouchables themselves.

One more point should be made clear here. It would be a mistake to suppose that the Head of a Mutt or a Pitha must also be a saint. One should certainly feel hurt or shocked if a saint made a statement in favour of untouchability. But one should not feel shocked if the Head of a religious order or Pitha made such a statement. In fact a Pithadhipathi or Head must needs defend all the dogmas or prejudices of his Pitha or else there would be no necessity for the Pitha. Only a saint, if he also happens to

Freedom First, May 1969

MR. ARVIND DESHPANDE, Secretary of the erstwhile Leslie Sawhny Programme for Training in Democracy.

be a religious Head, can be expected to endeavour to remove the prejudices, and discard dogmas. The Adi Shankaracharya who was not only a philosopher-saint but one of our greatest intellects is supposed to have admitted that he could not justify the practice of untouchability.

Coming to the subject proper, I think no liberal Indian or Hindu for that matter will deny that the practice of untouchability is not only sinister but inhuman and immoral. We have all been shocked to find in our midst a large section of people who being "untouchables" have suffered discriminations unthinkable in any civilised society. That is why, saint after saint, social reformer after social reformer from Ram Mohan Roy, Jyotiba Phule to Mahatma Gandhi fought for the abolition of untouchability. That is why the Government and our Constitution-makers have passed all laws they could to make the Harijans full citizens and rehabilitate them.

Yet, no sane Indian will also deny that the age-old prejudices still continue. This is because untouchability is only part of the wider phenomenon of caste. As Mr. A. C. Mayer in his book *Caste and Kinship in Central India* rightly points out, it "is only a more severe form of the concept of pollution which runs right through ritual regulations." Caste is still very much central to Indian life. It is, as Mr. Jayaprakash Narayan very often asserts, "the biggest political party in India". To complicate the matters further, the special privileges and "reservations" etc., have created a vested interest in backwardness and have produced a bitter resentment (for economic reasons) among the so-called Caste Hindus. Then we have sub-castes which are worse and more rigid than castes. Even the so-called "untouchables" sometimes keep their own hierarchy. Taya Zinkin once remarked that she nearly started a riot in Bihar when she tried to make a sweeper allow a basket weaver to draw water from his well. So it is an extremely complicated process and cannot be abolished by a fiat or wished away. It is too late in the day for the Shankaracharya now

to put the clock back. Nor can our progressive M.P.s remove the prejudices by flamboyant talk or gestures. Such talk only reveals that they are confusing a temporary victory with success. This is like opting for winning a few battles only to lose the war.

If I were a Harijan I would no more ask for special rights or privileges except the right to free education and free competition. These special rights have served their purpose and it is no more necessary to make the Harijan our permanent "second class" citizens. What is needed is the restoration of self respect and pride among Harijans. We do not want a few "heroes" but our aim should be to elevate the whole race. The aim should be not to compel by legislation, a high caste Hindu girl to marry a Harijan boy but to create conditions wherein a high caste girl, of her own volition, prefers a Harijan boy. This is exactly what happened in Dr. Ambedkar's case. A high caste woman asked for his hand. He did not go begging for it. There is no substitute for self respect, pride and dignity. After all why should it be really important for the so-called Harijan to be called a high caste Hindu? I would humbly submit that the Harijans should no more think in terms of favours, reservations of jobs, etc. Like Dr. Ambedkar, they should be proud, self respecting commanding respect and attention on their own merits. I repeat, untouchability in India will not be removed by legislation, or condescension on the part of so-called high caste people but by Harijans themselves, through their patience, ability and hard work. Like the Negroes in U.S.A. they too will have to sing and show: "We shall overcome".

The Untouchables

Indira Gandhi, eyes ablaze
Addressed her tennis team
"Don't Volley with South Africa;
I can't stand their regime.
Apartheid is a sin", she said
As Hindus stood aghast,
Now there's a pretty how-de-do
From folks who gave us caste".

W. H. von Dreele
Freedom First, No.274, March 1975

SOME SUGGESTIONS

JAYAPRAKASH NARAYAN

Like all other backward countries, this country too has had two problems, namely, those of change and development. In regard to both, a mistaken notion has been persisting since the very beginning. Gandhiji sought to rectify this notion but he did not get enough time to do so. This mistaken notion was, and is, that change and development can be effected through state power. Only Gandhiji knew the limitations of state power and so he added to it the flavour of *jana shakti* (people's power). At the same time he also knew that the traditional spontaneous initiative of the masses in this country had been deliberately killed in the British period. That is why, even after Independence, an awakened, organised and effective people's power was found wanting in this country. People's minds were full of dependence upon a government which they called their *mai-bap* (father and mother) rather than by a spirit of self-help and self-reliance.

The traditional spontaneous initiative of the masses in this country had been deliberately killed in the British period.

In pre-British days, India had thousands of years' old village institutions and caste *panchayats*; it had guilds (called *shreshthis*) of traders and artisans in towns. There was a long line of saintly orders (of *sadhus*, *sants* and *bhikkhus*) and of educational and spiritual institutions (*rishikulas*, *gurukulas* and *viharas*), all independent of state

Freedom First, April 1970

LOKNAYAK JAYAPRAKASH NARAYAN, one of the tallest leaders of a generation that contributed to the making of the nation with a rare vision and commitment.

and government and relying upon popular funds and support. It was these institutions which ensured, amidst political upheavals, the smooth flow of the nation's lifestream in its varied rivulets. During British rule, these institutions broke or languished; they became ineffective. This was in Gandhiji's mind when he planned to awaken and organise people's power. He thought of mobilising the total Indian population for the sake of national reconstruction, but then his dream vanished with him. It is now 22 years since he departed. Vinobaji has done something on the lines pointed out by Gandhiji but a lot remains to be done.

We have so many laws on our statute books pertaining to untouchability, prohibition, dowry, land reforms, maximum interest admissible on loans, minimum wages, income tax, price control, etc., but what part of them has been implemented?

What are the limitations, you may ask, of state power in the context of change and development. One is that change cannot be effected by mere commands, by law or by payments. For change, people must be persuaded; their attitudes must change. We have so many laws on our statute books pertaining to untouchability, prohibition, dowry, land reforms, maximum interest admissible on loans, minimum wages, income tax, price control etc., but what part of them has been implemented? Slogans echo in the air, down with capitalism, but capitalism dwells in the minds of our common people. Socialism can

not be established by law, for it is a way of life, a value system, which can be instituted, not by legal coercion, but by universal educative efforts, which can be made by voluntary organisations and volunteers alone.

In regard to development too, the situation is similar and this is now admitted by those in authority. They confess that their development schemes did not meet with expected success because people's cooperation did not come forth. The crucial question, however, is not of people's cooperation as of awakening the people's initiative. If this initiative is aroused, the people themselves will come forward to make development effort and the question will then become, not of *people's cooperation*, but of *government's cooperation* with the people. Initiative of the people, on the other hand, cannot be aroused by commands and commanders, or by plans

This decade at the outset has given a warning that if the rates of growth and change are not quickened, the country will be doomed.

made at the top and the money allotted for the plans. This was amply demonstrated by the community development plans which robbed the villages of whatever little mutual cooperation they had preserved in their communities. This work too can be done only by volunteers who go to the people to serve them, and hear before they tell.

Thus, both for development and change, hundreds of thousands of volunteers are called for, but where are such youth and citizens who would spare even some of their leisure hours for the task of national reconstruction? The ugly face of politics has been unveiled but that alone seems to hold attraction; politics is what people talk about and what they aspire to, as if the future of the country depended on it.

This decade at the outset has given a warning that if the rates of growth and change are not quickened, the country will be doomed. Even with a successful working family planning programme, our present population of 540 million will grow into 665 million by 1980. Our present number of unemployed, which is 13 million, will be more than doubled, to 27 million, by the end of the fourth Five Year Plan. These two figures are sufficient warning that we have no time to escape our national obligations by passing them on to the administrators.

I would like to submit a few words in the context of political challenges and possibilities to the political leaders and those in authority. In 1967, the Lok Sabha asked the Central Government to appoint an all-party committee to find a cure for the disease of floor-crossing. This committee was constituted under Shri Y. B. Chavan's leadership and it submitted its report early last year. As a member of that Committee and as a citizen, I insist that the Government must bring a Bill in the next session of Parliament to implement the recommendations embodied in that report.

Some amendments in the People's Representation Act seem to be necessary. Election has become very expensive and is day by day becoming more so. This has constantly been pointed out but nothing has been done about it. Many years ago late President Rajendra Prasad drew the attention of Pandit Jawaharlal Nehru towards this fact. Immoral practices in elections are also on the increase. As the number of parties grows, among other evils, one more evil is added that frequently, if not usually, legislators are elected on minor percentages of the electorate. There are some other defects too, discovered in the election system. This is no occasion to suggest remedies for all those defects but I will definitely like to suggest that the Government of India or Lok Sabha must, without further delay, appoint a high power committee for amending the Act. The Committee should submit its report soon, so that the Act can be amended before the next

general elections.

Another problem is becoming clear day by day, for which too an amendment of the Constitution seems to be obligatory. I have already spoken of political instability in more than half the states in our country. The same situation has now arisen at the Centre due to the split in the Congress Party. With the support of some opposition parties, at the moment, the Union Government is not expected to fall soon, but we cannot ignore the fact either that such a thing can happen any day. Then if we do not arm ourselves with constitutional and institutional provisions in our Constitution today, to meet such an emergency, the instability at the Centre, together with general instability in the states, can lead to dangerous political and economic consequences. We do have a provision for President's Rule, but the Constitution is not clear about the shape which this Rule should take in the Centre,

An all-party Council for National Conventions was called to discuss the situation arising out of the general elections in 1967, in which all parties, except Swatantra, were represented. This Council suggested, *inter alia*, that an advisory President's Council should be constituted at the Centre, charged with the task of advising the President on such complex but important functions as the imposition of President's Rule over the states; dissolution of state assemblies; or appointment of governors. The Advisory Council, it was made clear, was not intended in any way to limit the authority of the Union Government, but only to clear the doubt or suspicion arising among the people that the party in power at the Centre may sometime use the governors indirectly to serve its partisan interests.

Some suggestions regarding the composition of this President's Council were also given which included that the Vice-President should be its Convener. Its members should be the Prime Minister or, in his absence, his nominee, an ex-chief justice of the Supreme Court and five other persons au-

thentically known for their integrity and impartiality. These five persons should be nominated by either an electoral college of speakers of state assemblies presided over by the Speaker of the Lok Sabha, or by the President, but in consultation with, and the consensus of, the leaders of various parties in Parliament.

It seems to be evident that in the present political situation, such a provision has become absolutely necessary. The suggestion I have spoken of is not perfect or final. It is only a pointer to the problem. During the two years since this suggestion was made, unexpected falls have come in our political situation. So, it need not be stressed again and again that concrete steps must soon be taken in this direction.

*As the number of parties grows,
among other evils, one more
evil is added that frequently,
if not usually, legislators are
elected on minor percentages
of the electorate.*

Further, I have asked that Article 263 of the Constitution be amended and a Constitutional Council should be formed to settle disputes between the States and the Centre. Let me clarify the difference between the two Councils. The Constitutional Council shall settle disputes and its decisions shall be binding like those of the high courts. The President's Council shall be an advisory body though, in my opinion, it should be obligatory in order to strengthen its hands that its advice tendered to the President from time to time be published for general information.

I have some more suggestions to make in the present situation which are minor but seem to me important. The first is about administrative reforms. Since we became independent, the administrative system we inherited from the British has been bitterly criticised by everyone, from Jawaharlalji to

Indiraji. To call it outdated is the least one says about it. But what is amazing is that though several committees have recommended reforms in this system, like Soul, it remains unchanged. Whenever a question is raised about it, a Committee is constituted, which in due course submits a scholarly report and then that report is filed. Only the other day the AIR reported a recently-elected chief minister's declaration that he was seriously considering the appointment of an administrative enquiry committee in his state. Even if this gentleman remains at his post until the committee's report is received, I have no doubt, its recommendations will meet the

It is my personal experience that repeated changes in cabinets inhibit development schemes.

same fate as of the numerous other committees, from Appleby Committee onwards. The need is not to study this question repeatedly, but to bring about boldly the necessary fundamental reforms on the basis of available studies and experiences without delay. With my experience gathered in serving the people, I can say without hesitation that if this is not done quickly, the country's development, the implementation of the best policies of the govern-

ment, the social welfare schemes, all will remain tardy.

My other suggestion is that development works be kept aloof from political uncertainties. It is my personal experience that repeated changes in cabinets inhibit development schemes. In Bihar, for example, there was a great awakening among the peasants during the terrible famine of 1966-67. However, the State could not benefit from this awakening because governments were constantly changing, the administration became lax and policies became uncertain. Industrial development and education suffered likewise. As it appears to me, and I have said it before, this instability of governments is going to increase rather than otherwise. Therefore, I suggest that each state should have an industrial development corporation and another for agricultural development. These corporations should be truly autonomous, unlike many corporations presently existing in some states which have only nominal autonomy. They are fruitless except that they provide high posts to some officers and some opportunity of patronage to the ministers. If the political leaders and high officials were genuinely willing to part with their authority, constitution of such autonomous corporations should not be difficult and they would function, not like government departments, but like independent commercial institutions.

Civil Servants are Servants of the People

What is needed is a total revolution in their concepts of their duties as civil servants. They must never forget that they are the servants of the people, and that they are to serve their interests. Today, when they take a decision, however belatedly, they make it appear as if they are doing a favour, forgetting that they are only doing their duty for which they are paid. The arrogance with which they today treat the ordinary citizen must give way to courtesy at all times and readiness to listen and understand their problems. Such a change has also to come over their politician bosses. This can only be brought about by the people themselves when elections come round and they have to exercise their right to vote. This is perhaps too much to hope, nevertheless hope we must.

Excerpted from an article on "What is Wrong with Our Bureaucracy" by H. M. Patel a distinguished civil servant, formerly: President of the Swatantra Party, Member of Parliament and Union Finance Minister. *Freedom First*, July-September 1989



THAT IRREPRESSIBLE GADFLY – A. D. GORWALA

J. R. PATEL

Once upon a time there was an assistant collector who meted out justice with the wisdom of Solomon, the alacrity of James Bond and the humility of Socrates. His licence to do good covered the arid desert of Sind with its proud people and “their harsh yet loved hills, their accustomed icy air, their lovely tongue, their old friends and usually kindly kinsmen, their lives of danger and delight.” No case, no man found him wanting. Whether it was a matter of copyright between two bearded bards, family feuds over the love life of their off-springs, disputes over who owned what piece of land, the assistant collector saw to it “that within my boundaries none kills, none fights, without instant retribution.”

For instance, take the Queen of Beauty (*The Queen of Beauty and Other Tales*, by A. D. Gorwala, Bombay, Rs. 9/-). She, lovely creature, was betrothed to the son of a powerful elder of her tribe, but, alas, loved another. All hell threatened to break loose. And then the assistant collector stepped in. He placed the young couple in protective-custody at the local jail and turned his powers of persuasion on the wrathful parents.

“Your guns!”, he barked, and when they were reluctant to respond, “Many are my bad qualities, I have been told, but the worst they say is that when I go berserk, rarely of course, I grip men by their throats and however much they beat me or wound me, they die.”

Through sabre-rattling and cajoling the young officer brings about a compromise, a reconciliation

and that most essential element of a well-rounded tale – a happy ending

Though the omnipotent assistant collector remains nameless throughout the stories, he bears a strong resemblance to the

author, A. D. Gorwala, a former Indian Civil Service officer. Gorwala was assigned to Sind in 1924 with the quip he was “more sinned against than sinning.” It could hardly have occurred to him then that one day he would be writing tales of “that dry desert,” as it was commonly known, for his political weekly, *Opinion*. Nor could he have guessed that the same fearlessness, veracity and dedication that propelled him to power in the government would one day compel him to resign.

We see it coming in the lament of “An Independence Day Tale.” Here the assistant collector, now a Secretary, is confronted with a Chief Minister whose decisions are not always based on the collective good. When this is pointed out to him on two occasions – one concerning promotions and the other price decontrol – the Chief Minister is recalcitrant. The Secretary acquiesces, noting “the helplessness of good sense in the face of determined power.”

Many of the other tales focus on Gorwala’s *causes celebres*. The moral of “Being Prepared” is a plea for India to manufacture nuclear weapons.



A. D. Gorwala

Freedom First, January 1972

MR. J. R. PATEL is the publisher of *Freedom First*, and editor of the fortnightly *Parsiiana*.

THE TRUE LIBERAL

MINOO MASANI

When I attended the Conference of the Liberal International in Italy at the end of 1959, the Liberal leaders who were present from various countries of Europe told me that they found the principles of the newly established Swatantra Party to be "the milk of pure Liberalism." In India, however, most scribes and a great part of the so-called intelligentsia have throughout the last decade looked upon the Swatantra Party as conservative, if not reactionary. What is the source of their confusion?

The New York Times, Prof. Galbraith and Senator McGovern are well known examples of this bogus "liberalism" which has resulted in genuine liberals like Prof. Milton Friedman and Prof. Sidney Hook being known as conservatives.

This phenomenon and the confusion are not unique to India. The fashion comes, as most of our fashions do, from the United States of America where socialists and communist fellow travellers have pre-empted the word "Liberal" to refer to policies and operations which are anti-liberal in the extreme.

The *New York Times*, Prof. Galbraith and Senator McGovern are well known examples of this bogus "liberalism" which has resulted in genuine liberals like Prof. Milton Friedman and Prof. Sidney Hook being known as conservatives.

Freedom First, April 1973

MR. MINOO MASANI was the founder of *Freedom First*.

It would appear that this semantic confusion is now threatening to cross the Atlantic, or so it would seem from the letter written by Prof. P. T. Bauer of London University to the *Daily Telegraph* on 5th February, 1973.

Seeking to draw attention to the perversion of the term "Liberal" which had now spread to the pages of the *Daily Telegraph*, Prof. Bauer wrote:

"The term is used to describe advocates of freedom, a condition which according to the Oxford Dictionary denotes being free and having the right or power to do as one pleases, which of course has always been circumscribed by the obligation not to infringe on other people's liberty. In recent years and decades the term liberal has gradually come to mean its exact opposite.

"I have heard people talk of Marxist liberals – rather like talking of boiling ice-cream."

"For some time now in America, liberal has come to refer to Socialists or even Communists, that is advocates of close and extensive State control of social and economic life.

"I have heard an American woman describe an uncompromising supporter of Stalin's regime as an extreme liberal. I have heard people talk of Marxist liberals – rather like talking of boiling ice-cream."

Prof. Bauer concluded his letter by saying:

"Such corruption of the language makes rea-

sonable discussion impossible. It is ultimately destructive of civilised society.”

A few days later, Prof. Bauer was supported in his plea by Mr. Vernon Dawson, Secretary-General of the Liberal International.

The *Daily Telegraph* made amends in the form of an editorial article entitled *Who Are Liberals?* in the course of which it wrote:

“Liberalism, as Prof. Bauer reminded us on this page, is about liberty. Historically, it was the doctrine of those who, for moral as well as economic reasons, were against the sterile autocracies of 18th-century Europe. It was, and is, not a simple matter. Both Continental rationalism and English empiricism have contributed to it. But what genuine liberals, in all societies, have always had in common is a concern for the freedom of the individual, the rule of law, and the limitation of government, both in its power and its scope. As such liberalism must be regarded as a ‘political doctrine quite different in character from conservatism, which is about social order, and socialism, which is about social equality. How is it, then, that this old and honourable word is now commonly used to denote those whose

political views are the exact opposite of traditional liberalism? How is it that those who favour State intervention in the economy are called ‘liberal’, and those who have a genuinely liberal dislike of such things are called ‘conservative’ or ‘right-wing’?”

“Is this question of anything more than academic interest? Not if we think words do not matter. But if we think that political debate loses much of its point if words are used in a slipshod and inaccurate fashion, the misuse of the word ‘liberal’ is a tendency that we all ought to resist.”

All this will, of course, leave the crypto-communists in Delhi and their apologists in the press unmoved. They can be counted on to go on with their practice of ‘double think’ and “double talk” *à la* George Orwell, describing progress as reaction and autocracy as progress.

The controversy in the *Daily Telegraph* serves, however, to strengthen and vindicate the faith of genuine liberals in India, such as members of the Indian Liberal Group affiliated to the Liberal International, and others, that theirs is the true Liberalism based on the authentic liberal tradition.

The Roots of Indian Liberalism

There is reason to believe that ancient India was the cradle of tenets that form the core of modern day liberalism. Traditional Indian societies were generally pluralistic. The king, kshatriya by caste, was the unquestioned sovereign who was venerated as the very incarnation of super-god ‘Vishnu’ but had little power over the seats of learning and over the poor but scholarly Brahmins. Rajaji was fond of quoting a Gujarati proverb meaning, ‘Where the king is a trader his subjects are paupers’. The political head had little to do in matters of learning and trade.

This polycentrism may not, because of its caste basis, pass modern day scrutiny, but it constituted, at least in theory, a rare combination of muzzled monarchy and social prestige divorced from both wealth and power. The reality might not have been fully as rosy as all that; that such values were cherished at all so early in history is itself remarkable even when compared to the situation then prevailing in Europe, China or Japan.

Sharad Joshi, Excerpted from his article ‘Liberalism In India’,
Freedom First, October-December 1996

SALVAGING FUNDAMENTAL RIGHTS

S. P. AIYAR

A quarter of a century has just elapsed since the Constitution of India was inaugurated and as one reflects on the vicissitudes through which this noble instrument of government has passed one recalls the words of Rajendra Prasad in the Constituent Assembly. "Whatever the Constitution may or may not provide, the welfare of the country will depend", he said, "upon the way in which the country is administered. That will depend upon the men who administer it... India needs today nothing more than a set of honest men who will have the interest of the country before them... We can only hope that the country will throw up such men in abundance." It is a sad comment on our public life that twenty-five years later, the Constitution, which was conceived in liberty and dedicated to the goals of a free society based on social and economic justice, equality of opportunity and the unity of the nation should stand 'defaced and defiled' as one of our great constitutional lawyers has now written (*Our Constitution Defaced & Defiled* by N. A. Palkhivala (Macmillan, Rs.25/-).

The main cause, if one is compelled to select the most important from a welter of contributory factors, is the continued dominance of a single party for most of this period. In the Nehru era of Indian politics, as it is popularly known, there was a semblance of political stability but the economic policies of that period contributed immensely to the economic crisis and eventual social disruption which one witnesses today. Economic programmes and policies resulting in an administrative jungle of

permits, licences and controls, black-market and corruption; restrictions on business and trade and property rights and the growing disparities between rich and poor despite socialist declarations had prepared the soil for a revolution of rising frustration.

In his perceptive study of 'Jawaharlal Nehru, A Contemporary's Estimate' (1966), Walter Cocker observed: "It is hard to escape the fear that the main achievement of Nehru's economic and social policy will turn out to be social disruption."

In his perceptive study of *Jawaharlal Nehru, A Contemporary's Estimate* (1966), Walter Cocker observed: "It is hard to escape the fear that the main achievement of Nehru's economic and social policy will turn out to be social disruption." These trends acquired a terrifying swiftness in the second phase of one-party dominance under the Ruling Congress after the General Election of 1971. Statist policies, partly radical but mostly populist, were pushed through with little regard to constitutional implications and the new style of politics born in a life and death struggle against the 'old men' of the Congress was concerned with immediate political success rather than strengthening the norms of public life in a democracy. Within the brief span of three years the fundamental rights of citizens suffered erosion through constitutional amendments rendered possible through massive parliamentary majority and the judicial process was sought to be corrupted by injecting politics into it.

Freedom First, March 1975

DR. S. P. AIYAR was Head of the Department of Civics and Politics, Bombay University.

The public has been confused by specious and misleading arguments of the politicians while the apathy of the masses makes possible the destruction of the democratic freedoms of the citizen. The situation is well expressed in the words of Joseph Story quoted by Sachchidananda Sinha in the Constituent Assembly in December 1949. "Re-

*If the Constitution today stands
'defaced and defiled' it is due as
much to the apathy and
ignorance of the citizens as the
politician's appetite for power.*

publics are created" he said, "... by the virtue, public spirit, and intelligence of the citizens. They fall when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them."

If the Constitution today stands 'defaced and defiled' it is due as much to the apathy and ignorance of the citizens as the politician's appetite for power. Palkhivala expounds this theme with that celebrated eloquence which has made him famous. In part 1, he discusses the nature and philosophy of rights, the implications of the Twenty-fourth and Twenty-fifth Amendments, specially that notorious Article 31 C which he rightly describes as "an outrage on the Constitution", the role of the Courts and the dangerous doctrine of having "A Judiciary made to measure."

The inclusion of Fundamental Rights in the Constitution is viewed in the perspective of History. Rightly does he say: "Compulsions of History dictated that the rights of the citizens should be guaranteed by the Constitution. The country was to become a free democracy for the first time in its 5000 years old history. Freedom had not been bred in the bones of the people; and in such a country

the basic human freedoms needed a constitutional force to fight against the inevitable onslaughts of power hungry politicians." This is a view exactly the opposite of what the Simon Commission held in 1930. Its Report had said: "Many of those who came before us have urged that the Indian constitution should contain definite guarantees for the rights of individuals ... Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exists the will and the means to make them effective." It seems ironical that we have now reached a point in our political development when the view of the Simon Commission seems to get reinforced by the deliberate attempts of politicians to nibble away at the rights of the citizen. Palkhivala quotes with approval, at the head of one of his chapters, the words of Justice Learned Hand: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it."

Inhospitable Environment

In several arresting sentences he refers to the inhospitable environment in which the Constitution now functions: "The real danger which India faces today is from the men who hunger and thirst for power and whom Milovan Djilas called The New Class. They have little respect, and less concern, for the basic human freedoms of the citizen. Their irresponsible readiness to amend the Constitution with a view to constricting liberty is only tantamount to a confession of personal unfitness to work, what one Supreme Court judge aptly called, 'Our sublime Constitution.'" Again: "In India freedom is not more than one election away from extinction. When an attempt to uphold the rule of law is called 'vested interests', and when preservation of the sanctity of the Constitution is called the handiwork of 'reactionary forces', it should be clear to any thinking mind that freedom is in peril."

One of the untenable arguments advanced by

Communists and other radicals is the 'bourgeois' character of the Constitution and the inherent conflict between fundamental rights and the Directive Principles. Palkhivala categorically rejects this view: "There can be no inconsistency or collision between the fundamental rights and the directive principles since they are on different planes. There can be no conflict between the ends and the means. The only conflict is between the Constitution and those who refuse to accept the discipline of the Constitution. On the University campus, refusal to accept discipline is called 'student unrest'; in the political capitals, refusal to accept discipline is called 'progressive radicalism'."

In my view, the most important and valuable part of this book is the thorough examination of Parliament's power to amend the Constitution. It reflects Palkhivala's brilliant legal acumen and forensic ability. In line with the classic presentation of his arguments in the *Fundamental Rights Case* he emphasizes that "Parliament's power to amend the Constitution does not comprise the power to alter or destroy any of the essential features, basic elements or fundamental principles of the Constitution." Rightly does he argue that Parliament is a creature of the Constitution which is the source of its power and cannot therefore assert its supremacy over the fundamental law. Moreover, Parliament

cannot be identified with the people's will. The Twenty-fourth Amendment, he says, has brought about a revolutionary change in the Constitution by seeking to transfer sovereignty from people to Parliament. In the final pages he shows how the Court's

"There can be no inconsistency or collision between the fundamental rights and the directive principles since they are on different planes. There can be no conflict between the ends and the means."

decision in the *Fundamental Rights Case* had expressly repudiated Parliament's competence to alter the basic features of the Constitution. In doing this "something precious has been salvaged out of the tempest that raged over the Government's claim to wreck the Constitution." The trend of the decision indicated in unmistakable terms that Parliament's power of amendment is restricted and that it could not "arrogate to itself the role of the Official Liquidator of the Constitution."

This book is an important contribution to liberal constitutionalism and a passionate plea for freedom. Will the voice be heard?

On Indian Democracy

Mere parliamentary form does not give content to democracy, concepts of democracy in India are purely idealistic. There are, of course, variations among the idealists, but essentially they all are of one tribe. Village panchayats are paid homage not for their functional role, but as a part of Gandhian idealism which finds industrialisation and urbanisation evil.

Pandit Nehru was quoted as having said to a US columnist years ago "There is a difference between the Indian and Western mind. The Indian would not ask what he should *do*, but what he should *be*." In this comment lies the interesting secret of prevailing attitudes to democracy in India in certain quarters. "It is not a question of what to *do*, but what to *be*," represents the passion and fervour which give the power for drive and intense movement, but devoid of consciousness as to what to *do*, the movement often leads to a blind alley in terms of democratic values and aspirations.

S. R. Mohan Das, *Freedom First*, No.106, March 1961

DYING WITH DIGNITY

FREDOON P. ANTIA

It is not unusual to find amongst our friends and relatives elderly men and women, often over 70 years of age, who have long been suffering from some chronic, incurable ailment. It hurts those around the patient, probably even more than it hurts the benumbed patient himself, to see the physician pushing in quick succession, injections and drips into their withered half-dead muscles and veins. It probably hurts the conscientious physician himself, because he is well aware of the fact that the end result of all the effort on his part, no matter how sincere, is

*For the heart goes on beating,
although every other organ of
the body may be refusing to
function normally.*

going to be negative. In most cases death can be deferred only by a few days or weeks, but in some, he will be able to prolong the patient's existence almost indefinitely. For the heart goes on beating, although every other organ of the body may be refusing to function normally. This writer has heard of a case where a lady over 70 years of age, completely bedridden, was thus kept alive like a vegetable for 13 years, only after which her heart stopped beating. The writer recalls also having read a press item about the desperate struggle the physicians are putting up to prolong the life of Shahid Bhagat Singh's old mother, aged 98 years. The physician feels that he owes it to the ethics of his profession, bound by the Hippocratic Oath, to go

on pumping into the body of the patient, whether through the mouth or the bloodstream, whatever drug has even the remotest chance of prolonging life. Apart from the suffering of everybody concerned, this imposes inter alia a crushing burden, financial and physical, on those responsible for the patient's upkeep.

This writer is reminded of a Court case which came up in Hialeah in the State of Florida, U.S.A. A lady of 72 had to have her dried withered veins opened every day to force blood transfusion into her. Not being able to bear the pain she asked her physicians to stop torturing her by incising into her veins. The physician could not fail to see the logic of her request. But he felt he was between the devil and the deep sea. If he continued to give transfusion, it was tantamount to treating her against her will. If he stopped the transfusion, he would be aiding and abetting a suicide. As a cautious man he thought it prudent to take the issue to a competent Court of Law. The Judge ruled "I cannot decide whether she should live or die; that is up to God. But a person has a right not to suffer pain. A person has the right to live or die in dignity". He decided that the patient cannot be forced to accept any treatment which was painful to her. This judgement emboldened the physician to stop the blood transfusion. The lady was spared further torture. She died the very next day. The Judge put his finger on the right spot. What was at issue was the right of the human being to die in dignity, just as much as he or she has the right to live in dignity.

Quinlan

Far different from the above was the ruling given in a more recent American case which re-

Freedom First, May 1956

DR. FREDOON ANTIA was a founding member of the Society for the Right to Die with Dignity.

ceived – and rightly – world-wide publicity. In September last year, the adoptive parents of a girl 21 years of age, Karen Quinlan, petitioned the Superior Court in Morristown, N.J., that the respirator which sustained Karen's life be ordered to be turned off to enable their adopted daughter who had been suffering from an irreparable brain damage since April – so that she is permitted to die. The facts of the case are that Karen went into an unexplained coma after having taken a tranquilising drug and alcohol and experienced difficulty in breathing, which led to her present brain condition. She never came out of the coma ever since she was affected thereby. She had to be kept alive with the aid of an artificial respirator and by intravenous feeding. Her weight dropped from 120 to 70 lbs. and her body was reduced to "grotesquely twisted flesh". She was completely unaware of her surroundings and could not feel, think or respond in any way. Karen had "lived" in this condition for over five months when her adoptive parents, devout Catholics, convinced that no amount of medical attention could restore her to anywhere near normalcy, after consulting their priest, requested the hospital doctor to switch off the respirator to enable her to die "with grace and dignity" and to be permitted "to return to the gentle hands of the Lord". The doctors refused. Such an act, according to them, would be tantamount to homicide for which they would be held criminally liable. The parents thereupon applied for a Court Order that the respirator be switched off, as Karen in her present condition had a "right to die".

The hearing went on for days. All physicians

testifying in the Court for and against the petitioner admitted that, although alive, Karen was in a vegetative state and could never recover normal health. Dr. Julius Korien, Professor of Neurology at N.Y. University Medical School, an expert in the interpretation of brain wave patterns, said in an interview; "The Court of Law and physicians think of life v/s death and that is not the situation. There is life, there is death, and there is an in between state, that is vegetation".

"The Court of Law and physicians think of life v/s death and that is not the situation. There is life, there is death, and there is an in between state, that is vegetation".

The Judge ruled against switching off the respirator. By this time Karen had "lived" for nearly seven months in her comatose condition! He was careful enough to enter a caveat though, that the ruling was based on the facts of Karen's case and its application was limited to that case. There is little doubt that the judgement in favour of the Quinlan parents would have advanced considerably the cause of mercy killing. Karen must continue her vegetative existence and her parents must continue to suffer the pain, agony and mortification of seeing her in that state in full knowledge of the fact that there is no hope of ending it. Also the State of N.J. must continue to employ expensive medical resources, human and physical, of the order of thousands of dollars on her, fully aware that nobody is profiting by the treatment.*

***The Quinlan Case**

Since Dr. Antia wrote this article, there has been a welcome change in the situation concerning Karen Quinlan. The New Jersey Supreme Court has reversed the unfortunate judgement to which Dr. Antia refers and has given Karen's parents the right to exercise on her behalf her right to die. The logic of this decision is that, if a patient cannot exercise his or her right to decline medical treatment, his or her guardians – usually the next of kin – may do so.

In a recent survey carried out by "Nursing 75", described as the world's largest nursing journal, 15,000 of USA's 1.5 million nurses who took part voted in favour or slightly in favour of euthanasia for patients who desired it. 96% were in favour of withdrawing life sustaining treatment from patients who expressed a desire not to continue it. This is

the opinion of those who are in the closest touch with such patients and their suffering. In court cases, nurses seldom have a look in as experts or witnesses. The court depends entirely on the testimony of physicians and surgeons. If they are freed from their Hippocratic oath, is not there a distinct probability of their also tilting the scale in favour of euthanasia?

During the last hundred years we have all along been focussing our attacks – unsuccessfully though – on poverty, hunger, squalor and slums, which all detract from the dignity of living. But we have categorically been denying to the human being dignity in dying. Even socially advanced countries which have a humane slant toward suffering, not only of

The word "Euthanasia" derives from a Greek word meaning good death. It can be either active or passive in the sense that a drug or treatment can be administered to hasten death or withheld with the same objective in view.

human beings but even of animals, are prepared to see indefinite pain and distress before death, rather than put an end to them by terminating life, in full knowledge of the fact that the suffering cannot end without the end of life. It is true though that in countries with a high standard of medical treatment, prolonging life may not cause as intense suffering as in the Third World countries, where standards of medical aid are lower. In countries like India therefore it becomes all the more necessary to take measures in suitable cases to enable life to end quickly, if that is the only way suffering is to end.

Even in the U.S.A. where medical assistance of a much higher order is available so as to minimise the pain and suffering of the patient, movements are afoot to propagate the cult of dying with dignity,

i.e. without undue physical deterioration, dependence or hopeless pain. Organisations such as the Euthanasia Educational Fund and the Euthanasia Society of America have been propagating the cult of the "Living Will". The method adopted is for the person concerned to sign such a will in which he or she expresses the wish that in case of illness from which "there is no reasonable expectation for recovery, he or she be allowed to die and not be kept alive by artificial means or heroic measures". The contents of such a will have to be shared naturally with one's near and dear ones. It would be idle to claim though that this is a universally accepted cult in U.S.A. There is of course a great deal of raising of eyebrows and bitter debate.

Euthanasia

Incidentally the word "Euthanasia" derives from a Greek word meaning good death. It can be either active or passive in the sense that a drug or treatment can be administered to hasten death or withheld with the same objective in view.

About 18 months ago 250 top ranking intellectuals of the level of Andrei Sakharov and Julian Huxley asserted "the absolute right of the individual to control his or her own bodily destiny in regard to the reproduction, medical treatment or lack of it, and termination including Euthanasia and suicide". Another recent statement, amongst the signatories of which are several French, American and British Nobel Laureates, appeals to thinking people to incorporate in their will the desire that they would like to die with dignity and that those concerned should respect this wish of theirs.

We have confined ourselves so far to incurable cases of physical malady in which another party is normally involved, such as a physician, nurse, friend or relative. But surely those who are ill at heart or in mind, and have nobody to attend on them, have just as much right to relief in circumstances where they feel death alone can deliver them from extreme pain, embarrassment and/or humiliation. The present

law whereby failure to be successful in such an attempt is being treated as an offence for which the person is prosecuted requires appropriate revision. For surely from any rational, equitable standpoint it cannot lie in the mouth of another party, even in close contact with the person contemplating suicide, to sit in judgement on the act, whether the particular situation warranted such an extreme measure or not. It is only the wearer who knows where and how sharply the shoe pinches. For the intensity with which an identical situation can cause pain and suffering to two different individuals varies enormously, depending on one's background, bringing up, ethical and behavioural codes, and other strictly personal factors which no outside party can take into account. For example, to many an individual who has led an active, useful and meaningful life, retirement from normal work causes so deep and intense a boredom that he would prefer to be snuffed out quickly, rather than go on continuing what to him is a meaningless existence just waiting for death to claim him – which may not be on the scene for years. The concept of a happy, relaxed retirement turns out just to be a mirage, in India more than anywhere else. Continuous unemployment or absence of job satisfaction can cause just as deep a distress to a sensitive mind and suicide may appear to be the only way out. If society cannot solve the problem that causes such deep distress to the person concerned what right has it to demand that he should go on living, if life means nothing but suffering to him? Far from making an attempt at suicide a penal offence, a sane society should evolve and make available, with some formality to allow a cooling down period but without undue difficulty, specific devices, drugs, injections etc. for ending life without pain and without uncertainty as to the effect. And of course there should be no prosecution and no social stigma if despite all this the attempt fails. In India more than in any other country where life to hundreds of millions is nothing but an unceasing round of squalor, filth and misery, the right to end one's own life should be considered as a Fundamental Right, on a par

with any of the rights listed in Article 19 of the Constitution.

In India more than in any other country where life to hundreds of millions is nothing but an unceasing round of squalor, filth and misery, the right to end one's own life should be considered as a Fundamental Right,

Obscurantism

Social reform has always encountered bitter opposition *inter alia* from religiously oriented groups. Such opposition has to be overcome. A little more than a hundred years ago in India we contended with the barbarous institutions of "Sati" and infanticide, both of which had not only social but also religious sanctions. Even today we are contending with institutions of child marriage and dowry, both heavily overlaid with centuries of social approval and even religious lore. Each generation has to fight its own battles against conventions and practices which are found to have outlived their utility. The only social reforms which we have successfully implemented in India are the legalisation of birth control and of abortion. But even in regard to these we seem to fight shy of giving adequate publicity as though we are restrained by a feeling of guilt for having passed such laws. If sanity is to prevail, as it should, there is no doubt that the rights to die in dignity, and to commit suicide, suitably safeguarded against their abuse, will have to be conceded sooner rather than later. The only tragedy is that so much avoidable suffering will have been inflicted on millions of persons before this is accepted. At any rate those countries which have abolished capital punishment, thereby conceding to those who wish the right to live, cannot in all conscience deny to those who so wish the right to die.

STATE OF THE NATION

THE EMERGENCY YEARS

MINOO MASANI

There have been many demands from readers of *Freedom First* for the reproduction of a letter that the Editor wrote to *Encounter* magazine in London in response to an invitation from its Editor. It was published in their January 1976 issue. The story told in that letter was as of 31st October 1975 and a postscript carried in the March issue of *Encounter* brought the story up to 5th December. While it is true that several developments have taken place since then, the overall picture, by and large, is not very different today.

You have asked me for a postscript to the conclusions in my little book *Is JP the Answer?*, extracts from which I understand you are reproducing in *Encounter*. It is not an easy assignment at a time like this, but I feel like responding in view of my old association with *Encounter* and your own warm invitation.

Perhaps I should explain that I retired from active politics as far back as 1971. I have since attempted to view the scene, even when a good friend like Jayaprakash Narayan is involved, as a student of history and it is as a student of history that I have observed the sad events of the last four months in our country.

Under the heading of "The Prime Minister's Options", I sketched in my book the alternatives of a confrontation *a outrance* on the one hand and an adjustment between the Prime Minister and Jayaprakash Narayan on the other. Things have moved in a very different direction from what I had suggested was in the country's interest, but I must confess to being somewhat unrepentant on this point. It can hardly be claimed that what has happened during the past four months has proved my fears

about the dangerous consequences of a clash to be unfounded.

True, some readers of the censored Press and users of the Government-controlled Radio and Television may perhaps be led to think so. Isn't everything quiet? Has not discipline been restored in the factory, the secretariat of government, and the campus, and have not illegal strikes been eliminated? Do not trains run on time? Is it not true that there has not been a single act of violence and that the Emergency has been welcomed by the people at large?

If that is so why, one may ask, are thousands, including men and women of influence in the country and the leaders of democratic parties, still imprisoned? Why are *deterus* under the Maintenance of Internal Security Act held in prison without a reason being given and without recourse allowed to the Courts of Law which are valiantly trying to perform their duties under the Constitution? Why are Jayaprakash Narayan and some other distinguished *deterus* kept incommunicado and denied company?¹ Why is it necessary for the Press to be fettered and denied the right to comment *inter alia* on the Emergency, on Parliamentary proceedings, and on the Supreme Court proceedings on the Prime Minister's case according to the latest guideline which is held out as a "relaxation" of press censorship?

Freedom First, June 1976

¹ This was written shortly before the ailing Narayan was released on parole (in mid November) to obtain urgent medical attention. — *Ed. Note*.

The nature of this alleged relaxation is evidenced by the fact that even at the end of October the number of political prisoners, the arrest of individuals and the location of *detenus* were not allowed to be published in the newspapers. So too the very fact of censorship and the contents of the “guidelines” issued from time to time. In mid-October, I addressed in the capital of Gujarat an All-India Civil Liberties Conference attended by around 1,000 people, presided over by a former Chief Justice of India and inaugurated by a former Chief Justice of the Bombay High Court, who had also been a Cabinet Minister and an Ambassador. Next morning, not a line was allowed to appear about that event in the nation’s Press. Is it any wonder that such a situation breeds a crop of rumours, many unfounded, which follow one another in quick succession?

As Editor of a little monthly named *Freedom First*, I decided right from the start not to submit to the whims and fancies of the censor. I therefore suspended publication of the monthly and applied to the High Court of Bombay for a writ of mandamus against the censor. That was on 17 July. My writ was admitted by the High Court, but I am still waiting for the matter to come up for hearing.

The saddest part of it all is that the reasons given for the Declaration of Emergency and the steps taken under it are far from convincing. There was no clear and present danger to the security of the State. True, there was a threat of civil disobedience to press the Prime Minister to resign in the light of the judgment of the Allahabad High Court unseating her on an election petition; but such a situation could have been dealt with under the existing laws. Certain positive steps taken (such as the observance of discipline by various sections of the public: including Government employees who report for work on time and the maintenance of queues at bus stops) could surely have been achieved without the severe repression which has accompanied them? To imagine that arbitrary power

in the hands of the executive, which is not subject to judicial review, can function for long without oppression is an illusion. The discipline of fear, which is what we have now, is always deceptive. It deprives those in authority of knowledge of the extent of dissatisfaction among the people and of dissent from official policies, with the result that they tend to get more and more out of touch with the realities of the situation, as has been proved by the history of developments in other countries. It is a prescription for popular alienation which (as Mr. Pyarelal, who was Mahatma Gandhi’s secretary, wrote in the *Indian Express* on Gandhiji’s birthday on 2 October this year) “may take the form of a word or a look, a sign – even silence. It cannot be suppressed.”

The solution, if it can be called that, is an extremely short-term one. One can only quote what a writer has to say in the journal *Blitz* of 5 October:

“Though no all-India party has been banned, all activity was immobilized. A strange inertia seems to have descended on them The forces of bitterness and resentment have not died; they have gone underground. Party politics has become subterranean.”

This is something that only a fellow-travelling journal would be permitted to publish.

How to describe our present situation which has something of the nature of a nightmare? I would certainly not describe it as either a Fascist or Communist dictatorship. I see it as a limited form of authoritarianism from which one can go down the slope to totalitarianism or revert to democratic procedures. One of the more cheering aspects of the situation is that it is reversible. Indeed, the Prime Minister’s repeated public statements that she continues to believe in democracy, that the repressive measures have brought no pleasure to her, and that the Emergency is temporary and will be terminated as soon as the changed situation warrants it, are

encouraging straws in the wind. It may then be asked: what are we waiting for? The Prime Minister's answer is that it is for the opposition to manifest a change of heart. But, assuming that the leaders of the campaign against her have had second thoughts, how are they supposed to express them when they are held in solitary confinement and can neither meet one another nor their colleagues outside?

In such a setting, what is the role of the liberal democrat? It is, in my view, to eschew romanticism on the one hand and craven fear on the other. He should endeavour, to whatever little extent may be possible within the limits of legality, to assert the rights of the citizen and to seek to expand the bounds of freedom, for in such a climate even normal calm and courage have a therapeutic value. At the same time the liberal will accept the need for a measure of self-discipline. He will endeavour to address those in authority in the spirit of the Russian proverb: "The yes-man is your enemy, but your friend will argue with you." Our friend Kukrit Pramoj, now Prime Minister of Thailand, set a rather good example of this kind of posture when he functioned as editor of a daily newspaper for several years under an authoritarian regime.

The liberal, maintaining a sense of history, will also bear in mind that there are historical reasons for such developments and that a resort to demonology explains little. He will recall the fragility of India's democratic institutions; the way in which the Indian politician, by and large, played the fool; the absence of an infrastructure of grassroots vigilance. He will recall warnings given by many of us during the 1960s that a highly controlled economy, public sector monopolies, the combination of political and economic power in the same hands and a general acceptance of Statism under the slogan of "socialism" cannot be expected to co-exist for long with democratic processes. Bearing all this in mind, the liberal will endeavour to find common ground

between the warring parties and to heal the wounds of a divided nation.

Happily all parties, whether in Government or opposition, are agreed that the people of India should be free to decide their destiny through a general election to Parliament, and the Prime Minister has more than once said that elections will be held as soon as the necessary conditions come into existence. She is right in making this reservation as it is obvious that under prevailing conditions – with the kind of censorship of the Press that exists, the detention in prison of a large number of men and women of influence in the country and the threat of detention without cause and without trial under the Maintenance of Internal Security Act – no election that would enjoy any credibility could take place. It is obvious that in order that an election campaign can be conducted fairly and freely there will have to be freedom of expression and discussion on the platform and in the press over a reasonable period of time. It has also to be conceded that, in order that an election can take place in a calm and orderly fashion, extra-constitutional weapons would have to be set aside. Many people in India see no reason why some such arrangement cannot be worked out in the national interest, reinforced by considerations of legitimacy and democratic durability. Any other approach is likely to lead to tragedy, and tragedy is probably the aim of those who, like the Communists, seek to intensify the conflict.

The present regime offers the traditional promise of all authoritarian systems so aptly described recently by a writer in the *New Statesman*, "a perfect future in return for no questions asked." Its long-term stability is dubious unless it can give the people a demonstrably better life within two or three years' time. The threat to Mrs. Indira Gandhi's government comes not so much from Jayaprakash Narayan and the opposition parties as from the eventuality of a failure to deliver the goods.

Put very briefly, the question is whether the

Government with its present policies, which are not far removed from what in England is known as “Bennery”, can generate a surplus of around 10 million tons of foodgrains in place of the current deficit which has called for imports this year of around 5 million tons. The answer to that problem lies in the provision of inputs such as water from tube wells and minor irrigation works on the one hand and the flow of consumer goods at reasonable prices to the countryside on the other. The two are interrelated. Indeed, to the extent that most consumer goods in India are not consumer-durables but “basic” goods like foodgrains, cotton textiles, vegetable oil products and leather goods – which in turn are heavily dependent on agriculture – this flow of consumer goods is itself a function of our success in agriculture. Given our failure on the agricultural front, it is not surprising that the *per capita* index of basic consumption goods (except only for radios, bicycles and sugar) has been stagnant or declining all the way since Independence. On the other hand, industry too is stagnating and its major units, both in the private and the Government sectors, are facing the worst demand recession since Independence.

All this can be mended only by a reversal of the counter-productive policies and priorities of the successive Five Year Plans; a positive attitude to foreign capital investment; the diversion of scarce resources to agriculture and consumer goods industries made possible by the abandonment of an expenditure of between 480 and 650 million rupees per annum on Atomic Energy and a drastic cut in Defence expenditure, which would in turn call for a shift in foreign policy. If this is not done, unemployment will go on growing and inflation will again resume its stride after a short pause. If economic failure becomes clear in two or three years’ time, what price political stability? True, the Indian people are fairly docile. True, “verbal socialism” may act for a while as a soothing syrup. True, the resilience of the Indian people is something to be admired. But, as the phrase goes, “even the worm turns.”

In this sultry weather comes a breath of fresh air from an unexpected quarter – the Prime Minister’s son, Sanjay Gandhi. In an interview for a periodical journal, extracts from which were published in sections of the press on 28 August despite the efforts of the censors to countermand their original sanction, Mr. Gandhi argued strongly against nationalisation. He said he would not mind the Government sector being “allowed to die a natural death” where “it cannot function in competition with the private sector.” Mr. Gandhi argued for increased production through the restoration of competition, the removal of controls, and the reduction of taxes. While few things in India have been discussed so much in conversation in recent weeks, there has not been a single comment on it, whether friendly or critical, permitted in the censored Press. Perhaps, therefore, in a situation as full of enigmas as this, may I end my letter with a question mark as to what this statement, coming from where it does, implies and what its implications for the future might be?

Postscript

May I add a postscript to my *Encounter* letter (January)? Since I wrote my report there are a couple of interesting and not unhappy developments to report.

The detention order on Jayaprakash was withdrawn yesterday (4 December). But unfortunately he has been released in very bad shape and is now in hospital undergoing treatment on his kidneys which have been badly damaged during his 4 months of being held incommunicado. He is cheerful, but I do not know how long we will have him with us.

The other development is that, on 25 November, we at last won our law suit in the Bombay High Court against arbitrary censorship of our monthly publication, *Freedom First*; but, since it is likely the other side will be appealing, further comment will have to be suspended.

Bombay

Minoo Masani

INDIA'S BALLOT BOX REVOLUTION

S. P. AIYAR

The country has emerged from one of those political experience which, in the perspective of History, account for the great tides of change in human affairs and, by any test, the ballot-box has produced a revolution in Indian politics. A revolution, it has rightly been said, constitutes a drastic reallocation of power and this is precisely what has happened. The thirty-year old monopoly of the Congress has ended and the tenacious myth of its invincibility dissolved. The significance of this is not lessened by the fact that the scene of the great change is North India and not the states in the South. As yet, no satisfactory explanation has

What the Sixth General Election has achieved is without parallel in the history of democracy.

been offered for the dramatic contrast in the political choice of the people in the north and in the south of this subcontinent; obviously there can be no overarching theory of political behaviour in all the Southern States and local factors must be taken into account.

Rule of Caprice

What the Sixth General Election has achieved is without parallel in the history of democracy for the people have expressed themselves and passed a judgement on the rulers after a period of emergency during which a coterie of men surrounding the prime minister had sought to make the country

into a prison-house for the freeplay of their impulses. True, the scene of their operations in the north, east, west and the south largely escaped the rigour of the mechanism of terror which had been set up. But the suppression was everywhere, a pall of fear fell over the country and the people had been governed not so much by the rule of law as by caprice. Writing during the high noon of the emergency, a contributor to *The New Statesman* who understandably preferred to remain anonymous, expressed the view that no one could ever be so naive as to imagine that the emergency, and the system of government it had given rise to would end in the foreseeable future. It was the general belief that the emergency had come to stay and the media men had worked feverishly to give it an air of legitimacy. When the election was announced on January 18, the emergency was "relaxed" but not lifted and all evidence seems to support the view that it was the intention of the Congress to continue with it and "consolidate" the gains after it had secured a fresh mandate by the people, ultimately, the emergency was "lifted" not by Mrs. Gandhi but by the people of India, specially of Rae Bareilly.

When the election was announced on January 18, the emergency was "relaxed" but not lifted and all evidence seems to support the view that it was the intention of the Congress to continue with it.

The election results exploded with a surprise and leading newspapermen the world over were pathetically striving for the right words to describe

Freedom First, June 1977

DR. S. P. AIYAR was head of the Department of Civics and Politics, Bombay University.

this most extraordinary event in the Asian scene. The words they seized upon were intended to capture the element of high drama; "earthquake" and "volcano" were freely used and in India, "wave" and "hurricane" were employed. These expressions, to my mind, are not only inadequate but are also apt to be misleading because they give us no clue to the nature of the phenomenon or the forces underlying it.

Democracy *Versus* Dictatorship

India's ballot-box revolution has a significance for our own political development as well as that of other developing countries. Unlike previous elections, the exercise of the franchise; this time has a certain epic dimension and as in all epics there is a main theme as well as its sub-plots; its ennobling characters as well as its despicable villains. The sub-plots and the activities of the villains will undoubtedly become clear when the separate official investigations are carried out and the results made known to the public. However, these are linked up with the main theme of democracy *versus* dictatorship – one of the principal strands in the manifesto of the Janata Party.

The Economist has recently observed that "Never again will anyone be able to claim that democracy is unsuited to any developing country or that the poor and hungry do not value their rights. India shot down these condescending dogmas ... along with Mrs. Gandhi and her Congress Party." It is true that ordinary men and women who have been denied the advantage of formal education cannot understand the abstract arguments of freedom and equality as expressed, by political and constitutional pundits; equally true that the harsh realities of the underdeveloped world make survival more important for people than political battles. What is forgotten, however, is the fact that human beings will rebel against injustice and any threat to their dharma or way of life. Why did Mrs. Gandhi lose in her own constituency with so big a margin de-

spite the fact that it had been carefully nursed for many years and had many benefits bestowed upon it? Why is it that practically every one closely associated with her and having a reputation for highhandedness was defeated at the polls? Why is it that the normal inducements offered to poor voters

The Economist has recently observed that "Never again will anyone be able to claim that democracy is unsuited to any developing country or that the poor and hungry do not value their rights".

in, cash or kind or the variety of pre-election sweeteners promised by State Governments had little or no effect in many prestigious constituencies? The election has shown beyond the shadow of doubt that the voter, urban as well as rural, literate as well as illiterate, could not be deflected from his decision to vote in the way he wanted. There was widespread fear that the election would be rigged and rumours afloat in Bombay suggested that what ever the electorate did the result would be a victory for the Congress. Yet this did not happen and is the greatest achievement of this revolution through the ballot-box. It has given rise to a tremendous confidence in the power of the vote and the secrecy of the ballot-box. The result was a powerful demonstration of *Jana Shakti* the power of the people. The Constitution of India spoke of "We, the People" but this was generally taken to be no more than a rhetoric of the eighteenth century; the election demonstrated the reality of popular sovereignty.

Any evaluation of the historic significance of our recent political experience must acknowledge with pride the work of the Election Commission and the Returning Officers who brought to bear on their work the spirit indispensable for a free election. What Vinod Malhotra, the Returning Officer at Rae Bareilly,

did when confronted, by a petition for a repoll presented by Makhanlal Fotedar, Mrs. Gandhi's Election Agent, and the timely intervention of P. B. Dutt, the Election Commission's observer, indicate that the spirit of freedom had not been snuffed out.

Divine Right Delusions?

What destroyed the Congress image was its *hubris*, its belief that it was its historical destiny to rule India and provide the stability which its leaders believed could not be provided by any other political party. What gave credence to this belief was the splintered nature of the opposition in the country's political development. For more than a decade, Indian political scientists following their Western masters propounded the theory that having a party like the Congress, representing a broad consensus in a dominant position, was the best thing that India could have. It followed logically that al-

For more than a decade, Indian political scientists following their Western masters propounded the theory that having a party like the Congress, representing a broad consensus in a dominant position, was the best thing that India could have.

though the country could have other political parties they could only function in opposition and exert pressure on the ruling party. This was at best a rationalization of an historical accident and at the worst a subtle variation of a Divine Right Theory. The notion that only one party has a monopoly of political wisdom to rule this large country was not only out of tune with the realities of a plural society but it also carried within it the implication that opposition is irrelevant to a country like ours. Mr. Barooah was only explicitly stating what was in the minds of most Congressmen when he boldly declared that the opposition was irrelevant. In a

similar strain, Mrs. Gandhi declared during the emergency that the opposition had been vanquished but not destroyed. Uma Vasudev's almost fulsome biography of Mrs. Gandhi clearly mentions that many years ago – long before she became minister – she had gone to the extent of saying that to make the foundation of the country strong it was better not to have opposition parties. This is a dangerous doctrine. The election has not only destroyed it but also created a situation in which people can hope to have an alternative government. Mr. Y. B. Chavan recently warned the Janata Government that if the

Mrs. Gandhi declared during the emergency that the opposition had been vanquished but not destroyed.

Congress with its long history could have its parliamentary majority reduced from 352 to a 153 it would not take much time to reduce the Janata Party's majority 270 to 70. He was right and this is a clear indication that the principle of alternative government is now a reality. It is significant that it did not occur to him to make a similar statement after the 1971 election.

Volatile Loyalties

In the current euphoria one is likely to forget that political loyalties are extremely volatile; so is the mood of the people. For the moment, the Janata Party has roused high expectations – political as well as economic. Its manifesto has promised the implementation of political charter, including the full restoration of civil liberties and the rule of law. The restrictions on the freedom of the Press are being rapidly removed and the relationship between Parliament and Judiciary will be restored to the form envisaged by the framers of the Constitution. Parliament is once again becoming the vital centre of our political system and "there is every hope that new conventions will develop between government and opposition. Congress leaders have shown re-

straint in their pronouncements and a willingness to cooperate with the government within the framework of the Congress policy. One can also expect the government and opposition to function as integral parts of democracy and play the game according to the rules.

In the post-election period, the relations between the Union Government and the States, particularly those in the South, can be expected to have their strains but much depends on the new government's capacity to build up an image of impartiality. Most important of all, the earlier promises on the question of language will have to be kept. The Janata Party leaders may have to temper their utterances and explore every possibility for harmonizing relationships with Congress governments in the South.

Most important of all, the new government will be judged by the effectiveness of its economic programmes, its capacity to create jobs in urban as well as rural areas, keep prices of essential commodities from rising stimulate industrial and agricultural production and inspire confidence in the economy. In this endeavour, policies can not differ fundamentally from those of the Congress although the emphasis might well change. One of the major casualties of the recent election might well be a

One of the major casualties of the recent election might well be a disastrous set back for family planning for the words themselves have come to acquire an unsavoury connotation in the public mind.

disastrous set back for family planning for the words themselves have come to acquire an unsavoury connotation in the public mind. Unfortunately the Union Minister for Health and Family Planning has been indulging in a form of demagoguery on this matter. The failure to control the population would mean pushing more and more people below the poverty line, and, given the return to a liberal democratic system, conflicts and pressures will build up rapidly and the opposition can once again exploit such a situation. Indian society cannot change overnight and the soil is ever fertile for the demagogue. There was a time when we believed that a totalitarian system was not possible in India. But we came very close to it. We must not delude ourselves a second time by saying that it will not happen again. The ballot box can bring about a political revolution by changing the structure of power but it cannot by itself produce a social and economic transformation.

Elections 1977

India is a land of miracles. Like a materialisation act of some Baba, the Janata Party materialised a sweeping miraculous victory. I and my friends had poured over the various big books on Indian Elections. We discussed the caste factor, the religious factor, lack of grassroots organisation, lack of resources, and the various percentages and had drawn some scientific conclusions. As the results began to come we began to reject our conclusions.

Let it be remembered that the victory has been won on a protest vote. As tales of misdeeds and terrorism practised during the emergency began to come before the public it created a feeling of disgust and hatred.

One of the sorry facts on the Janata side was the introduction of the religious heads as campaigners. As things stand the Janata Party will have to pay the price for this indiscretion. It may be an exaggeration but I put in the category of the Khilafat mistake in India's politics.

N. C. Zamindar in the 'Letters' column of *Freedom First*, No. 295, June 1977

TORTURE AND PREVENTIVE DETENTION

S. A. A. PINTO

The practice of torture has been in existence from time immemorial and is not confined to India but it is man alone amongst all living species who indulges in inflicting pain for the sake of causing pain with the ulterior motive of gaining something. Therefore, “inhuman” is entirely the wrong adjective; so are “brutal” or “bestial”. Neither animal nor reptile nor bird nor insect is known to cause pain for the sake of causing pain, but only in the course of killing for food or in self-defence.

As *homo sapiens* evolved into a rational being, he also learnt to employ pain for gain and acquired the perversion of cruelty for pleasure. With civilization, torture became a part of the penal law, that is, it became an accepted form of punishment for offences, often meted out publicly for setting an example to others.

As homo sapiens evolved into a rational being, he also learnt to employ pain for gain and acquired the perversion of cruelty for pleasure.

Hypocrisy having gained sway, in no country today does the law recognize torture as a punitive measure but while, on the one hand, cruelty and sadism continue though practiced in a clandestine manner, on the other hand, the governments of most

countries unofficially employ torture as an investigative device. The tragedy of such casuistry is that torture is underhand and uncontrolled and, therefore, even more difficult to root out.

Consider what happens when a person is tortured. The person is put through intense physical suffering, all the while under continuous pressure with the constant threat of worse agony to follow to make him confess his own suspected guilt or reveal information incriminating others. Sometimes unconsciousness provides welcome relief, but only momentarily. Sooner or later the point is reached where the victim cannot stand it any longer, where death seems more merciful, but this blessing is denied because torture aims at submission, not death.

What if the victim is innocent or has no information to provide? At that moment, it hardly matters. He prefers to confess, as tutored, to a crime he has not committed or make, as tutored, a false accusation against others rather than continue to writhe in pain.

It is elementary logic to conclude that such confessions and information are based not on fact but on the tolerance limits of the victim and hence, more often than not, are completely fictitious. It is not merely the rank and file of the police, but officers, administrators, politicians – especially those in power – and even the people seem to accept the use of torture as routine and necessary.

Since Independence, there is not a single recorded instance of a magistrate, a high court judge, a home minister or any other minister or any politician belonging to a party in power carrying out surprise visits to investigate complaints or rumours

Freedom First, October/November 1977

MR. S. A. A. PINTO is a Merchant Banker by profession and a member of the People's Union For Civil Liberties (PUCL).

of torture, or taking special measures to protect complainants who are amongst persons, most of whom are in police custody without any charges being preferred against them.

Why now the surprise at what happened during the Emergency when all normal laws were suspended and those who protested were few in number? It does not require more than a process of ratiocination to appreciate that what was usual and normal practice in the case of the common people became, during the Emergency, the usual and normal practice in the case of all, including even those who had material or political muscle *prior* to their arrest.

Under the law, the maximum punishment for any crime is only rigorous imprisonment for life, or death. Death has to be instantaneous and imprisonment may be accompanied by hard labour but never by torture; not even whipping is legal today. Therefore, it is clear that when the police torture a person, they have already inflicted on him, without evidence, without trial, without proving his guilt, a punishment more severe than the law decrees for the crime, assuming he were at all found guilty of it, worse even than capital punishment.

Let us now turn to the subject of preventive detention. As there can be no case of torture without detention, this aspect assumes vital importance. Atrocities are committed in prisons but they are more common in the case of those prisoners who have the appearance of being abandoned by society. Consequently, the most frequent victims are political prisoners and, of these, Naxalites are the most common target. Most of these are detained under special laws without trial and although they may be in regular prisons they are carefully segregated.

Where they are under trial and the trial has continued for several years, by all canons of natural justice the description of the proceedings as a "trial" must be regarded as a cruel euphemism. In

the majority of cases, therefore, where torture takes place the victim is under preventive detention, or detained without trial, having been arrested under a special law, or a prisoner under trial (so-called). The circumstances of all these make them an easy target for the police to indulge in their propensities for sadism, the excuse being the extortion of evidence relating to alleged conspirators or confessions of the suspected guilt of the victims themselves.

When the Constitution was enacted at the end of 1949, India became unique in that preventive detention was provided for even in times of peace. "The proper function of these provisions", explains Mr. H. M. Seervai in his book constitutional Law of India, "is to safeguard the State against those who claimed for themselves the democratic freedoms assured by our Constitution with the openly proclaimed intention of destroying them". The origin, therefore, was political and the purpose was the containment of sedition.

When the Constitution was enacted at the end of 1949, India became unique in that preventive detention was provided for even in times of peace.

As a matter of fact the Congress party in power during the next 27 years used these provisions against political opponents of all kinds. With one or two notable exceptions, the opposition parties unwittingly aided and abetted the Congress party when they debated or contested the ostensibly social or economic aims of a plethora of legislation which, while they failed to achieve these goals anyway and often had the opposite results, always contained in them ingredients for the debilitation and destruction of individual and civil liberty.

The result was that instead of nurturing and reinforcing the spirit of individual and civil liberty, the people were made accustomed to inroads into

these rights and gradually but imperceptibly an attitude of submission, even servility was engendered so that it was only a short step to the Emergency and there was hardly any protest from the public.

The Indian Penal Code of 1860 provides unambiguously for the punishment of torture. Sections deal exhaustively with this offence and prescribe up to a maximum of seven years rigorous imprisonment in the case of "hurt" and up to ten years where "grievous hurt" is caused by torture.

The problem is that since the offence is in almost all cases committed by the law enforcement authorities themselves, the sections of the IPC have rarely been enforced and the cases of police or other officials being indicted under these sections, much less convicted, are either not aware of their rights or they are intimidated from enforcing them. There are also difficulties in securing evidence. Some of the methods of torture have been invented so as not to leave tell-tale marks. Women who have been sexually assaulted do not like to talk about it.

Therefore, the first step would be to publicise as widely as possible the existence of the right and to set up special machinery in the government to enable victims, most of whom are the poorest of the poor, to obtain redress.

Finally, politicians both in government and outside, members of the legal profession, judges and magistrates and the press, should be made conscious of the necessity for continuing vigilance in putting down acts of highhandedness by the police. This can only be achieved and maintained by frequent surprise checks and a sincere interest in providing continued security to those under custody.

Thirty years have passed since Independence but over 90% of the cases of remand relate to persons who clearly appear to have been literally picked up from the streets and by-lanes. Many of the persons are escorted by plainclothes men except that their clothes are filthy and they are almost

distinguishable from their wards. Incidentally, even the women prisoners, mainly prostitutes, are escorted by male police. Most of the prisoners are undernourished, many are phthisic, some are ill, others injured, many disabled, and few of them can hardly walk. It is difficult to imagine what crime they would be capable of committing. Constables stand all round them when their names are called out. In spite of this, some still make bold – clearly out of desperation – to complain about their treatment.

The case for abolition of preventive detention is far more difficult as it is surrounded by much greater controversy. Mr. H. M. Seervai, develops the argument in the following passage which relies on a judgement of Justice Jackson of the U.S. Supreme Court: 'The invocation of Constitutional liberties as part of the strategy for overthrowing them presents a dilemma to a free people, a dilemma which has produced a sharp conflict of judicial opinion in the United States ... Our Constitution has resolved this dilemma by providing that even freedom of speech must yield to public order, for in the words of Jackson J. "the choice is not between order and liberty, but between liberty with order and anarchy without either and that doctrinaire logic must be tempered with a little practical wisdom, if a bill of rights is not to be converted into a suicide pact."'

Mr. V. G. Ramachandran author of *The Law of Preventive Detention* states in his book: "To confer on a state absolute domain over all that the man holds dear (personal liberty) is to confer arbitrary power on those who are the masters for the time being. Despotism in any shape will only land the country in abject slavery." These words were uttered before 1958 and everyone will see how prophetic they were. For the first time since Independence there are people in power in New Delhi who have themselves experienced the consequences of the loss of freedom and have therefore reason to heed the lesson. This should encourage us in our task.

www.godrejno1.com

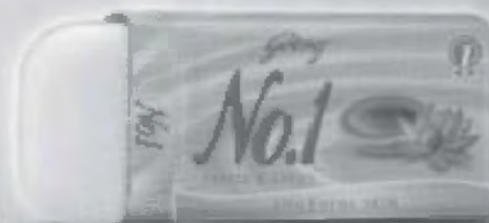


Rejuvenated skin, everyday



NEW *Godrej* **No.1** PAPAYA LOTUS SOAP

The all new Godrej No.1 has a unique combination of papaya and lotus. Papaya cleanses your skin from within to retain its innocence and gives it a whole new feel. The sweet fragrance of lotus deodorizes the body. That's why your skin gets rejuvenated and looks new every time.



True Natural Beauty

Godrej **No.1** - India's largest selling Grade 1* quality soap

The Company is proposing, subject to market conditions and other considerations, an offer on a rights basis of its equity shares and has filed a notice of offer with the Stock Exchange, which is available at the website of SEBI or www.sebi.gov.in and also at the website of the Company.

India's Leading Logistics Solution Provider



Over the last 60 years, AFL has pioneered the cargo, logistics and courier express industries in India. Today, we have emerged as India's leading service provider of integrated logistics solutions. From delivering documents overnight and transporting packages anywhere in India to streamlining supply chains and managing freight, we put it all together. So whatever your need, there is only one integrated service provider you can trust, AFL.

For all your movement needs, contact us at: mail@afl.co.in



Supply Chain | Warehousing | Freight | Express | Transportation

AFL Private Limited

AFL House, Lok Bharati Complex, Marol Maroshi Road, Andheri (East), Mumbai 400 059. Tel: 66463500 Fax: 2920 6993

www.afl.co.in

OUR TRADE UNIONS

WILL THEY FACE THE CHALLENGE OF THE EIGHTIES?

V. B. KARNIK

A significant change must take place in the role that unions play. In the Eighties, they cannot be merely combative organizations, constantly engaged in struggle for securing petty concessions.

A new decade has begun, the decade of the Eighties. The challenges that trade unions will have to face are not likely to be qualitatively different from those faced earlier, but they will be more pressing and complicated. They will acquire that character because the economic situation is likely to be increasingly difficult and the problem of unemployment to weigh upon trade unions very heavily.

Trade unions grow when the economy grows, not only statistically but at a rate higher than that of population. Growth must be able to provide for at least a slight improvement in the conditions of the people, and for employment opportunities to absorb not only the new entrants into the labour force but also a fair percentage of those who are already unemployed. Care will have to be taken moreover that the new wealth that is created is not monopolized by those who are better off but is widely distributed amongst those at the bottom. There is little prospect of the economy growing at that rate in the eighties and much less prospect of widening the employment opportunities and equitable distribution of newly created national wealth.

There are indications that the burdens on workers and other toiling millions will increase since vast sums will be needed for developmental expenses.

They are likely to be raised through fresh taxation and deficit financing. Both will hit workers hard. Prices will increase, scarcities will appear, and living conditions will be harder than what they are at present. Growing population and unemployment will make things still harder.

These conditions will place trade unions on the horns of a dilemma regarding the policy to be adopted. Will it be a policy of constant struggle and confrontation against the Government and employers, without worrying about the results? It may appear heroic, but will prove self-defeating in the end. It will antagonize society, isolate the unions and provide an opportunity to the Government to damn them as anti-national and anti-social. Constant strikes hamper production, create bottlenecks and slow down industrial progress. Workers do not like unending strife. They leave unions following that course and flock to others working in a different way.

Or will it be a more prudent policy of securing as much as possible through negotiations and co-operation, building up strength, widening the bases and winning the support of public opinion? Will it pay more attention to changing socio-economic policies than to winning a concession here or a concession there. There will be little glamour in this cautious, painstaking course of action, but it will secure more benefits to the workers and do no damage to public interest. Strikes are not excluded, but they will be resorted to only when absolutely necessary and only after exhausting all other means.

Freedom First, April 1980

MR. V. B. KARNIK, an eminent Trade Unionist was closely associated with *Freedom First* and was its editor for well over a decade.

Trade unions can follow this course effectively only if they extend their organization to unorganized workers in cities and also to agricultural labourers and artisans in rural areas. That will give them a strength which cannot be ignored. They must at the same time get involved in rural development and all associated activities. This will be a departure from the beaten track of trade union work, but it will be necessary if trade unions are not to be swept away by the rising tide of poverty and unemployment.

Trade unions should now shift their emphasis from monetary to long term non-monetary demands such as housing, education, particularly technical and vocational, old-age pensions, promotions, etc.

Workers and their trade unions are under attack at present because they ask more and more for those who are already much better off than agricultural labourers, the rural poor and unorganized workers. Some critics go to the extent of calling farmers a privileged class. This criticism is far from true. Industrial workers in cities by and large, are only a little better off than their brethren in villages. And the little additional benefit that they enjoy as the producers of vast wealth they usually share with their poorer brothers, cousins and other relatives. An unemployed relative or two usually stays with an industrial worker, and from month to month he has to remit funds to the village for the support of his parents or his wife and children who cannot live with him for lack of accommodation. The criticism, however untrue, is likely to become louder and fiercer in the present decade. Trade unions can justify their demand for improvement of the conditions of industrial workers only by combining it with an equally strong demand for the improvement of the conditions of all poor people. And a mere demand is not enough. It must be accompanied by active efforts to organize the poor in cities and villages.

A significant change must take place in the role that unions play. In the Eighties, they cannot be merely combative organizations, constantly engaged in struggle for securing petty concessions. They will have to be more constructive in their approach. They will have to widen their horizons so as to include in it not merely their members but also the large masses of unorganized workers and the poor in the villages. They must also be prepared to shoulder responsibilities so that the policies that they advocate are properly implemented. This will bring about a qualitative change in the outlook and functioning of trade unions.

Trade unions should now shift their emphasis from monetary to long term non-monetary demands such as housing, education, particularly technical and vocational, old-age pensions, promotions, etc. They should also demand a larger voice in the determination of the terms and conditions of employment and in the management of the undertakings. They will, of course, have to equip themselves for discharging these new responsibilities. The unions will also realize that patient negotiations and reasonable arguments, accompanied by pressure of public opinion, are more useful for gaining their demands than strikes and demonstrations.

Long-term demands of workers and amelioration of the conditions of the masses can be best secured through legislation and through governmental actions and policies. The movement must, therefore, turn its attention to politics, to larger issues facing the country. It should try to influence the actions and policies of the Government. This can be done without joining any political party and without losing its independence and autonomy. The movement will stultify itself if it fails to perform this wider role. It must take an active interest in the plans for economic development, and in all actions of the Government in the social and economic fields. The age is long past when it could confine itself to collective bargaining over wages and allowances. It

must enter the wider field of social and political life, and seek to influence it in the interest of a better deal for industrial workers and the producing masses as a whole.

Trade unions must adopt a positive, and not a negative or oppositional attitude towards the Government. Opposition, even a fight, may become inevitable when the Government does anything which is against the interests of workers. But it can do, particularly in a democracy, many things, which is of advantage to workers and others. Those must be actively supported, and constant pressure must be exerted on the Government in order that it may follow that path more vigorously. This can be done only if there is an attitude of critical co-operation, critical in the sense of readiness to criticize whenever necessary.

The Eighties will pose similar challenges to employers and the Government. Their response to those challenges must be helpful if worker's responses are to prove useful and rewarding. Employers must give up their hostility to trade unions and must accept them as equal partners in building up enterprises. They must hold constant consultations with unions and should not ordinarily introduce any changes without securing their consent. Disputes, wherever they occur, should be settled in negotiations across the table, and resort to an external authority should be an exception rather than the rule. Workers' demands for higher wages, dearness allowance or bonus should be regarded as legitimate, and all efforts should be made to settle them as early as possible. Apart from wages and fair conditions of work, workers should be treated with respect, and their dignity as human beings should be preserved.

Government has two roles, one as an employer and the other as the sovereign authority. As an employer, it cannot claim any privileges not available to other employers. On the other hand, it has the responsibility of behaving like a model employer

and of setting standards for others to follow. It should, in particular, set up high standard in the matter of labour-management and co-operation.

As a sovereign authority, the Eighties will prove a very difficult period for the Government, whatever its colour. For the economic development that is taken in hand, huge investments and heavy mobilization of resources are needed. Benefits will not be available immediately. The task cannot be accomplished in a democracy without enlisting the co-operation of all sections of the people.

The co-operation of the trade union will be crucial in that respect. It can offer not only its own co-operation, but can also secure the co-operation of millions of others. This can be enlisted only through a meaningful dialogue with the movement. The dialogue must be continuous and must embrace all sections of the movement. It must taken into confidence and consulted from time to time on all issues of social and economy policy.

Government has two roles, one as an employer and the other as the sovereign authority. As an employer, it cannot claim any privileges not available to other employers.

There is a good example of such a dialogue in Great Britain. Some years back there was the Social Contract. It gave some good results, but later fell into disuse. Another effort was made later and it resulted in an agreement between the British Government and the British Trade Union Congress. A similar agreement was arrived at recently between the AFL-CIO and the U.S. Government. It is called the National Accord. Here is something that authorities in India can copy with advantage. There will be many other challenges, but they will generally be of the same kind as faced earlier. They will be such as inter-union rivalries, democratic func-

tioning of unions and others. They will have to be tackled properly, taking care at the same time to reduce tensions rather than to intensify them.

Inter-union rivalries have plagued the movement since long. They are responsible for many work stoppages, and also for some violence and other anti-social activities. The point to be noted, however, is that unions are not the only guilty party. The main offender is the Government. It has failed so far to provide an expeditious machinery for evaluating the claims of rival unions, and for granting the status of a recognized body to a representative union. Secret ballot is the best way to ascertain the support enjoyed by a union.

Recognition of a representative union (the representative character being determined by a secret ballot open to all employees) as the sole collective bargaining agent and bonafide collective bargaining with it should be the basis of the industrial

relations system all over the country. Recognised unions should enjoy the rights of check-off the union shop. That will put an end to inter-union rivalries and enable trade unions to grow as strong and responsible organizations. The movement would be well advised to secure the enactment of a law to provide for it as one of the main objectives of its work in the decade. It must also ensure that unions forming it function in a democratic manner.

It is difficult to foresee all the challenges that the new decade will pose. The situation is fluid and it may change in many directions. International developments may force a big change; internal developments may also, under some circumstances, knock the bottom out of the basic assumption of this argument. However, apart from these contingencies, trade unions would be well-advised to follow the path of conciliation and co-operation, to avoid the alternative path of constant conflict.

Liberal Publications

Freedom & Dissent by Minoo Masani 90

A set of two books in honour of the founder of *Freedom First*

Rs.100/-

Liberalism – An Essay by Minoo Masani

Rs. 10/-

We Indians by Minoo Masani

Rs.150/-

Our Growing Human Family by Minoo Masani

Rs.150/-

Minoo Masani Memorial Lectures (A set of three publications)

Rs. 20/-

- More Governance with Less Government

– Digvijay Singh

- Corruption Mocking at Liberalisation

– N. Vittal

- Increasing Intolerance and Suppression of Dissent

– Soli Sorabjee

Philosophy and Practice of Liberalism by Amlan Datta

Rs. 10/-

Liberal Priorities for India in the 21st Century

Rs.20/-

What India Needs: A New Path

Rs.10/-

Liberal Position Papers

Rs.10/-

Voluntary Organisations

Rs. 10/-

The Swatantra Economy – Obstacles & Challenges by Gangadhar Gadgil

Rs. 10/-

V. B. Karnik – Views and Visions

Rs.100/-

Terrorism by V. Balachandran

Rs. 50/-

The Swatantra Party – Victory in Defeat by H. R. Pasricha

Rs.100/-

The Retreat from Socialism by B. K. Nehru

Rs. 10/-

Development and Human Rights edited by Munmun Jha

Rs.100/-

Accelerating Disinvestment of State Enterprises

Rs. 10/-

Equity and Sustainable Development by P. V. Indiresan

Rs. 10/-

Post-Reform Trends in Poverty & Inequality in India by Suresh Tendulkar

Rs. 10/-

Trends in Government Expenditure by K. P. Geethakrishnan

Rs. 10/-

To order a copy, write to **Freedom First** or e-mail freedom@vsnl.com or ilg@vsnl.net. • Prices include postage charges. • Cheques drawn in favour of "ICCF" payable at par in Mumbai or add Rs.50/- for outstation cheques. Money Orders also accepted.

Wherever
steam and
liquids and gases
need to be measured and controlled
Choose **Forbes Marshall.**



KROHNE

Forbes Marshall
Complete range of Flow Meters and
Mag. Flow. Also, Ultrasonic, Vortex
and other types of Flow Measurement



ARCA

Forbes Marshall Arca
Control Valves, Pressure Reducing &
Control Valves (PRCVs),
Compressors

Forbes Marshall

Process Analytics
Full range of pH, Conductivity
& other Flow Quality
& TOC Analysis



Forbes Marshall

Forbes Marshall Valves
High Pressure &
High Temperature Safety, Stop,
Check & Shut down Check Valves



Forbes Marshall

Forbes Marshall Controls
DC Converters, Transmitters,
Digital Controllers & DCE



spirax sarco

Spirax Marshall
Safety, Steamers, Mixtures,
Shut down, Stop, Start,
Pressure Reducing Pumps,
Condensate Recovery Systems,
Steam Monitoring & Control

JNM

J N Marshall
Passaged Burners, Burners
High Efficiency Burners



CODEL

CodeM
Gas Analyzers
for CO₂, SO₂, NO_x,
and Dual Monitors



Forbes Marshall

Fan/ventilator Solutions & Controls for
a variety of process applications
Pressure & Temperature Control
Ventilation Monitoring, Control & Purging



Forbes Marshall

SWAS
Control Valve & Water
Analysis Systems
for Power Industry

Forbes Marshall's goal is to provide solutions in Energy Efficiency and Process Automation using the best technology the world has to offer. All our products, systems, services, and the personnel that put them in place, are technology leaders in its respective field. Our products and services are the result of a commitment to energy efficiency, energy efficiency, control and automation for the process industry. No other company can offer you the technology, innovation, quality and customer service that has become the hallmark of Forbes Marshall worldwide. Efficiency is your goal, go with the company that gives you the best. The world's technology and understanding. Customer Service.

Forbes Marshall

Mumbai - Pune Road, Kharavela, Pune - 411 004, India

Tel: 91 (0) 20 - 27145480 • Fax: 91 (0) 20 - 27147471 • E-mail: enquiry@forbesmarshall.com • www.forbesmarshall.com

Specialists in Process Efficiency and Energy Conservation



**Saraswat
Bank**

Outstanding Achievements as on 31st March, 2008

- Net Profit of Rs.202.26 crore.
- Total business of Rs.20,000/- crore Landmark crossed in 2009 January.
- Foreign Exchange turnover of Rs.44,108/- crore.
- Net NPA maintained at 0%.
- Own Funds Rs.1088.28 crore.
- Winner of the 'Best co-operative Bank Information Award – 2007' presented by Indian Banks' Association, and Trade Fairs and Conferences International.
- Winner of the 'Life Time Achievement Award' presented by the Maharashtra Urban Co-operative Banks' Federation for outstanding work in the Co-operative Banking Sector.
- All branches inter connected - **Core Banking Solution implemented** in all branches and offices.
- Secured 'A' rating from Statutory Auditors for the last three consecutive years and for earlier years also.

Over
Your Bank has crossed

Rs.20,000 crore

Landmark Business Level at the beginning of year 2009.

We Thank all Shareholders, Customers &
Well-wishers for their support



**Saraswat
Bank**

The Saraswat Co-operative Bank Ltd. (A Scheduled Bank)

-: Corporate Office :-

Mittal Court, 'A' Wing, 1st Floor, Vidhan Bhavan Marg, Nariman Point, Mumbai 400 021.

Our Customer Service Centre (Mumbai) -26464013/26464019/26464022

Website: www.saraswatbank.com email: corporateoffice@saraswatbank.com

RESERVATION

IN EDUCATION AND PUBLIC SERVICE

H. M. SEERVAI

I want to discuss the topic as one directly arising under our Constitution, and as a human problem which has to be solved within the framework of our Constitution and the guidance which it gives us. The problem and its solution is a matter of urgency, if we are to avoid greater disaster measureless in its pain.

We are a democracy because we believe that certain values are so important that neither legislative power nor executive action are permitted to violate those values.

It is not generally realised that the various provisions of the Constitution act and react upon each other. And the difficulty with politicians, judges and students is that they look at the problem of reservation or right to reservation of seats in education: Article 15 (4); reservation in public service: Article 16 (4) by itself. I think that this is not a correct approach, and if you want to solve the problem with which we are concerned today, you must first see the scheme of the Constitution, its framework, and the political set up which has been constituted under it.

Freedom First, July 1985

(This speech by Mr. Seervai was published courtesy the Incorporated Law Society and the Indian Merchant's Chamber, Bombay)

MR. H. M. SEERVAI, former Advocate General of Maharashtra is a distinguished constitutional expert and the author of the most authoritative book on the Constitutional Law of India.

The Preamble to the Constitution

The Preamble to our Constitution says that we are a "Democratic Republic". Well, the word "democratic" has many meanings. But we are a liberal democracy, having adopted a Parliamentary form of government on the lines of the British Parliament. And we are a democracy because we believe that certain values are so important that neither legislative power nor executive action are permitted to violate those values. The Preamble goes on to say what is important: that the Constitution exists for the citizen, not as in communist States, where the citizen exists for the Constitution. For, the Preamble proceeds to say "to secure to its citizens Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity", and ensuring to all its citizens "Fraternity, assuring the dignity of the individual and the unity of the Nation."

Now you see that these things are inter-connected. Justice – which includes free access to Courts of Law – for without justice there can be no freedom of thought and expression as the Emergency proved beyond the shadow of a doubt. Without justice and freedom of speech and expression, equality and fraternity, including the dignity of the individual, are in peril. So, you must bear in mind that we have provided in our Constitution for a set of values which are described and outlined in the Preamble, but which are carried out fully, and taken even further, in the enacting provisions of the Constitution.

Let me give you an example. We have enacted Fundamental Rights. It is one thing to declare fundamental rights; it is another to make them ef-

fective. So, in Part III, which enacts Fundamental Rights, Article 13 declares that any law violating fundamental rights is void. Well, that's all right. How are we going to give effect to the declaration? So Article 32, which creates a fundamental right, says that every person has a right to approach the Supreme Court for the violation of fundamental rights and the Supreme Court has got the power to grant appropriate relief. That drives us to Part V of the Constitution which provides for the Union Judiciary. The safeguards of the Judiciary are valueless, if we have corrupt, servile or sycophantic judges. So, Chapter IV of Part V takes steps to ensure the independence of the judiciary. There are other Parts relating to financial arrangements which are equally designed to secure judicial independence. So, one thing gets linked to another, and if you Want to know the nature of fundamental rights and their effectiveness, you have to look not only at Part III, which deals with fundamental rights, but at a large number of other provisions, which give content and practical effect to fundamental rights.

Constitutions do not by themselves produce social revolutions. But there are two provisions in our Constitution which have, by themselves, produced a social revolution in our country.

Untouchability Abolished

Now, coming to the problem before us, I think one can say that at the bottom of it there is one word which our Constitution puts in inverted commas: "Untouchability". Constitutions do not by themselves produce social revolutions. But there are two provisions in our Constitution which have, by themselves, produced a social revolution in our country. First, Article 17 proclaims that "Untouchability" is abolished, and the enforcement of any liability or disability arising from "Untouchability" is to be made an of-

fence punishable by law. Now this is as revolutionary in India as the abolition of slavery was in the United States of America. But in the United States the revolution was brought about by a terrible and devastating Civil War, and slavery was abolished on the battlefield. And the U.S. Constitution, in enacting the 13th and 14th Amendments, gave legal recognition to what had been achieved by victory in a Civil War. We are more fortunate. We have abolished "Untouchability" by persuasion, by the action of great reformers, led by Mahatma Gandhi, who was determined that this blot on Hindu Society should be removed. The question of reservation is not new; it arose in an acute form in the Second Round Table Conference, in the Minorities Committee. A Memorandum was presented, among others, by Dr. Ambedkar in which he said that if you give us universal suffrage, I am quite content

I would far rather that Hinduism died than that untouchability lived .

with joint electorates with reservation of seats. Otherwise, I must ask for a separate representation. And at this place I want to read to you what Mahatma Gandhi said in his address to the Committee, because, it seems to me, that he went to the heart of the problem. This is what he said on 13th November, 1931:

"Let the Committee and let the whole world know, that today there is a body of Hindu reformers who are pledged to remove this blot of untouchability. We do not want on our register and on our census untouchables classified as a separate class. Sikhs may remain as such in perpetuity; so may Muhammedans, so may Europeans. Will untouchables remain in perpetuity? I would rather that Hinduism died than that untouchability lived ... I want to say with all the emphasis that I can command, that if I was the only person to resist this thing, I

would resist it with my blood.”

He went to the heart of the problem, because, an acknowledged evil cannot be perpetuated all time. And in a country fighting for political freedom, it would be impossible to have, at that time, four crores of “untouchables” (now 12 crores) unfit to be touched by their fellow co-religionists, whose touch polluted in various States, and whose shadow polluted in the south of India. So, we reach the first stage in our problem today – that the great reformers, led by Mahatma Gandhi, were determined not that some assistance should be given to “untouchables”, not to ameliorate that evil, while maintaining “untouchability”, but wipe it out – as it deserved to be wiped out.

The Act which Parliament was meant to pass making the enforcing disabilities arising from “Untouchability” a criminal offence was not passed till 1955.

Well, the whole thing has happened, and historians of the Constituent Assembly have said that when Article 17, which abolished “Untouchability” was passed, it was appropriately and universally acclaimed with the words “Mahatma Gandhi Ki Jai” – because the cause for which he had fought was won.

But then a question arises, when for years and decades and centuries people have been bound hand and foot in the grip of custom, rendered subservient by a status which was scarcely human, will those people regain all the faculties of free men when the shackles are struck off from their hands and feet? So, the question arose: What shall we do, what attempt shall we make, to give these people a reasonable time, and reasonable opportunity, to develop their powers so that, like any other citizen, they come in the mainstream of Indian political life?

Universal Adult Suffrage

Well, the second revolutionary step in our Constitution was – universal adult suffrage. For, it put in the hands of the despised, maligned, ill-treated community of “untouchables” the power to influence political decisions by giving them a vote and a right to stand as candidates for the Legislatures. It gave them a voice in the affairs of our country. But the Debates in the Constituent Assembly show that there was almost universal agreement that for a limited period of time, this right to be a candidate at an election would be futile if it was left to persons who, for want of a better word, I call “advanced classes”, were left to vote or not to vote for “untouchables”. So, it was decided that for a period of 10 years – that was the original period, it was raised to 20, then to 30 and now to 40 years—there should be reservation of seats; joint electorates with reservations of seats for “untouchables”. I will refer to them as Scheduled Castes, because, basically, that is the name by which “untouchables” are now called. For 10 years they should have reservation of seats. In other words, the high casts Hindu was compelled to vote for an “untouchable”, and it is a salutary psychological lesson.

Dr. Ambedkar, who in his person, had suffered indignities and inhuman treatment as a student – he had to sit out on the steps of his school in Baroda – fortunately, had the good fortune to join the Elphinstone College, and a distinguished Professor wrote that in the free atmosphere of a Bombay College, he was accepted by his fellow students, “untouchable” or not. And what is more, he went to the University of London and obtained a Doctor’s degree, thus showing that “untouchables”, like anybody else, given opportunity, and assistance, can hold their own against any other citizen of India. Dr. Ambedkar thought, and said, that a longer period than 10 years was not required; and it seems to me a matter of regret that his advice was not followed. He himself said that “since everybody now

talks of 10 years, I don't want to stand in the way." But he added that if 10 years were found inadequate, well, ways and means would have to be found, to extend the period. But it would have been much better if 15 or 20 years had been provided for. Because I must confess that the Government was lackadaisical in the discharge of its duty to "untouchables". The Act which Parliament was meant to pass making the enforcing disabilities arising from "Untouchability" a criminal offence was not passed till 1955. It took five years to make a law which should have been made, and which, if the British Parliament were passing the law, would have made within days of the Constitution coming into force. But never mind, the period of 10 years was extended to 20, to 30 and to 40.

Issue Politicised

This is a little unfortunate, because it has now become a political issue: offer to reserve seats, or offer to continue special reservation, and the party which makes the offer expects to get the votes of Scheduled Castes and Tribes. However, the thing to note, which is directly relevant for our problem, is that when the Constitution intends to confer a right, it says so. They have a right of representation in proportion to their population. That right has been extended to 40 years. The second thing to note is that the conferment of this right either to vote or to become a member of the Legislature does no great harm, because in an electorate, 90 per cent or more of which is illiterate, no qualification is required for being a voter except that you are a citizen and are of a particular age, and you are free from a few narrowly specified disqualifications, like insolvency, unsoundness of mind, conviction for criminal offences, etc. Secondly, there is no requirement of any intelligence or intellectual capacity in the legislator.

This is not a matter for jest. Because, the President of the Constituent Assembly was forced to say that it does seem odd that for those who

interpret the law a detailed and long apprenticeship in the law is required; whereas for those who make the law, no qualification at all is required. But he said our difficulty is this: what we want are men of vision, men of insight, who will take a broad national view. In short, who have character. And, unfortunately, there is no yardstick by which character can be measured, and so long as that remains, a part of it will remain as a defect in our Constitution. But let me tell you that he expressed his faith which subsequent events have justified. He said that he had confidence in the villager as opposed to the town-dweller. The villager is shrewd, is practical, and he will bring a shrewd practical judgment to bear on the problem. I think that the President was right. The elections of 1977 showed that the electors knew what was good for them, illiterate though they may be. The elections in Andhra Pradesh, in Karnataka and in Maharashtra in 1985 show that literate or illiterate, the electorate knows what it wants.

The elections of 1977 showed that the electors knew what was good for them, illiterate though they may be.

Now let me first cite a few provisions for the Scheduled Castes and Scheduled Tribes in our Constitution to better understand the reservation of seats and reservation in public service. A Commission is to be set up by the President to investigate into the hardships, disabilities and disadvantages suffered by Scheduled Castes and Scheduled Tribes and to make recommendations for their advancement, and the Union and State governments have been given the power to make grants to effectuate that purpose. Secondly, so far as Scheduled Castes and Scheduled Tribes were concerned, the power was given to the President of India to notify Scheduled Castes and Scheduled Tribes by an Order. It is a matter of deep regret that the Supreme Court which de-

livers judgments on Scheduled Castes and Scheduled Tribes, should not have referred to the Scheduled Castes Order. Because, at the end of the Order on Scheduled Castes, there is one inconspicuous little sentence: "No person shall be deemed to be a member of the Scheduled Caste unless he professes the Hindu or Sikh religion". So Scheduled Castes are essentially based on religion; not that there is anything wrong about it. We have religious freedom, but the point to note is that when judges talk loosely, "After all, this is not caste in the ordinary sense of the term" – why any one should speak of Scheduled Castes and Scheduled Tribes if they are not castes among Hindus is difficult to understand. Then there is one other provision. I would like to dwell upon it, and then pass on to Articles 15 and 16.

"No person shall be deemed to be a member of the Scheduled Caste unless he professes the Hindu or Sikh religion". So Scheduled Castes are essentially based on religion;

Restoring Dignity

Now, not only were untouchables not treated as human beings, because of caste, but though treated as Hindus, they also were prevented from worshipping their own Gods, – who were the Gods of other Hindus, – in their own temples. The Temple Entry Movement had been launched before the Constitution came into force; and a judgment of the Supreme Court in upholding its validity said that if the Court had to decide the question as a matter of Hindu religion, then the Court would hold that the right to exclude certain people from the temple was a part of the Hindu religion. But the very Constitution which gave freedom to profess, practise and propagate the Hindu religion, limited that right by saying that nothing in that right shall prevent the throwing open of temples to every Hindu. Summing

up, you have the dignity of the individual restored, and "Untouchability" abolished. You have given the "untouchable" a vote, you have given him reserved seats in Parliament, you have given him the right to worship his own Gods in his own way, in public temples. So, when the Constitution speaks of fraternity, assuring the dignity of the individual, this was an essential cardinal step towards achieving that end.

So, the framers of the Constitution laid down a general rule against discrimination.

We now come to two closely related questions: What happens in educational institutions? What happens in public service? The one thing to note is that the framers of the Constitution resolutely set their faces against electorates on communal lines so that every Indian citizen votes, whether he is Hindu, Muslim, Christian, Parsi, Jew or whoever he is, in joint electorates – there are no separate electorates for Muslims. Nor are there separate electorates for Scheduled Castes and Scheduled Tribes although there is reservation of seats which was intended to last for a limited period. Now, if people have been brought up on servile occupations – which if they did not perform, a city like Bombay would grind to a halt, and would become a city of disease and death, – how do you suddenly expect them to be able to educate themselves, to develop the faculties which are in them, of body, mind and character, which not only train the mind but equip people for a career, a profession, industry, public service? So, the framers of the Constitution laid down a general rule against discrimination. That is confined to citizens. (Not that a non-citizen is being discriminated against in fact. It only means that if he were discriminated against, he cannot complain of the violation of a fundamental right). So the framers said that no citizen shall be discriminated on the ground of race, religion, sex, caste or any one of

these grounds. This injunction is against the State. The second part of Article 15 is directed to every single individual. You know that "untouchables" could not enter shops, or take water from a well, or even walk into a restaurant, or go to a barber's shop for a haircut. So "untouchables" were not to be prevented from public places of entertainment, business or service. Thus the general rule of equality and non-discrimination was made further effective by prohibiting the evils known to the framers of our Constitution, and a subsequent amendment of the Untouchability Act has made these restrictions more stringent in 1976.

Sub-Article (3) of Article 15 said that "Nothing in this Article shall prevent the State from making any special provision for women and children".

This is the general rule. But what provision was to be made for women? When King George V was in India, and Gopal Krishna Gokhale met him, the King said: "Mr. Gokhale, do you think the people will be happier under self-rule?" He said, "No sir, but they will retain their self-respect." The King said to him: "How can you talk of self-respect when you treat women the way you do?" And Gokhale being the wise and honest politician that he was, did not say "In Vedic times men and women were equal, later we had queens like the Rani of Jhansi" and so on. He said: "Yes sir, that is a reproach to our society". But he was not the man to admit a reproach and make no attempt to remedy it. So, sub-Article (3) of Article 15 said that "Nothing in this Article shall prevent the State from making any special provision for women and children". The Congress movement led by Gandhi, led by Jawaharlal Nehru, had brought women to the front. But India does not live in its cities; it lives largely in its villages. So, special provision had to be made

for women. For, if you prefer them to men, that is discrimination on the ground of sex, which is forbidden by the general rule. That is how Article 15 stood when first enacted. Then the Madras Government issued a circular allocating seats in Colleges according to caste, race and religion: two seats for Brahmins, so many for non-Brahmins, so many for Christians. A woman student who was a Brahmin, applied to the High Court of Madras for a writ, saying that she was refused admission on the ground of religion and caste, because she was a Brahmin. The Supreme Court upheld this, and it is said that their conclusion was fortified by the fact that special power was conferred to reserve seats in public

Parliament in 1951 amended Article 15 by adding Article 15 (4) which said that "Nothing in this Article shall prevent the State from making special provisions for the advancement of socially and educationally backward people, or for Scheduled Castes and Scheduled Tribes."

services under Article 16(4) since a power to reserve seats was intended to be conferred. So Parliament in 1951 amended Article 15 by adding Article 15 (4) which said that "Nothing in this Article shall prevent the State from making special provisions for the advancement of socially and educationally backward people, or for Scheduled Castes and Scheduled Tribes."

A Power Not an Obligation

Bearing in mind that equality is the rule, bearing in mind that discrimination is to be avoided, what is the nature of this provision? The first thing to note is that what is conferred is a *power* on Government. No *obligation* is imposed on Government. Secondly, it has been held that this discretionary

power conferred on Government confers no right on the backward classes or Scheduled Castes and Scheduled Tribes to say that there should be reservation. So that this discretionary power to be exercised from time to time as circumstances dictate, but bearing in mind the general framework of our Constitution of which equality is an important principle, and bearing in mind that every Constitution is designed to secure the public good, at least in intent. Now this is the position as to educational institutions.

Article 16 gives no countenance to the theory of "sons of the soil" – for example, Maharashtra for Maharashtrians. There is only one soil, the soil of India.

Coming to public services, the Supreme Court decisions are, unfortunately, a little untidy. A part of it is dealt with under Article 15; a part of it is dealt with under Article 16. Each judgment refers to other judgments, so that in order to find out what is the true position you have to turn to judgments on Articles 15 and 16. The first thing is Equality. There should be equality of opportunity in matters of public employment. The rule is asserted in an affirmative form. That is the rule. But it is reinforced, negatively – No citizen shall be discriminated against in matters of public employment by reason of religion, race, caste, sex, descent and place of birth – and here a word has been added – residence. So here again, the rule is equality of opportunity in public service. Now, for public service you have to go to Part XIV and questions relating to public service are to be decided not in the abstract but in the framework of our Constitution. And in order to recruit people to public service, a Union Public Service Commission, made as independent of Government as a Constitution can make it, and State

Public Service Commissions were established. And it was their duty to conduct competitive examinations for the purpose of recruiting candidates to public service. This is important, in view of some nonsensical observations of Mr. Justice Krishna Iyer which I will quote.

Public Employment

But before I do so, let me say that Article 16 gives no countenance to the theory of "sons of the soil" – for example, Maharashtra for Maharashtrians. There is only one soil, the soil of India. And we are all sons of that soil. We are all Indian citizens. Every one of us is a citizen of the soil of India. There is no other soil. That is essential for the unity of the nation, and Article 19, by its three sub-Articles, provides for the right to move freely throughout the territory of India, the right to settle and practice any profession anywhere in India, the right to acquire, hold and dispose of property anywhere in India. And the Supreme Court has rightly held that these sub-Articles wipe out the narrow parochialism which treats an Indian citizen as a foreigner in his own country, because he belongs to another State. So the theory of the sons of the soil finds no place in our Constitution. Then came the question: supposing that you want a judge – let us say a subordinate judge in Gujarat or a legal practitioner, he may not know the language, he may not know the customs, he may not know the laws of a State. So power is given, not to the State but to the Union government, to provide a particular residential qualification for particular posts for a State or part of a State. Having done that, there comes an Article corresponding to Article 15(4) – that "Nothing in this Article (which means it is an exception) shall prevent the State from reserving seats in public employment for backward classes who are not adequately represented in the public services." Again, a power conferred, not a duty imposed, and no right is conferred on the party you ask for reservation. When this came before the Supreme Court they decided that since this was an exception, you

* What he wanted to say was "or an ape like similar, institutions." 'Simian' means, belonging to an ape.

have to construe it so as not to nullify the rule, and therefore the first proposition is: you cannot reserve more than 49 per cent of seats, because an exception cannot swallow up the rule. It is a little unfortunate that those were the heady days of nationalism, and that judges, like politicians, like to show how much their heart bled for the poor. But when it came to their own personal conduct, a judge refused to have a Scheduled Caste peon because his wife objected! So that is the difference between practice and preaching. But, this power was conferred, and basically they have treated both the requirements as meaning "backward socially, and economically" and the social and economic backwardness of Scheduled Castes and Scheduled Tribes is recognized as something flowing from their long history and their present state. This was the position. I do not want to go into the judgments of Mr. Justice Krishna Iyer. He has the belief that he has missed his vocation. That it is he, and not Dr. Ambedkar, who should have been the father of the Constitution, because he says, what is all this talk of merit and suitability in public service? You want graduates from Oxford and Cambridge? What you should want is something very different. Let me read out the nonsense which he has spoken, because I find it difficult to characterise it in any other way. This is what he said in *Akhil Bharatiya Soshit Karmachari Sangh v. Union of India*:

"... A sensitized heart and a vibrant head, tuned to the tears of the people, will speedily quicken the developmental needs of the country, including its rural stretches and slum squalour. Sincere dedication and intellectual integrity – these are some of the major components of 'merit' and 'suitability' – not degrees from Oxford or Cambridge, Harvard or Stanford or simian,* though Indian institutions. . . . The colonial hangover still clings to our selection processes with superstitious tenacity and narrower concepts of efficiency and merit are readily evolved to push out Gandhis and J.P.s, Ambedkars and Nehrus, to mention but a few

who knew the heart-beats of the people."

Now, first of all, a competition among 8,000 students cannot go into the integrity and the bleeding heart. Further, as regards Gandhi, Nehru, J.P. and Ambedkar, actually Gandhi was an English Barrister; Nehru was at Harrow and Cambridge; J.P. studied in American Universities and Ambedkar had a distinguished record in the University of London! How can you apply these tests of the bleeding heart and sensitized mind, sensitized to the tears of the people? Who is going to determine this among 8,000 students? So if I used the word "nonsense", I used it advisedly, for it makes no sense. So we go to an open competitive system. And, the idea is that, if honestly conducted and honestly carried out, examinations give you as good a test of merit and capacity as is available. Everybody expresses dissatisfaction with examinations. They do this, they do that. But, by and large, a first class student will, broadly speaking, be superior to a second class student, and decisively superior to a third class student. There are, of course, exceptions, but they do not disprove the rule. Mathew Arnold got a second class. Again, the greatest Latinist of his day, A. E. Housman, failed to get a degree. But, as Lord Macaulay said, such examples only show that those who have wasted their youth in idleness do not throw away their manhood in despair.

Time Bound Discrimination in Reverse Intelligible

So this is the position. A few days back the Prime Minister of India talking about efficiency in the public service – and the whole scheme of public service is such that it touches the happiness of the people said that anything which goes wrong with public service injures the people. Obvious, commonsense. He wants integrity, honesty, impartiality, and high qualifications in members of the Public Service Commission. And I am glad that we are now living in an age in which the populist dogmas of the past which are supposed to embody the values

of the Constitution have all been quietly brushed aside, and lessons taught by experience have been learnt. I know for a fact of a Law Minister ringing up the Public Service Commission to appoint X, Y, Z. I also know that the Secretary of a Public Service Commission, a first class student of the Elphinstone College, retired prematurely because of constant interference with public services.

Discrimination in reverse for a reasonable period of time is intelligible. If there has been a great historic wrong, if people have been suppressed and oppressed, then to give them some advantage, even at the sacrifice of some efficiency, even at the expense of a loss of career of people better qualified, is intelligible.

What Articles 15 and 16 provide for is what has come to be known as “discrimination in reverse”. It means that certain classes have been so handicapped by social conditions, by previous history, by the nature of their employment that some advantage should be conferred on them in order to bring them up to the level of the others. However, discrimination in reverse for a reasonable period of time is intelligible. If there has been a great historic wrong, if people have been suppressed and oppressed, then to give them some advantage, even at the sacrifice of some efficiency, even at the expense of a loss of career of people better qualified, is intelligible. Whether it is just or not is a different question. So when we talk of a period of ten years, you would say, it is all right, we have to put up with it. When 15 years, then 20, then 30 and then 35 years have gone by, a vitally important question arises. And there is no better illustration of what I am saying than a case in which out of 45 posts for

public competition 16 were open and 29 were reserved. A man called Devadasan came to the Supreme Court and said: “Look, I have got 61 per cent marks. I have not been appointed. But among the reserved seats there are persons who got as low as 29 per cent marks. By what process do you justify this?” Well, by a majority of 4 to 1, the rule was struck down, pointing out that it reserved more than 49 per cent of posts.

But the point I am making is this – and it is a little important, because the relaxations made in favour of Scheduled Castes and Tribes have progressively overlooked the injunction of Article 335, namely, that the claims of the Scheduled Castes and Scheduled Tribes in public services shall be considered having regard to the efficiency of the administration.

I would like to say that if for a first class you want 60 per cent marks, and for a second class at least 40 per cent and for a third class 30 per cent, then, on the borderline it is difficult to say that efficiency is decisive. Let us assume that a Brahmin student gets 60 per cent marks and obtains a first class. And a Scheduled Caste student who sits on the steps of the Town Hall – they keep the lights going till late in the night, – who has no books of his own to study from, whose father is probably a sweeper, gets 59 per cent marks. It is not rationally possible to say that he will be a less efficient civil servant. I should say he would be more efficient, having regard to the handicaps he has overcome. But there is a borderline. Now surely it cannot be suggested that a person who gets 29 per cent of marks will be within miles of the man who gets 61 per cent marks. So a serious question affecting the efficiency of the public service is involved. And the same thing arises in the case of education. If you deprive a student from getting admission in the medical profession although he gets 60 per cent marks, but a Scheduled Caste student is admitted although he gets 29 per cent in a separate examination, you are depriving the country of

a person whose higher skill, greater knowledge and ability would have helped him to render invaluable services to the country.

Provide Facilities

For, just as we condemn the injustices of the past, we cannot cure one injustice by perpetuating another injustice. And the events in Ahmedabad and in Madhya Pradesh remind us that the sands of time are running out. Nobody suggests that reservations can be dispensed with overnight. It seems to me that if you turn to the description and discussion about Scheduled Castes and Scheduled Tribes in "*India 1982*", you get a confused picture of the attempts made by Government – what Government is doing and attempting to do. You do not get a picture of the results of the attempts. And it seems to me, and I have said this before, that if all these attempts have failed, you must start with the primary school. What is it that handicaps the Scheduled Caste and Scheduled Tribe student? His parents want him to earn. They ask him to go and sell newspapers and earn a rupee a day. He has no books; uniforms cost money. So education which should be free and compulsory, should be free and compulsory for every Scheduled Caste student. He should be supplied with uniforms and books free of charge. He should have subsistence allowance. If you can't train a lakh of Scheduled Castes students, train fifty thousand. Select them by some process, if need be by lots. For out of hundred students in primary classes surely there must be 20 or 21 who show promise. Give them scholarships in recognition of work and merit; give further incentives and subsistence allowance so that the parents have no desire to make them work, and supplement the family income. Carry this on to the Colleges, and do it, as the cliché goes, on a war footing. If there was a war, as in 1939-1945, every factory in India, every factory in England was buzzing, teaching new skills, and developing skills. Adopt, as Government has done, measures to free Scheduled Castes and Scheduled Tribes (and others) from the

money lender, to free them from the political boss, to free them from the police, and do it in earnest. And it is some comfort to think that it is no longer considered good politics to have corrupt ministers who therefore have been sacked, and corrupt legislators who therefore have not been given tickets. It is a comfort to think that at least it is dawning on the people in power that no matter how good the Constitution, corruption and political chicanery is like a cancer which must ultimately destroy the Constitution.

So, in substance it comes to this: provide a phased programme – 15 years, 20 years, (in the life of a nation that period is not large) – by phasing out reservations in periods of 2 or 3 years. We have guidance for this in our Constitution. Anglo-Indians were given special protection because 60 per cent of their members were working in certain employment, in railways, in gas companies and so on. So this protection was given for 10 years so that they should not be disturbed in their employment. Every two years the number was to be reduced, so that in 10 years the protection would end. Take special grants to Anglo-Indian Schools. Those grants were continued, but at the end of 10 years they were phased out by being reduced every two years. From that time, it was intended, or believed, that the Anglo-Indians could stand on their feet.

The Death of Prof. Mamlok

Surely, when you engage a doctor or a surgeon you are not thinking of his race, caste or religion. Let me illustrate this by a story. Before the war, the British Government suppressed two films: "The Confessions of a Nazi Spy" and Charlie Chaplin's "The Great Dictator", but they were released as soon as the Second World War began. When Germany invaded Russia, a remarkable Russian picture was released, called "The Death of Prof. Mamlok". Dr. Mamlok was a distinguished German Doctor, who also conducted research. His

hospital was so famous that people from all over the world, Japan, Ireland and from places in the East came to work in his clinic. He was a Jew. He conducted research with people of different races. Perfectly friendly with all kinds of people. Then came the Nazis. Some Nazi official came to Prof. Mamlok's hospital, and looking at a Japanese doctor there, the officer said, but he is an Oriental. "Oriental"? said Prof. Mamlok, "but he is a doctor". So a petition was fomented registering complaints against Dr. Mamlok, and he was driven out of the hospital. After a little while a very senior Nazi military officer suffering from a grave ailment was rushed to the hospital. The nurse said to him that it was unfortunate that the only man who could cure his disease was Prof. Mamlok and he was no longer with the hospital. So hurried messages were sent to Prof. Mamlok saying it was all a mistake, you come back. He came back. So, after all the Nazi officer was not thinking of the hated Jewish race of Dr. Mamlok, but wanted the best medical aid available. But, as the saying goes:

"Ease would recant

Vows made in pain, as violent and void"

So, the same campaign against Dr. Mamlok started again and he was driven out. He looks at

a revolver which had been presented to him by the Kaiser for valour in the First World War, fighting for the Germans, and he tries to kill himself. As he lay recovering in a nursing home, he realizes that his son was right in fighting the Nazis. His son comes to the nursing home to meet his father and also to escape from a police raid. The father helps him to escape. Then Dr. Mamlok goes out on the balcony and addresses the people, and he says the Germany for which I fought and suffered and for which I was decorated was the Germany of great thinkers, great philosophers, great poets – not this Germany. The crowd is so taken aback that ultimately a group of police and army officers using machine guns shoot him dead.

So when you want to be cured of a disease you are not worried by Jew or Gentile nor with the question whether the doctor is an "untouchable" or not. If the "untouchable" is the best surgeon within your means you'll go to him. If another person, a foreign doctor – say a German – is the best surgeon within your means, you'll go to him.

So, what I say finally is that reservation of seats and posts was meant to be a help; you were to hold out a helping hand. They were not meant to be permanent crutches.

The Real Beneficiaries of Reservations

Is reservation the right or the principal method of achieving radical social transformation? Has the policy achieved its original objectives? Have more than five decades of reservations for the SCs and the STs resulted into social, economic or political empowerment of the most depressed sections of our society?

Obviously, the answers to these questions are not in the affirmative. The highest incidence of poverty, illiteracy and exploitation is found among the *Adivasis* and the *Dalits* today. Moreover, instead of removing backwardness, reservation has only served to create entrenched, neo-Brahmanical elites among these communities. These elites grab the political, social and economic benefits in the name of millions of their caste brethren, who continue to languish in sub-human conditions. After the celebrated Mandalisation and mobilisation of backward classes in the last one and half decades, what we have produced is self serving and sectarian politics of the leaders of parties like Mayawati's Bahujan Samaj Party, Mulayam Singh's Samajwadi Party, Lalu Prasad Yadav's Rashtriya Janata Dal or Ram Vilas Paswan's Loktantrik Janshakti Party.

Amit Dholakia, excerpted from his article
"The Politics of Social Backwardness", *Freedom First*, July 2006

WRONG LAW AND ORDER ASSUMPTIONS

K. F. RUSTAMJI

Any evaluation of the present law and order situation must be preceded by a few generalisations. The first is that law breaking is part of our national political heritage. We began with nonviolent satyagraha during the freedom struggle, and after independence political parties used the method but changed the weapon to make statements with guns and bombs. We have got used to it, and yet are unable to deal with it in a democratic way. Secondly, as the objective is to get publicity we rely on the day-to-day shock which newspapers give us, and that is often distorted by communal and sectarian prejudice. As a nation we

Law breaking is part of our national political heritage. We began with nonviolent satyagraha during the freedom struggle, and after independence political parties used the method but changed the weapon to make statements with guns and bombs.

tend to rush to conclusions which are superficial, even totally wrong, ignoring the deeper implications of the political forces and currents which are shaping our destiny. Thirdly, we seem to think that law and order does not need any intellectual content at all. It only needs state violence, not even state justice. Our ancestors believed in the *raj danda* (the heavy hand of the state): We have come to accept that

Freedom First, October 1989

MR. K. F. RUSTAMJI was retired Inspector General of Police and a member of the Police Commission.

the rifle, not democratic debate and adjustment, even court decisions, are required to maintain peace in a land seething with discontent over social and economic injustice.

Religious Fundamentalism

Of all the columns that have been written by commentators on Jammu and Kashmir do justice to that State? Why is it that we always find the Pakistan hand, which is a facile explanation to cover up all criticism? They would have us believe that not only is there a strong influence of Pakistan in the Kashmir valley but all Kashmiris have become Pakistan sympathisers. Historical facts are forgotten or distorted. The great part played by the people of Kashmir to resist every Pakistan invasion is not even mentioned. The unrest due to economic causes and unemployment, the decline in tourism, is played

Fundamentalism is a state of mind which attracts all those who have no values or ideologies to depend on; and it raises problems which the fundamentalists themselves are unprepared for.

down as being so normal that it hardly counts. The upsurge of fundamentalism which is becoming dominant in every Indian home is not even considered relevant. The Hindus have a right to turn to fundamentalism, the Muslims do not. But if there is the slightest indication that the Muslims are becoming fundamentalists, it would appear that the end of the world is at hand, and Pakistan is the main agency inciting it. What is happening in Jammu is consid-

ered inconsequential. What is happening in Srinagar is assessed on a different scale. Is this the secular detachment which we have striven for from the earliest time to attain?

Fundamentalism is a state of mind which attracts all those who have no values or ideologies to depend on; and it raises problems which the fundamentalists themselves are unprepared for. What is the unrest in Ladakh due to? There is only one reasonable explanation. It has been caused by the upsurge in Muslim fundamentalism in the valley. The Buddhists want a share in the trade and services of Ladakh, which at present is in the hands of the Muslims of the valley. Is it such an unreasonable demand? Is it something that the State government or Government of India cannot resolve in a democratic way? Obviously the people of Ladakh feel that there will be no response to their difficulties until there is a revolt. All over India the harm which fundamentalism is causing, and the explosive riots that it will generate in future, is being covered up by politicians and the media; the former because they want the political advantage of it and the latter owing to prejudice.

State Violence not the Answer

As regards Punjab, we tend to oscillate between giving up all hope of a reconciliation with the Sikhs and the terrorists and the imperative need to find instant solutions, regardless of the damage that it may do to us. It is true that the killings and particularly the mass killings by the extremists have caused serious damage to the secular moorings of the nation. In their own interest all Sikhs should resist it. But can this be cured by killing suspects, even those who are known to have committed murders? The politician in desperation says yes, this is the only way. Even the most "loyal" Sikh will tell you that it has generated a feeling of desperate alienation in the community, where every act of Government is seen as an attack on the community as a whole. We were on the wrong track when

the Golden Temple was "liberated". We were totally wrong when we lacerated the feelings of Sikh youth in Operation Woodrose. We debased ourselves as a nation when we allowed barbaric atrocities to be committed on the Sikhs in Delhi and other places. At present we want to suppress terrorism with harsh measures, but we will leave a wound in the community which cannot be healed by police methods. It is a credit to the perceptions of the Hindus of Punjab that they have also realised that unless we constantly keep groping, experimenting, looking forward to a political solution we will not be able to deal with the problem of Punjab. The Longowal accord may have been killed by a few intemperate men. But does that mean we should stop trying to find a democratic solution to a problem that has been created by several causes, the dominant one being similar to the one that led to the creation of Pakistan? It is because we submitted to one partition that the desire to have partition seizes every single community that feels oppressed and the basic fear is not of anything except the fear of a non-secular government at the centre. If we jettison secularism there will be no end to terrorism and insurgency, and demands for separation.

We were on the wrong track when the Golden Temple was "liberated". We were totally wrong when we lacerated the feelings of Sikh youth in Operation Woodrose. We debased ourselves as a nation when we allowed barbaric atrocities to be committed on the Sikhs in Delhi and other places.

In Punjab there is not even a pretence at intellectual examination. The bomb and the gun have a knack of destroying men's minds. We just cannot think reasonably if a man with a gun or a bomb kills people. The shock of it unsettles our minds. Punjab is a perfect example of not applying the mind

to law and order, or applying a mind that childishly reacts with petulance at bloodshed. How else can we explain the fact that a nation that was built by lawyers and legal luminaries just refuses to think in terms of legal reform which would take away from the police, or make it unnecessary for the police, to punish those who transgress the law.

What is certainly the most serious problem we will have to face is the Naxalite revolt all along the spine of India. This will turn out to be the most difficult problem we will face in the next ten years.

The Economic Causes of Unrest

I can see no end to the revolts that will rock the nation. A taste for a better life is what is at stake, and those who are in the depths of starvation will fight for their rights when education, T.V. and other causes rouse their desire for a change. Turn by turn we have had uprisings among the Nagas, Mizos (the anti-Hindi agitation had a similar basis) and we now have the Bodos and the Jharkhandis and an uprising in Darjeeling which was fortunately dealt with in the right way. What is certainly the most serious problem we will have to face is the Naxalite revolt all along the spine of India. This will turn out to be the most difficult problem we will face in the next ten years. In the hill jungles of Madhya Pradesh, Andhra and Maharashtra, there is the continuation of a struggle that started 35 years ago in Hyderabad State after the police action soon after our independence. The CPI organised a violent movement in Telangana and adjoining areas, which was called off by the Soviets, it is commonly believed. It smouldered all these years and has come up with a fresh fire. The tribals of India have woken up to the fact that they have to change their mode of life. They expect and demand support from all the people of India. They want all that the others have – roads, houses, food, electricity, education, hospitals, even cinemas, and in the process they want to preserve

their identity as tribals. Now that they have received a big consignment of AK 47s they will begin by terrorising those whom they consider class enemies. They will use all the methods which made the other insurgencies get their way. We on the other hand will try piecemeal police methods, forgetting that what they were shouting and complaining about and we cannot hear, is a total lack of development in their area.

Starting with a Clean Slate

Whether the Congress wins or loses the next elections, the increase in fundamentalism in every party, including the Congress, will create misgivings in the minds of the Muslims, the other minorities, and among the tribals and scheduled castes. Their fears may be totally unreal because whichever party wins, it will make adjustments in its electoral rhetoric. To the communal agitator, however, it is not reason that counts, it is prejudice that builds up a community's fears, and that can be easily worked up as events prior to 1947 have clearly shown.

I have reached a stage of utter disgust with our politicians, judges, lawyers and policemen. The entire criminal justice system is manned by men who seem to lack faith in justice of a civilised type.

I have reached a stage of utter disgust with our politicians, judges, lawyers and policemen. The entire criminal justice system is manned by men who seem to lack faith in justice of a civilised type. There is no plan on how the clogged system of courts can be cleared of arrears. The position is so bad that I would have no hesitation in saying "withdraw every case that has been under trial for more than two years, and let us start with a clean slate again, with reforms that would make decisions possible within a year at the most. And for the sake of our democracy take away from the police the right to inflict punishment."

THE MAHABHARATA AS A STUDY OF THE PROBLEM OF EVIL

A. N. MOORTHY RAO

By and large it must be admitted that the atmosphere in the Mahabharata is dense with evil. Evil is widespread; it is found in the most unlikely places; it bends even virtue to its will, and it generates evil in others.

V. S. Sukthankar, one of the leading authorities on the Mahabharata, considers the Mahabharata under three heads: the story on (1) the mundane plane; (2) the ethical plane and (3) the metaphysical plane. I shall leave the metaphysical severely alone and concern myself with the mundane. In the Mahabharata the mundane, while not casing to be mundane, throws out tentacles to grip the ethical. To me, this work is a document about human nature, showing good and evil struggling for mastery within it. In this Epic, there is a runaway excess of disquisitions on *Dharma*. So, concentrating attention on the mundane has this advantage: We can take in just as much of the ethical as is relevant.

There is almost no one in the Mahabharata – Vidura is the one prominent exception – who does not, on some occasion or other, lapse into evil. The Kaurava quartet – Duryodhana, Dussasana, Sakuni and Karna – are all steeped in evil, I propose now to consider how the main characters in the Epic deal with evil. Perhaps it would be more ac-

curate to say “how evil deals with them”. In our Epic, evil seems to have the initiative; good is surprisingly, though not totally, passive.

The Kuru Race

There is a history of evil in the Kuru race. In the early stages it was a history of excessive sexual passion and naked unashamed selfishness. We need not dwell on the former. The Mahabharata age was not over-prudish in matters of sex. It took, for example, the Parasara-Matsyagandhi episode in its stride and highlighted not Parasara's lapse but the genius of Vyasa who was the product of that irregular union. In the atmosphere of the Mahabharata Parasara does not figure as a man who has fallen from grace.

But the love of women is one thing and the pursuit of that love at the expense of the legitimate happiness of others is another and a quite differ-

Freedom First, April 1991

PROF. A. N. MOORTHY RAO, known as the teacher's teacher was well-known wherever people from Karnataka live. He retired from the University of Mysore (1955) after several decades of distinguished service and awakening hundreds of graduates to the sensibilities and nuances of English literature and civilization. Later, he took up the Directorship of the Literature and Culture Department of the State of Mysore.



ent thing. In Yayati's case the "others" happen to be his own offspring. At an age when he should derive happiness from seeing young people happy, Yayati has no qualms about asking his sons to give him their youth! And when they refuse, he can find it in his heart to curse them!

Santanu has inherited this weakness. For fear of losing his love-life with Ganga, he witnesses without protest the deliberate drowning of seven of his children by their own mother. In his later life he is an improvement on Yayati. He did not demand any sacrifice from his son. But he accepted it when it was volunteered. What Devavrata (Bhishma renounced was not only the throne. He renounced his love-life so that his old father might have it. The father accepted the sacrifice! This weakness seems to have worked itself out in Vichitravirya who died an early death because of it.

*Except Krishna whose divinity
gives him a place apart,
Bhishma is far and away the
greatest character in the
Mahabharata.*

Bhishma's Sacrifice

Except Krishna whose divinity gives him a place apart, Bhishma is far and away the greatest character in the Mahabharata. He had killed in himself the desire for worldly greatness, power and prestige; and what is infinitely more difficult to kill – the desire for the happiness and mellowing influence of love, the love of women and of children. The sacrifice does not make him bitter. Even after the renunciation, his interest in the affairs of the kingdom does not wane.

And yet it is this man, flawless in character, strong in will, wise, full of concern for others who (unwittingly) brought about the destruction of the Kuru race. It is not from anything evil in him that

destruction flows. It is the good and gracious in him, the strength of the good in him, that is responsible for the disaster that overtook the Kuru race. It is as though the Spirit of Evil sat unconcerned, fingers crossed and a cynical smile on his face, telling himself: "For the destruction of this race I need not exert myself, the forces of good will do the job for me". It is not that the Spirit of Evil took possession of 'the good' and used it for its own purposes. The good was just allowed to do the job of evil.

*What niceties of Dharma can put
the stamp of approval on the
attempt to disrobe her in public?
Instead of indulging in talk about
Dharma, Bhishma should have
leaped up and felled Dussasana
to the ground!*

A little reflection will make this clear. But for his sacrifice, Bhishma himself would have been the king of Hastinapura. He was alive even after the crowning of Yudhishtira; and he was in full possession of his mental faculties. The war would not have taken place if he had not renounced kingship, and he would not have been lying helpless on his bed of arrows. If, instead of the weak, and at times even perfidious Dhritarashtra, Bhishma had ruled the kingdom, the Mahabharata saga would have been one long paean of joy. What Bhishma sacrificed at the altar of Santanu's love-life was really the very existence of the Kauravas.

The Problem of Dharma

The effect of Bhishma's sacrifice on his own self is worth noting. Once Dhritarashtra was crowned king, Bhishma stood aloof. He gave advice, but never actively interfered in the affairs of the kingdom. That is as it should be. But why did he do nothing to stop Dussasana when he (Dussasana) was trying to pull off Draupadi's saree? Let us recall that terrible scene: Draupadi has been dragged by her hair

into the midst of an assembly of princes. Insults have been heaped upon her, and but for a miracle she would have had to stand naked in full view of an all-male assembly. In answer to her heart-rending appeal all that Bhishma has to say is a few words about the intricacy of the problem of *Dharma* – a problem which he left to Yudhishtira to solve. Granted that Draupadi *was* a slave. What niceties of *Dharma* can put the stamp of approval on the attempt to disrobe her in public? Instead of indulging in talk about *Dharma*, Bhishma should have leaped up and felled Dussasana to the ground!

Duryodhana is almost the personification of evil. Even his friendship for Karna – which is genuine – is not unmixed with a pragmatic awareness that, in the event of war, Karna is the only man who can stand up to Arjuna.

Again, consistently with what he believed to be just, Bhishma should have gone over to the Pandavas. If he did not like defection he could at least have remained neutral. But he actually accepts the post of Commander-in-Chief of the Kaurava forces! Well, right or wrong, after doing that he should have been faithful to the Kauravas. It is treachery to the Kauravas (whose champion he has agreed to be) to instruct the Pandavas as to the best way of eliminating him.

Clearly Bhishma is a man whom we are meant to respect; and yet his lapses are stressed – deliberately, it would seem – again and again. Was it Vyasa's intention to show how unpredictable the workings of the human mind are? Or is he in effect telling us that when a man, however great, lives

a life without any responsibility, there will be a dulling of his moral perception.

Drona and Aswatthama need not take much of our time. There is a vein of pettiness in the former, and of heartless cruelty in the latter which makes it difficult for them to live up to the greatness thrust upon them.

The 'Gang of Four'

The most devoted of the henchmen of Evil are the 'Gang of Four' (Duryodhana, Sakuni, Dussasana and Karna) of which Duryodhana is the head. Sakuni is the evil genius behind all Duryodhana's plans. Dussasana has no personality worth speaking of; he is ever ready to execute Sakuni's plans, however heinous they may be. In Karna's favour it must be remembered that he is acutely conscious of the fact that he is despised as a man of inferior birth, and that he is grateful to Duryodhana for giving him a status in life. His inferiority complex gives an edge to his arrogance, envy, and where the Pandavas are concerned – even heartlessness. But we get the impression that the evil was there to be given an edge to! It is part and parcel of his nature.

Duryodhana is almost the personification of evil. Even his friendship for Karna – which is genuine – is not unmixed with a pragmatic awareness that, in the event of war, Karna is the only man who can stand up to Arjuna. Duryodhana was born vicious; we are told there were portents of evil at the time of his birth. The extermination of the Pandavas is the one aim of his life, and he would do anything to attain that end. Poison, drowning, burning them alive, letting serpents loose upon them – nothing is too mean or too treacherous for him. Even when the hand of death is already upon him there is no trace of repentance in him.

In Dhritarashtra there is a constant struggle between what he knows to be right and parental affection. It is the latter that wins. He is a consent-

* Even after reading what Sukthankar has to say about the *Bhagwad Gita*, I cannot help thinking that it is an interpolation.

ing party to most of his son's evil deeds.

The Pandavas

In comparison with the depths to which the Kauravas sink, the evil in the Pandavas pales into insignificance. But it is there. They do swerve from the path of righteousness on a few occasions, Arjuna killed Karna when the latter was trying to raise his chariot from the mire; Bhima hit Duryodhana in the thigh; Yudhishtira uttered what was in effect, a lie. But in comparison with the perfidy of the Kauravas the lapses of the Pandavas are little more than cheating at cards!

By and large, it must be admitted that the atmosphere in the Mahabharata is tense with evil. Evil is widespread; it is found in the most unlikely places; it bends even virtue to its will, and it generates evil in others.

What are we to make of the struggle between these two forces? Does the Mahabharata hold out any hope for mankind?

The Good is Passive

As opposed to this there is some good. Vidura, Yudhishtira and Krishna are its chief repositories. Special mention must be made of Gandhari. When Duryodhana, just before going to the battlefield, touches her feet, and asks for her blessings, instead of wishing him victory, she says, 'Victory goes with *Dharma*'. It takes exceptional nobility of character to say that to her son – in effect she has refused to give him her blessing!

But on the whole goodness is ineffective in the Mahabharata. Vidura is not man of action; Bhishma and Yudhishtira actually play into the hands of evil. Bhima's impulse to oppose evil is restrained by Yudhishtira. Good is passive. It has the courage and strength to endure, but it is not dynamic.

Its very goodness forbids dynamism. Krishna did his best to stem the tide of evil, and he failed. Evil ran its course, and in the process destroyed its own votaries along with those in the opposite camp.

What are we to make of the struggle between these two forces? Does the Mahabharata hold out any hope for mankind? It seems to do so – at first sight. The words of hope occur in the *Bhagawad Gita**. The spokesman is no less a person than the great stage-manager of the universe, the '*Kapatanataka suthradhari*' Gitacharya Krishna.

Before quoting the words of hope I would like to mention one strange thing about the *Gita*. It does not give a direct, unequivocal answer to the doubts that trouble Arjuna. Arjuna cannot bring himself to kill, for selfish ends, his preceptors and his own flesh and blood. The direct answer to Arjuna's doubts would be this: "Whether you like it or not, war has already been declared. This is not merely a war between you and your cousins. It is a war between good and evil. It is your duty to fight against evil."

But what Krishna says is something very different: As a Kshatriya it is your duty to fight. (He does not say specifically that the duty is to fight against evil). What you are killing is not the person but his body which is only, the habitation of the soul. The soul cannot be killed; it knows neither birth nor death. So, fight! If you die you go to "*Virswarga*", and if you win, you gain a kingdom.

Would not this argument exonerate Hitler and Stalin? Granted that the soul is immortal and quits one body to get into another. It chooses its own time for doing so; or destiny fixes the time. Have we the right to force that soul to quit at a time of our choosing? That is the crux of the problem.

The real answer may be inferred from two of Krishna's statements in different parts of the *Gita*:

- "I am born in age after age to protect the righ-

teous and to destroy the wicked”.

- “Be thou the instrument of the Lord”.

The destruction of evil and the establishment of *Dharma* – that is the *raison d’etre* of Krishna’s *avatar*. He promises to do the job and he wants Arjuna to be his instrument. The responsibility is taken off the shoulders of Arjuna.

Let us now see if Krishna kept his promise.

Who Wins in the Mahabharata?

One of the titles to the Mahabharata is ‘Jaya’ – Victory. Whatever the explanation given for this title, the common man may be forgiven for suspecting irony in it. Of the galaxy of warriors on both sides, but seven were left alive on the Pandava side; and of the Kaurava warriors but three survived the war. Who won the victory!

Was Evil destroyed? The evil-doers who bore arms at Kurukshetra were destroyed, we know. But was Evil destroyed?

Did Krishna, who promised to protect the righteous, make sure that no good man was killed in the war? Without pausing for an answer let me ask another question: Was Evil destroyed? The evil-doers who bore arms at Kurukshetra were destroyed, we know. But was Evil destroyed? We can picture to ourselves the fiendish grin on the face of the Spirit of Evil at the time Dhritarashtra was planning to crush Bhima to death while pretending to embrace him – Evil was very much alive!

It is alive in Bhima too. Consider: Dhritarashtra has paid for his sins. He and Gandhari – once King and Queen – are shorn of their glory and are now dependent on those whom their son had wronged, those whose hands had dealt death to their sons.

They have nothing to look forward to except futile self-reproach. They deserve only pity now. But Bhima – in their hearing – slaps his arms and boasts: “With these arms I killed the sons of this blind fool!” *That* is Evil speaking.

Kurukshetra and Hastinapura are not all the world. Let us travel a few hundred miles and see what is happening in Krishna’s own Dwaraka. The Vrishnis have earned a curse and are fighting among themselves. No great cause is involved – it is just drink and the devil! The clan destroyed itself. Krishna himself went berserk and participated in the slaughter. He was later shot by a hunter called Jara, and died where there was none to shed a tear for him!

If the Supreme Spirit gets incarnated again in our era, it will not have to face unemployment. Its old job is still there, waiting!

Hope amidst Despair

May we take it that in the destruction of the Vrishni clan we have witnessed the end of evil? No. We find that Arjuna, who was escorting the Vrishni women and children to safety was attacked by robber hordes. The great archer found it difficult to lift his Gandiva (bow), and his arrows lacked speed and power. The robbers had their way. That is the plight in which we see Arjuna – Arjuna who was to be the instrument of the Lord in destroying Evil!

Dharmasamsthapana – installing *Dharma* on the throne – was part of the task which Krishna undertook. If it was installed anywhere it certainly did not survive the *Dwapara* era. If the Supreme Spirit gets incarnated again in our era, it will not have to face unemployment. Its old job is still there, waiting!

Towards the end of the Epic there are two scenes which I often recall to my mind:

As Arjuna and the remnants of the Yadava clan receded from Dwaraka the waters of the sea flowed in. Where there was the song and dance and laughter (and, alas, the strife) of life there was now only the incessant roar of the waves. It is symbolic of the end of an era. The President of the Immortals – as Aeschylus of the Greeks and Thomas Hardy of England called him – had tried a great experiment with humanity. The experiment had failed and he wrote it off!

The second scene, almost the last in the Epic: Yudhishtira goes to heaven and sees Duryodhana resplendent on a royal throne. Even Yudhishtira who is forgiveness incarnate is roused to anger and protest! I wouldn't like to see anybody, not even Duryodhana roasting in Hell. But was it necessary to reward him! I am sure Vyasa intended the irony, when, reacting to Yudhishtira's protest, Narada says "there is no such thing as hatred in heaven". Yudhi-

shtira does not care to discuss the matter. He changes the subject.

And now we close the book and lay it down. What are we left with? It is said that the *rasa* of the Mahabharata is *Santha* – peace. I am against thrusting the final impression of a work of art into a category by main force. But if we do accept the nine *rasas*, can we assign the *Santha* rasa to the Mahabharata?

We need peace – Shanti – all right. But is that what we get? What we are left with is, I think, a deep thwardness, a mood of profound reflection regarding the mystery of life. The Mahabharata is an answer to the *Gayatri* prayer: Our minds are quickened to grasp the mystery of life. Vyasa does not seek refuge in any cheap optimism. But with Yudhishtira, Vidura, Bhishma, and wise Krishna in our company, our reflection need not end in despair either. We have to be patient, and wait – a million years perhaps! By then *nara* (man) may become *Narayana* (god).

The Universality of Hinduism

Every Hindu is a Hindu in his own way and the non-believer could be as much a Hindu as the fervent theist. There is nothing to bind Hindus to any uniformity of thought or action in religious matters and, as a matter of fact, any such idea is repugnant to Hinduism. It is not possible to reduce Hinduism to a set of religious dogmas or to give Hindus a dead uniformity or make them less than universal. Hinduism does not consider exclusiveness a virtue nor does it prevent its adherents from studying and understanding other faiths like Islam and Christianity..

Over the centuries shadows have replaced substance and Hindus have reduced their religion to the observance of mere rituals. In clinging to form they have let go the essence of Hinduism. As a result Hindus have come to feel insecure and tend to see ghosts where there are none.

K. S. Ramamurthy, Excerpted from his article 'The Universality of Hinduism'
Freedom First, October-December 1993

CRIMINAL POLITICIANS OR POLITICAL CRIMINALS?

S. V. RAJU

The fact remains that criminals have taken over and their writ runs in large parts of the country. In other words, goondas who put politicians in power and manipulated them from behind no longer feel it necessary to be backstage. They have now come out into the open and have got themselves elected to public office. This is the reality of public life in India today.

The big bangs from the bomb blasts in Bombay on March 12 signalled, with their deafening roar and the blood of their victims, the fact that the chickens had at last come home to roost; that India had truly touched rock bottom – that the descent of India was indeed complete.

One could argue as to when exactly the rot started. Some would say that it began on August 15, 1947 when the British handed over power to the Indian National Congress led by Pandit Jawaharlal Nehru. Another would suggest that the rot started with the Second Five Year Plan in 1957 with its Gosplan orientation fathered by Prof. P. C. Mahalanobis. 1957 would also be identified as the year of birth of the notorious Licence-Permit-Quota-Raj. A third view would be that it began with Mrs. Indira Gandhi; and a fourth that it all really started with Nehru's grandson and Mrs. Gandhi's son Sanjay Gandhi. Each of these (milestones of sorts in their own way) could be right.

My own personal preference is for the second 'milestone' – the launching of the infamous Second Five Year Plan. Licences, Permits and Quotas led to countless restrictions, which in turn led to the creation of a whole new profession, the breakers of such restrictions – familiar to us as smugglers, black-marketers, 'hit-men', 'Dons' etc. Corruption came to be accepted as a way of life

– it may be recalled that Mrs. Gandhi once described it as a 'universal phenomenon' (obviously she had accepted globalisation of corruption much before the globalisation of legitimate trade and commerce was even thought of).

Once corruption came to be accepted as inevitable then who better than the criminals to manage 'the system'. A rather simplistic explanation, I will be told, hence inadequate. But then most things in life do have rather simple explanations once the layers of alibis and excuses are peeled off.

Once corruption came to be accepted as inevitable then who better than the criminals to manage 'the system'.

So long as the Permit Licence quota Raj continued under the umbrella of the 'socialist pattern of society' the cozy relationship between corrupt businessmen, corrupt politicians and corrupt bureaucrats continued undisturbed. Unfortunately for them the economy bankrupted sooner than they expected. The Indian *nomenklatura* saw lucrative sources of income disappearing in front of their eyes. Something had to be done quickly to reverse or at least slow down the trend towards a free economy. One was to ensure that officials at the centre and the states dragged their feet so that, irrespective of what the ministers said or promised, performance lagged behind promised policy. The other was to tell the world that India was an unsafe place to put their

Freedom First, April 1993

MR. S. V. RAJU is editor, *Freedom First*.

money in. Without foreign investment the economy stood little chance of revival.

The first was easy. Also welcome because it suited the interests of a large number of bureaucrats in Delhi and in the states. They therefore did their damndest to nullify official policy. In this they have had the willing cooperation of petty officials right down the line who too have much to lose. With regard to the second, the BJP, the VHP and the various assorted 'Sanghs' and 'Dals' that go by the name of '*parivar*' or family, provided India's 'New Class' with just the opportunity they needed by bringing down the domes of a mosque in disuse in a remote town in Uttar Pradesh. While one did not expect anything better from such organisations which represented Hinduism's lunatic fringe, many including this writer expected the BJP to be more mature. On the other hand I had no business to expect the BJP to behave better as I have had the opportunity of following rather closely the pronouncements and policies of the BJP in its previous *avatar* – the Jan Sangh. But that is another story.

The fact remains that today in just under 47 years after the British handed over power to the Indian National Congress the people of India are at the mercy of criminals clad in khadi.

There is yet another explanation that is offered by those who assert that the Ayodhya demolitions had nothing to do with the March 12 explosions. According to the proponents of this view the explosions are the expression of anger (or the backlash if you wish) of gangsters against the previous Chief Minister of Maharashtra, Mr. Sudhakar Rao Naik who had declared war on the many gangs infesting the city. One of the weapons he used in his campaign was to order the demolition of illegal multistorey constructions built with impunity by 'builders' with the active connivance

of corrupt officials and corrupt politicians. The latter owed their election to the Municipal Corporation or the state legislature to local 'mafias' who provided these politicians with the money and the manpower to contest and win the elections.

Not surprisingly when his continuance in office was threatened Mr. Naik called off the campaign. That he finally did resign had more to do with his inability to enforce law and order in the wake of the bloody riots that claimed over 600 lives in the wake of the Babri Masjid demolition.

Whatever the reason the fact remains that criminals have taken over and their writ runs in large parts of the country. In other words, *goondas* who put politicians in power and manipulated them from behind no longer feel it necessary to be backstage. They have now come out into the open and get themselves elected to various public offices.

This is the reality of public life in India. Whatever they may say and howsoever they may disclaim responsibility the fact remains that today in just under 47 years after the British handed over power to the Indian National Congress the people of India are at the mercy of criminals clad in *khadi*.

An exaggeration? The following are excerpted from various newspaper reports. You judge for yourself.

The following is from a report filed by Mr. Sanjeev Unhale in *The Times of India* of February 25, 1993:

"Aurangabad, February 24. Corporators from the municipal corporation here have flouted the law with impunity and managed to get away scot free because of the immense clout they wield in their areas of operation," it is said.

"Forty-six different criminal suits have been filed against some of the corporators, according to police sources.

"Some of the cases pending against the corpo-

rators are for cheating, robbery, dacoity, theft, extortion, house-breaking, rioting, arson, causing grievous hurt, attempt to murder, kidnapping, wrongful confinement of government servants, sale of banned narcotics and drugs, running a gambling den, fraudulent deeds and disposal of property, criminal trespass, land scams and threats to contractors.

"To cite one example, the former Shiv Sena corporator, Mr. Pradeep Dutt is involved in as many as 11 criminal offences... "Another corporator, Mr. Javed Hasan Khan has 46 criminal trials pending against him... "Another known corporator who crossed from the Shiv Sena to the Congress, Mr. Narayan Fatelashkar, faced two dozen criminal trials for the offences of assault, attempt to murder, unlawful congregation, robbery and wrongful confinement of a public servant."

The following was filed by Mr. P. K. Surendran from Nagpur in *The Times of India* of February 5:

"Nagpur, February 4. If there was a place in the Guinness book for the criminal antics of a civic body, Nagpur municipal corporation might well win the position hands down. "Criminalised politics may be a trite issue in the Indian context today but the civic body in the "orange city" of India has much more than it offers. Here, the first citizen is elected by lottery. Also other civic panel members get elected by drawing lots. A Janata Dal leader of the corporation finds himself handcuffed as he comes out of the civic hall. And, at least, six other corporators have criminal records."

Mr. Hitendra Thakur, the Congress member of the Maharashtra Legislative Assembly has the "dubious distinction" of being the first elected representative from Maharashtra to be booked under the Terrorist and Disruptive Activities (Prevention) Act (TADA).

In his despatch in *The Times of India* of October 29, 1992, Mr. Rajdeep Sardesai notes that "Mr. Thakur's rise from small-time crook to don of Vasai-Virar has been supported by politicians from the Congress, BJP and the Shiv Sena alike."

"Mr. Thakur got involved in a big way in land grabbing and illegal constructions after 1988, the time around which Mr. Pawar announced the dereservation of green zone land in Vasai-Virar in one case when the tehsildar ordered the demolition of some illegal buildings, a stay order was obtained within moments from the then minister of state for home, Mr. Madan Bafna.

"In recent weeks, Mr. Bafna's name has been linked with telephone calls that were allegedly made to Dubai's underworld kingpin, Dawood Ibrahim. Mr. Thakur's brother, Bhai, is a trusted lieutenant

"The BJP has demanded that a full-fledged inquiry be held into the Thakur affair. But the party cannot profess to have an entirely spotless record in the matter either.

"During the last general elections, Mr. Thakur tacitly supported the BJP MP from North Bombay, Mr. Ram Naik. In fact, the BJP's performance in the Vasai-Virar segment of the constituency was much better than the Congress.

"When the police began its offensive against Thakur's men this year, the Sena actually criticised the police action. *Saamna*, the party's mouthpiece, even wrote an editorial accusing the police of spreading "terror" in the district"

According to a report in the *Indian Express* of November 16, 1992, "Ahmed Ali alias Sher Khan, a notorious character of Agra who is facing charges in more than 25 criminal cases, has been nominated Chairman of the Indian Jute Development Council (IJDC)." The report adds that Khan's nomination was announced by the Union Ministry of Agriculture on September 14. The report

reveals that “the Chairman’s name entered the police records way back in 1971, when he was allegedly caught with a wireless set and subsequently charged with espionage... The police at Agra and Etah booked Khan for various offences including murder.”

The above are only miniscule samples to give you a flavour of the extent to which public life in this country has been all but taken over by criminal elements. There’s more — very much more that is reported in the daily press and in the magazines. An excellent account entitled “The Mafia. Challenge” in *The Week* of April is recommended reading for those concerned with the rapid decline in the quality of public life and morality in India. Here are two paragraphs from this account written by Maria Abraham:

“The spectre of chaos haunts the Indian cities. From smuggling and satta, kidnapping and supari killings, the underworld don has graduated to the semester of Semtex and sabotage. From the power-hungry politician and the money-mad policeman, the patronage that the don boasts has widened to forces beyond the country’s borders. Indian dons have gone global.”

“Earlier, politicians created and controlled the dons. Now in a reversal of the picture, the dons are claiming more than their pound of flesh. They are seeking to subvert the country. The bombing of Bombay shows just that.”

In the course of his article entitled “Hack at the roots” in the *The Economic Times* of April 24, 1993, Mr. Nikhil Chakravarty points out

“The bomb blasts on March 12 have, of course, shaken many a politician out of his unscrupulous complacency in maintaining links with the underworld of smugglers who have promoted themselves as arms dealers right up to the sophisticated RDX. The Sanjay Dutt case has

shaken the film world, and now Dawood Ibrahim’s links have been traced to Bangalore and beyond. And Dawood Ibrahim is not the only mafia don with whom prominent politicians have built up cosy arrangements.

“There is a lot of talk nowadays of criminalisation of politics. Why not say it openly that the criminal has become a partner of the politician in the same joint venture of capturing and managing the power structure of this country. Its gruesome manifestation has come as a frightening revelation to the country as a whole. And this cannot be eliminated from our public life without liquidating this unholy nexus. The fight has to be as much against the mafia as against the politician who protects the mafia.”

How do we reverse our tracks. Can we reverse our steps. Can we go back to the days before freedom when we still retained some idealism. When India could produce men of the calibre of Dadabhai Naoroji who carried the cause of India’s independence right into the House of Commons.

Voluntary movements and organisations need to be supported and encouraged. There is need to critically evaluate whether the extent of power in the hands of our politicians and bureaucrats is really necessary and consider how best to reduce such power to the minimum required for the efficient governance of the country. We need to evaluate the amount of privileges enjoyed by our elected representatives and consider how many of these privileges are really necessary or justified for the efficient performance of their duties. While no one can dispute the fact that electoral reforms are badly needed there is also the need to make power less attractive. Because among the reasons why criminal and other anti-social elements seek electoral office are the power of patronage and the perks that go with public office. Power should become service oriented and not the means for self aggrandisement which is what it became since freedom.

SECULARISM INDIAN 'ISHTYLE' *

SHARAD BAILUR

Since all religions involve conviction and faith, not reason and evidence they are, by definition, intolerant. Equal respect for all religions can therefore only mean that there is equal respect for competing intolerances.

Over the last four decades not a single political leader, with the honourable exception of Jawaharlal Nehru, has been clear about what secularism really means. The Congress party which has run the country for most of these years has never been clear about the principle of secularism involved in a modern constitution based on the rule of law. And, unfortunately neither has any other political party. *The Economist* stated it rather aptly in 1988. "In India," it said, "secularism means religious tolerance."

Negative Connotation

The principle of secularism in the Indian Constitution gives the citizen the freedom to profess, practise and propagate any religion. This right, like the other fundamental rights, is negative in nature and merely limits the power of the state, preventing it from forcing any particular religious belief upon its citizens. It has no other connotation. It does not mean that the state respects all religions equally or that it respects any religion at all. Implied in it is the inviolability of the right to hold a belief, indeed any belief, not respect for beliefs themselves.

For instance, I might hold a belief that two and two make twentytwo. So long as my belief is private to myself and my followers and does not

impinge on the rights of others to hold beliefs different from mine, my right to do so is inviolate. So, for instance, would be your right to have no belief whatsoever, in other words to be an agnostic. This right is closely allied to the right to the freedom of opinion and expression which is the keystone of the civil rights arch. This was the interpretation that the country's first prime minister, Jawaharlal Nehru, stood by throughout his long tenure.

When the ordinary man in the street goes to a place of worship it is his constitutional right and evokes no response. But when, say, the President or the prime minister does, it makes for publicity,

Secularism Misinterpreted

But other leaders, even during his time, were not so clear. The public demonstration of their private religious convictions was something he was powerless to prevent. Their visits to temples, mosques and churches were news on the radio and in the papers. Over the decades it became the norm. When the ordinary man in the street goes to a place of worship it is his constitutional right and evokes no response. But when, say, the President or the prime minister does, it makes for publicity, and possible unhappy interpretations because of the official position which he holds. It has to be publicly justified. The only way to justify it is then to

* 'Ishtyle' is the way many Indians pronounce 'style'!

Freedom First, No.422, July 1994

MR. SHARAD BAILUR is a Consultant in laser printing and a former bank executive.

say that the leader in question has respect not only just for the religion he practises but, for the peace of mind of those who do not share his convictions, for all other commonly practised religions as well. Indira Gandhi was the first to popularise this theme of 'equal respect for all religions'. The travesty of secularism that we today have, comes of this background. The inability of the government to bring into law a common civil code stems from just this misinterpretation of secularism. It glaringly exposes our congenital inability to work out, in advance, the possible implications of a policy before it is publicly announced. And it is this, if anything, which is responsible for letting the genie of political denominationalism out of the bottle.

*Equal respect for all religions
can therefore only mean that
there is equal respect for
competing intolerances.*

The Rights of Atheists

Since all religions involve conviction and faith, not reason and evidence they are, by definition, intolerant. Equal respect for all religions can therefore only mean that there is equal respect for competing intolerances. This is impossible. Political leaders are aware of this hypocrisy without saying as much. So are the people. Besides does this principle of equal respect apply to the views of agnostics and atheists as well? If it does it means there is no respect for any view. If it does not, it means that atheists and agnostics cannot claim protection under the relevant fundamental right; that, because secularism involves respect for religions, atheists and agnostics must somehow acquire religious convictions of one colour or another, to be treated equally with other citizens. It is surprising and sad that the Indian Secular Society did not raise a voice in protest when this twist first became public.

A second angle to this interpretation is that

the Constitution has no definition of what a Hindu is. It merely says that Hindus are all those who do not practise the other religions specifically mentioned in its contents. According to the Constitution therefore, all agnostics and atheists are Hindu by definition, whether they like it or not.

Official Public Display

With the new interpretation has come the encouragement of religion in public, often with official sanction and invariably with studied silence from those in authority, apparently in the hope that looking the other way will make the problem go away. Instead, it has only got bigger and more menacing each day. The word 'religion' has come to acquire a dogmatic public sanctity which even the forces of law and order do not wish to be seen controlling. Various organs of government and public sector bodies permit their employees to demonstrate their private religious faith at their places of work. Central and State Government offices, police stations, public hospitals, railway and airline offices and bus stations maintain shrines to various deities which are ceremoniously looked after by the staff during working hours. Many public sector organisations officially approve the holding of Satyanarayana *Pujas* in their offices on the ground that it is a social occasion. The proliferation of, unauthorised roadside shrines is of a piece with this phenomenon.

*The word 'religion' has come to
acquire a dogmatic public
sanctity which even the forces of
law and order do not wish to be
seen controlling.*

The decision to allow the showing of the Ramayana and the Mahabharata on T.V. would have been completely harmless if these great epics were to be regarded as great literature or mythology which they are. Unfortunately, in the Indian context, mythology is religion and religion, mythology. There

is a lot of truth in the apocryphal stories of television sets being garlanded and *aartis* performed when the serials came on. As a sop, official functions are held involving other religions. The spectacle of a Hindu President holding 'Iftaar' parties during Ramzaan is telecast for the gratification of Muslim viewers. It is only an act of inadvertent omission, or perhaps the weather is too cold in December, for the Prime Minister to be shown on T.V. attending Midnight Mass at Christmas.

Equal Encouragement of All Religions

Equal encouragement of all religions invariably results in competitive obscurantism and one-upmanship. It is the best fuel for communal riots. 'Antisocial elements' are always blamed for such riots, and rightly so, because they are in the best position to take advantage of a combustible situation. But the dynamite which explodes is first provided by shortsightedness in the interpretation of secularism. Hence Ayodhya, the Bombay riots and the subsequent bomb blasts.

Constitutional democracies in the West find their religious incubus a constant embarrassment over which they have to maintain eternal vigilance to prevent religious forces from entering the temporal arena.

Even educated people who sympathise with the BJP's views, often say that if other (presumably western) constitutional democracies can have a state religion, so can we. That there is nothing wrong in going ahead and changing the Constitution to make India a Hindu State in which 'the rights of the minorities are respected'. Other constitutional democracies in the west find their religious incubus a constant embarrassment over which they have to maintain eternal vigilance to prevent religious forces

from entering the temporal arena. In all such cases the state religion is a relic of the past; not a blueprint for the future. This is something nobody is willing to talk about.

If laws are flouted through exceptions, the respect for law diminishes in direct proportion to the exceptions made, till it vanishes altogether.

Freedom of Belief Curtailed

Without going into the merits of such a move, it is quite clear that what is being aimed at in our country is the curtailment of the freedom of belief and thence of opinion and, perhaps later, even of expression. It has apparently not occurred to anybody that succumbing to the temptation of imposing one religion on the country is the first step to the abolition of all civil liberties. If the right to freedom of opinion and expression is curtailed we shall no longer be a free democracy. We can at best be a dictatorship of the majority in which the Hindu shall be more equal than the others and where there shall be no place for such occidental fancies as the concept of equality before the law or even of the rule of law.

Much of the problem is caused by the fact that the concept of the modern state and the rule of law is something which was imposed upon this unwilling conglomeration of nations, (which later became the India we know), by those wicked imperialists, the British. For every law we enacted, we have provided exceptions. Some perhaps inevitable and justified. Others, for completely frivolous reasons. This again betrays our congenital lack of foresight. Take prohibition. We first make a law which prohibits drinking. Then we say that those with medical certificates may be permitted to drink. Later we say that medical certificates are not necessary; just a permit to drink is. The law of

prohibition stands on the statute books. Nobody respects it and, nowadays, nobody gets himself a permit. This applies to every law. If laws are flouted through exceptions, the respect for law diminishes in direct proportion to the exceptions made, till it vanishes altogether. In matters religious, it, in addition, spawns corruption protected by the religiosity of the fanatic.

Lip Service to Secularism

The Indian mind is far sharper than almost any other mind in the world. Its weakness is laziness. We are therefore always on the eternal hunt for short cuts, looking for ways to reduce the mental effort involved in modern democratic practice. The only way to reduce mental effort is to ritualise action. In action the Indian mind prefers the safe route taken by the herd. Where possible, it is substituted by symbolism and sloganeering; ceremony and sermonising. We go through the ritual of modern democratic practice and of a rule of law in the hope that the ritual will fetch us the essence. It is quite

clear that secularism as a concept is only a ritual to which we wish to be seen publicly paying lip-service. It is not something to be put into practice with the full might and backing of the state and of the rule of law. This is because of the rule of exceptions. Having compromised and made exceptions on the question of secularism all these decades, till the word became utterly meaningless, secularists and those others who hope to see the emergence of a pristine form of secularism and of a rule of law are forced on the defensive to the point of being called anti-religious thus increasing the level of intolerance further.

It is important that civil libertarians take up the secular cause if this country is to be prevented from falling into a dictatorial trap, because once a compromise is made on one fundamental right, the erosion of other fundamental rights will follow rapidly in its wake. That will be the end of the Indian democratic dream.

The Dilemma of Progressive Muslims

Some of us working in the Muslim Satyashodak Mandal at the grassroots level, get enough evidence to prove that secularism has not spread its ideas at the grassroots level. There should be a new dimension to secularism. The attitude of Muslim communities to secularism is a dilemma for progressive Muslims particularly when Muslims think that secularism is good when they are in a minority and want Islamism when they are in a majority.

When we try to express new ideas they ask us whether we are trying to teach them Islam if so, they tell us, 'please do not tell us' and if we say it is not in Islam, then they ask 'then why are you telling us?' Their attitude basically is 'What is in Islam is Islamic and what is not, is anti-Islamic.' That is why secular Muslims find so many problems working among our community.

At the same time much misunderstandings about secularism are not only among Muslims but in other religious groups as well who look at secularism as being anti-religion. The Hindus look at secularism as an over-protective policy to protect the minority, particularly the Muslims. That is why the path of humanism and rationalism are very essential and an integral part of secularism. At the same time we think secularism needs a spiritual base. We need to spread a non-disruptive faith among the people.

Remarks by an activist of the Muslim Satyashodak Mandal during a seminar on Secularism: Precept and Practice in Contemporary India organised by the Freedom First Foundation

TASLIMA NASREEN

A PROFILE IN COURAGE



V. K. SINHA

No one is compelled to read *Lajja* or any of Taslima Nasreen's writings. Banning these do not protect religion; they abridge freedom of expression. It is a thin end of the wedge which can impose today a censorship on one's views on religion and tomorrow on one's opinions.

Taslima Nasreen, Bangladesh writer with over twenty publications of verse, essays, and novels, an ardent feminist and sharply forthright in her views, a popular columnist, probably an agnostic catapulted to the world's attention when an obscure fundamentalist group issued a *fatwa* against her with a prize on her head. Another Salman Rushdie? One more lethal target of a mind-set which has little compunction in issuing death sentences in the name of Islam? Have the fundamentalists become so insecure in their adherence to the "true" Belief that they view the opinions of a writer as threats to the very survival of their Faith? Is any Faith worthy of respect if it cannot meet any criticism of it except through violence to the very person of the critic? These and several other related questions emerge as one ponders with despair and anger over the travails of a young writer, above all a woman, faced with real threats to her life and yet who is unwilling to compromise on her basic beliefs.

Common Bengali Traditions

Ms. Nasreen, thirty-two years old belongs

Freedom First, July 1994

MR. V. K. SINHA is editor of *The Secularist*, a bi-monthly published by the Indian Secular Society.

to a nation which is younger than her and which after a war and two coups is still seeking peace, stability and a secure national identity. A desperately poor country burdened with massive illiteracy, Bangladesh has probably the highest concentration of population in the world – over a hundred million people eking out subsistence from a land which

Have the fundamentalists become so insecure in their adherence to the "true" Belief that they view the opinions of a writer as threats to the very survival of their Faith?

is less than 1.5 lakh sq.kms. The emergence of Bangladesh in 1971-72 had dealt a severe blow to the two-nation theory which had split the Indian sub-continent into India and Pakistan. East Pakistan which was treated more as a colony than as an integral part of an independent Pakistan seethed with despair and resentment for over two decades before it seceded in the name of Bengali nationalism. Language here proved to be stronger than religion as a source for defining a nation. Islam failed to cement the two parts of Pakistan.

Bangladesh shares with its neighbour not only a language but a common literary tradition. Tagore is as much a revered poet in Bangladesh as he is

in West Bengal. Liberalism, Marxism, Humanism compete for the allegiance of young minds as much in the University of Dacca as they do in Calcutta University. Islam is a dominant religion in Bangladesh but it shares little of the harsh, austere and Arab-oriented Islam which prevails in Pakistan. Islam in Bangladesh is relatively more tolerant, less rigid and hardly influenced by Arab culture.

*Her poems reflect an acute
sensitivity of a free spirit caged
in a male-dominated and
conservative society which treats
women as mere chattel*

However, in recent years Islamic fundamentalists have been steadily gaining ground in Bangladesh. In a country as poverty-stricken as Bangladesh with seventy percent illiteracy, blandishments of religion and superstition are irresistible. Compounded with these harsh realities is the fledgling democracy in Bangladesh. Compulsions of power have led to strange alliances – both the BNP, the ruling party with a slender majority and the Awami League, the main opposition party, have been negotiating with the leading fundamentalist group, the Jamaat-i-Islami. The chief of the Jamaat, Gholam Azam was a former detainee who was charged with being a war criminal in 1992 for supporting Pakistan in the late 60s and the early 70s. He was released only last July and it is he who has been spearheading the Jamaati thrust into Bangladesh politics. His commitment to democracy is at best ambivalent. It is in this turbulent situation that Taslima Nasreen's maiden *Lajja* was published giving the fundamentalists a convenient issue to whip up communal frenzy and mobilize supporters.

Family Background

Taslima Nasreen, born in Mymensingh, a small town in Bangladesh, comes from a typical Muslim middle-class family. Her father, himself a teacher

of medicine, encouraged Taslima in her educational pursuit finally leading to a medical degree. However, the same latitude was not extended to her two sisters who were brought up under the more restrictive Islamic tenets. Taslima took to writing early, at the age of thirteen, and was already a well-known poet and writer in Bangladesh (as well as West Bengal) before the publication *Lajja* in February 1993. Her earlier writings, apart from newspaper columns, were in verse. Her poems reflect an acute sensibility of a free spirit caged in a male-dominated and conservative society which treats women as mere chattel rather than as autonomous persons with a dignity and identity of their own. In her *Nirbachita Kalam* (selected writings from her newspaper columns) published in 1992 and which fetched her the prestigious award Ananda Purushkar, she writes:

“Within a male-controlled family structure, the tenets of Islam endorse male superiority. The women's subsidiary, even servile position reduce them to slaves; they are objects of male desire, turned into commodities as sexual wares.”

*No writer in our subcontinent –
India and Bangladesh – has so
forthrightly and clearly high-
lighted the feminist issue and
made the world aware of it as
Taslima Nasreen.*

As a physician, Taslima Nasreen had the opportunity to visit rural and semi-rural areas and witness at first hand the lowly, even demeaning and degrading, status of women in Bangladesh society. Her feminist views, seething with anger and passion, spring not from any bookish or academic source, but from her intimate insight into the place of women in her society.

The Real Issue

Taslima Nasreen has been faulted as a writer by certain literary critics. Her verse, they argue, lack

subtlety and her novel *Lajja* is poorly structured. They assert that Taslima Nasreen is a journalist and not a creative writer. On the other hand, Shanto Ghosh, a highly respected poet in West Bengal has argued that Taslima Nasreen's "work stems from intensely personal experience, yet is vastly objective." Sunil Gangopadhyaya calls Taslima Nasreen as one of the most powerful authors writing today in Bengali, "She has spoken of her personal experiences unhesitatingly", he states, and "broached such issues in a spirit quite unexpected from a woman in a conservative society".

She has been a persistent critic of the personal laws and property rights prescribed by the Shariat and has demanded their revision to ensure justice to women.

The real issue is not Taslima Nasreen's literary talent. Even if her writings were to pass into literary limbo meriting a footnote or two, her significance today is of momentous importance. No writer in our subcontinent – India and Bangladesh – has so forthrightly and clearly highlighted the feminist issue and made the world aware of it as Taslima Nasreen. She has given a global dimension to the whole problem of injustice to women in the name of religion.

Taslima Nasreen represents a faith in the humanist vision which sees in reason and persuasion potent weapons of social change. She declares most emphatically that she writes "because I believe in the power of my pen, and to bring change."

Advocate of Women's Equality

Taslima Nasreen has used her columns to expose the iniquitous place of women in her society. An ardent and passionate advocate of equality, she has asserted: "Women must have control over their minds and bodies, their reproductive capabilities. First of all they must enjoy economic

independence and have access to education. This is the first step towards empowerment. In many suburbs and villages in Bangladesh, schools for girls are being burnt down or forcefully closed." She has been a persistent critic of the personal laws and property rights prescribed by the Shariat and has demanded their revision to ensure justice to women. Her pen addressed to women has a universal appeal. It is addressed not just to women in Bangladesh but to women in India and to women everywhere else where they suffer discrimination in a male-dominated society:

Live woman. Learn to live life fiercely. If you are human, break these chains and stand up. Break the chains with your two hands, they are yours. Run with your two feet, they are yours. See life with your eyes, laugh loud, those lips are yours. You are wholly yours. Entirely yours. Here I have dusted off all pain and stood up. I have not compromised with vulgarity or sickness. Women, walk holding hands with beauty and dreams...

All Religions are Man-made

Taslima Nasreen has invited the wrath and fury of all fundamentalists by her relentless campaign against the religion-based tenets which legitimize women's lowly status. "I hate all forms of fundamentalism," she declared, "whether it is the mullah in my country, or the BJP in India." She has argued further that "the women's liberation certainly doesn't suit the fundamentalists. Keeping women illiterate and behind the purdah perpetuates inequality. They blindly follow religious tenets of the Shariat which are obfuscating and ancient." In an interview to the *Statesman*, of Calcutta, she called for a radical revision of the Koran. She later denied that she had made such a statement. However, her demand for revision of the Koran is consistent with her beliefs that all the major institutionalized religions are man-made (whether Hindu, Muslim or Christian) and comprise several tenets which have become obsolete. They are shackles which inhibit any progress

towards the establishment of a more humane and egalitarian society in the future.

One of the oft repeated arguments put forth by the apologists of religion, and which is primarily evasive, is that religion has nothing to do with the persecution of writers like Taslima Nasreen and Salman Rushdie. It is argued that "true" Islam does not countenance such intolerance and barbaric actions. The *Fatwas* issued against these writers are contrary to the spirit of "true" Islam. This is a form of argument which can be advanced, say, by a Christian apologist confronted by the Inquisition or the burning of witches at Salem. It can be advanced by a pious Hindu in the face of daily injustices meted to the "untouchables" or the militant posturing by the various "dals" in this country.

The apologists of every religion, not excluding Islam, refuse to admit that all religions are a *pot-pouri* of the noble and the base, that all are a mixture of universally valid tenets and locally-based superstitions. Christianity is not just manifested in the Sermon on the Mount. It is also reflected in the Spanish Inquisition and the Index. Islam projects itself not only through the Prophet's revolutionary social change of the primitive and barbaric society in which he lived but also in the savage penal code – still practised in certain parts of the Islamic world – which enjoins stoning of a woman charged with adultery. The screaming and exultant hordes who vandalized the Babri Masjid did so in the name of Rama.

The apologists of every religion, not excluding Islam, refuse to admit that all religions are a pot-pouri of the noble and the base, that all are a mixture of universally valid tenets and locally-based superstitions.

Religion and Human Rights

Any attempt to determine what is essential

in a religion and what is merely peripheral, to remove chaff from the grain, is an exercise in futility, an endless debate which can never conclude. A more practical approach would be to confine religion to a limited area of influence. And whenever any particular belief or practice tends to abridge or abrogate a human right, it should be disallowed. One may presume that what is "essential" in a religion is unlikely to harm human rights!

Any attempt to determine what is essential in a religion and what is merely peripheral, to remove chaff from the grain, is an exercise in futility.

Another significant issue raised by the Taslima Nasreen affair (and Salman Rushdie) is the apparent conflict between two "values" – freedom of expression and respect for the religious susceptibilities of people. It is on this ground that some liberals in India and abroad have justified (though not condoned the *fatwa*) the banning of Rushdie's *Satanic Verses*. Some liberals and secularists in Bangladesh have expressed reservations in their support to Taslima Nasreen that her call for a revision of the Koran was a grave affront to the religious feelings of the Muslims. Freedom of expression must be sacrificed to protect the religious sentiments of the faithful.

Ms. Taslima Nasreen has been charged under Section 295A of the penal code in Bangladesh of "deliberate and malicious acts intended to outrage the religious beliefs" and if convicted could be sent to prison for a maximum term of two years. This code is a legacy of the ancient and savage practice of meting out harsh punishment to heretics. It is akin to blasphemy in criminal law which is prevalent in a few Christian States, including England. There is a strong movement in England to remove it from the statute books. The Law Commission in England in its Report, *Criminal Law: Offences against Religion and Public Worship*

(1985) has cogently argued for its abrogation. On the other hand, the Jamaat in Bangladesh has called for revision of the penal code to impose more severe punishment on "Blasphemers"!

A closer analysis of the issue of "conflict" between freedom of expression and religious sentiment of the people should clearly reveal the falsity and pernicious nature of the argument in defence of religious susceptibilities of the people. Primarily what constitutes "hurt" to the religious feelings of the people is highly subjective and therefore open to arbitrary and irrational responses. The existence of the Babri Masjid on the "Ramajannabhoomi" hurt the religious sentiments of the Hindus, apparently atleast a large number of them. Was

Maulana Rahman who leads a campaign in Bangladesh to "save the Faith and save the country", says, "How can a woman be treated as Muslim if she drives a car or rides a bicycle?"

vandalization of the mosque justified? Tomorrow a number of Hindus could put forth a claim that the sight of the mosque at Haji Ali hurts their religious feelings. It may be argued that the mosque pollutes the sea which belongs to the 'majority' community. Would one be justified in having the mosque pulled down? Maulana Rahman who leads a campaign in Bangladesh to "save the Faith and save the country", says, "How can a woman be treated as Muslim if she drives a car or rides a bicycle?" Obviously, these sights hurt his precious religious sentiment!

Philip Green writing in *New Statesman and Society* presents an unassailable case for the primacy of the right to freedom of expression over religious belief:

"Such a defence... is located in the distinction between institutions that are constitutive of a social or political system, and those that,

however laudable, are incidental to it. Free speech is such a constitutive institution; along with a few other related institutions, such as the right to vote, freedom of association, accountable government, equality before the law, and equal opportunity, it is constitutive of the political system we call "democratic". Freedom of speech is constitutive of democracy because in its absence the very process of democracy, the voluntary formation of groups

No one is compelled to read Lajja or any of Taslima Nasreen's writings. Banning these do not protect religion; they abridge freedom of expression.

of persons with like-minded views about what the public good or public interest requires, cannot go forward. Contrarily, no particular religious belief is essential to democracy. In this respect, and in this respect only, free speech and religious dogma, however much they may deserve to be called "sacred beliefs" are not on an equal footing."

Taslima Nasreen's views are no bar on any faithful Muslim in Bangladesh to practise his Faith. Nor has she forcibly compelled any unwilling ears to listen to her opinions. No one is compelled to read *Lajja* or any of Taslima Nasreen's writings. Banning these do not protect religion; they abridge freedom of expression. It is a thin end of the wedge which can impose today a censorship on one's views on religion and tomorrow on one's opinions on other social and political questions.

L'Affaire Nasreen has not only underlined the issue of justice to a beleaguered young writer but has raised issues of freedom of speech - basic to a democracy - the place of religion in politics and the role of women in society. Taslima Nasreen has chosen not only to speak for herself but for the entire womenkind.

“I REMAIN, SIR, YOUR OBEDIENT SERVANT”

N. B. GRANT

Hardly anybody pays attention to the requirements of efficiency, effectiveness and productivity of the governmental apparatus. The country is functioning as a democracy, but democratic institutions demanding accountability, have not penetrated the lower levels of government and administration.

In the days of the Raj, and even a few years after Independence, it was mandatory for all government servants, irrespective of their rank and status, to end all communications to the public by the words, “I remain, Sir, your most obedient servant”, thereby implying that they were accountable to the public who were their masters, and whom they had sworn to serve. Over the years, this type of salutation has ceased to be used, and the word ‘service’ has become synonymous with the term ‘servant’, and has reached a stage when the government servant thinks that, each time he is rendering a service, which is his duty to do, he is doing a big favour and obligation. In short the term ‘accountability’ has completely disappeared from the vocabulary of the bureaucrat and his political master.

In the Western democracies, the words ‘accountability’, ‘transparency’ and ‘delivery systems’ in the provision of public services and of governance, symbolise the rights which people have been able to extract from their governments. These carry the language and the message of modern day governance. The best example of this I found in Canada, where each department and institution of the government has been made to spell out in detail what services they commit to provide, of what quality and at what time, and what systems each one of them has installed for monitoring the delivery of such services and dealing with any complaints that are

received from the people. The Canadian government has promulgated that recipients of its various services are its clients, the customers, and their satisfaction is the *raison-d’etre* of existence of the government machinery. Like the private sector enterprises which exist for providing services and which depend entirely on consumer satisfaction for achieving the objective of their making profit, the governmental machinery is placed under obligation to ensure that, while they do not work for profit, they have to give complete satisfaction to those who receive the public services.

The term ‘accountability’ has completely disappeared from the vocabulary of the bureaucrat and his political master.

The Canadian System

In the Canadian system, the various departments of government have laid down specific standards of service. These are widely publicised and people are given assurance that not only will these standards of service be maintained, but that they will continuously be improved upon, and that any lapse in the maintenance of these standards will not be allowed to be repeated. It is worth looking at some of the standards which have been prescribed by the respective departments of that government. These are really eye-openers for us who have be-

Freedom First, January 1995

BRIG. N. B. GRANT (RETD.) is a freelance journalist.

come inured to the inadequacies and faults in the functioning of our institutions and departments.

Their revenue department for instance (the equivalent of our central taxation department) has laid down that

- it will always maintain 100 percent accuracy in communicating demands to the citizens;
- there will be at most 20 minutes wait at any counter of the department, for provision of information of services;

The governmental machinery unfortunately is bloated, outsized and flabby. Public grievances are hardly attended to.

- in the matter of telephone enquiries, the department will ensure that out of 100 calls made to it, no more than 30 at any time will result in the busy signal the first time, and once the caller gets through he will be connected to the official concerned within, at most, three minutes;
- there will, at most, be a one day response time for business enquiries, and not more than 30 days in replying to any letter;
- a client's request for alterations in taxation demands must be finally decided within 28 days.

UK Citizens Charter

Let us now look at some of the commitments which have been made by the government in UK, whose Whitehall type of democracy has been adopted by us. It has issued a White Paper in the shape of a Citizens Charter. This Charter commits the government to a variety of initiatives aimed at making public services more responsive and accountable to their clients, improving the quality of service and involving the people in choices. It prescribes as a policy that competition will be encouraged in the provision of services wherever possible, to spur

quality improvement. This will include reliance on market forces through privatisation, contracting out and removing the monopoly status of public services. It has committed that services standards will be published, making the information available on performance in relation to the standards, and providing clients the opportunity to act when services are unacceptable, by introducing effective complaints and redressal procedure as important factors of the entire programme. As an example, in prescribing standards it has been stated that, if a resident, for instance, calls for an ambulance it must reach within 14 minutes where the need is in an urban area, and in 21 minutes if the call is from a rural area. Such specific standards have been prescribed in relation to a large number of services, in areas such as transport, communication, procurement of supplies, etc.

The Indian Situation

We in India are at the threshold of transformation which the processes of economic development and liberalisation are bringing about; new horizons are opening up. There are inadequacies and difficulties, which we need to effectively and quickly overcome. There are various facets of the government functioning, at the Centre and in the states, that need to be overhauled and improved, if we want to create confidence in foreign investors. The governmental machinery unfortunately is bloated, outsized and flabby. Public grievances are hardly attended to. Points of contact between citizens and the field apparatus of the government have enormously increased, but simultaneously the harassment of people has also increased. Administrative and financial powers have become very centralised. As one travels from the center to the states and to districts and villages, the quality of administration shows distinct deterioration. Hardly anybody pays attention to the requirements of efficiency, effectiveness and productivity of the governmental apparatus. The country is functioning as a democracy, but democratic institutions demanding accountability, have not penetrated the

lower levels of government and administration. There are many ailments of the functioning of democracy and the problems are mostly based on political considerations which hold sway over the legitimate interests of the country.

A P.U.R.C. for India

There has to be greater enforcement of discipline and accountability. Openness in decision making must become the hallmark of the functioning of government and people must be involved in the decision-making processes. These are indicative of the changes that need to be brought about to make the governmental apparatus more responsive to the people and to meet their requirements of services for which they pay and which they demand. There is a paramount need for the evolution of a Citizens Charter for our country. To bring this about, there is need for the enactment of a Public Utility Regulatory Commission (PURC) Act. We understand that although the Ministry of Civil Supplies had initiated a proposal for this, all the consumer service ministries concerned have opposed the proposal. Some of the salient features of such an act based on similar commissions established in the USA and other Western democracies would be:

- the Public Utilities Regulatory Commission (PURC) would be a statutory, regulatory, quasi-judicial body, and not an advisory board.
- It will function as a quasi-judicial body in terms of its proceedings; filing a brief and answering interrogatories by the utilities, consumer organisations and their advocates.

*There is a paramount need for
the evolution of a Citizens
Charter for our country.*

- It will file written statements, producing expert evidence and addressing arguments like a regular adversarial proceedings before the quasi judicial body.
 - The jurisdiction of the PURC would cover prior approval for fixing and revising tariffs, fares and freights, and no revision in them, whether it be for power, water, telephones or public transport, etc. If the Western democracies have achieved this, there is no reason why we cannot do it in India.
-

Secrecy and Security

"Security restrictions – foreign national not allowed", says a notice in one of the Service Golf Clubs in Pune. There seems to be a fear that, some top secret military secrets may pass hands on the 19th hole – the club bar. If Moses gave the Ten Commandments, the Ministry of Defence has promulgated an eleventh one – "Thou shalt not disclose".

We seem to have mixed up secrecy with security, and do not seem to know the difference between information and secrets. Possibly, ours must be the only country in the democratic world where, in this age of satellite imagery, it is still forbidden to take photographs at aerodromes, dam sites, bridges and even railway stations, lest we give away some secrets of James Watt's steam engine, which by the way we still use. If one totals up such areas, there will be hardly any structure or place in this country which remains unclassified.

**Brigadier (Retd.) N. B. Grant, excerpted from his article
'The Eleventh Commandment - Thou Shalt Not Disclose, *Freedom First*,
October-December 1996**

WHEN LAWYERS DID INDIAN DEMOCRACY PROUD

M. A. RANE

The Supreme Court of India failed the people of India in their hour of trial, when the entire country was turned into a prison house.

The news of the declaration of the "Emergency" during the night of 25/26th June 1975 was not published in the morning papers of Delhi of June 26, as electric supply was shut off in the Bahadurshah Zafar Marg where most of the presses of the newspapers in the capital were located. Most people learnt of this declaration and of the midnight arrest of a number of leaders including an ailing Jayaprakash Narayan, Morarji Desai, Vajpayee, Advani, Madhu Dandavate, and several others from an announcement on the BBC in the early morning of 26th June. In the course of that day, censorship was clamped on the newspapers all over India.

More than a hundred thousand persons were illegally detained under MISA on the ground that they were threats to the internal security of India.

Lawyers all over India protested and abstained from attending the court on the 26th. The lawyers were led by eminent persons like retired Chief Justice Chagla, retired Chief Justice C. J. Shah, former Justice V. M. Tarkunde, Ram Jethmalani and others. A small section of lawyers among whom was Rajni Patel supported the emergency rule. Some lawyers who were members of the RSS were detained under MISA on the very first day. Those who offered satyagraha were also detained subsequently. More than a hundred thousand persons were ille-

gally detained under MISA on the ground that they were threats to the internal security of India. There were no acts on the part of any of these detenus to justify their detention under MISA.

Some of the earliest *habeas corpus* petitions filed in the High Courts on behalf of the detenus succeeded. The Delhi High Court released well known journalist Kuldip Nayar and a group of old Congressmen led by Bhimsen Sachar and six others who had addressed a letter to Mrs. Gandhi protesting against the declaration of emergency and the arrest of Jayaprakash Narayan and other leaders. Their *habeas corpus* petitions were argued by Mr. Soli Sorabjee. The Judges who released them were ultimately penalised. The senior Judge of the Bench was transferred to some other High Court and the junior Judge, Justice Agarwal, who had just been promoted from the cadre of District Judges was not confirmed and was reverted to his office as District Judge.

Mr. M. C. Chagla argued the *habeas corpus* petitions of Vajpayee and Madhu Dandavate in the Karnataka High Court and got them released. However, fresh orders of detention were passed and they were re-arrested. Morarji Desai and RSS detenus did not file *habeas corpus* petitions as a matter of principle. However, petitions were filed on behalf of a large number of political detenus belonging to different political parties.

In the Bombay High Court, a number of *habeas corpus* petitions were filed and the High Court directed the detenus to remain present on every occasion in the High Court. Other High Courts

Freedom First, April 1995

MR. M. A. RANE was a leading advocate and free lance journalist.

also released the detenues, taking the view that wherever the detaining authority had not applied their minds or that the orders were malafide, the detention orders were quashed and the detenues were set at liberty. Such decisions were given by all the High Courts, except the Kerala High Court, notwithstanding the drastic amendment in the MISA prohibiting filing of petitions even on grounds of malafides.

Mrs. Mrinal Gore who soon after the emergency went underground and later arrested, was detained in the prison at Akola, where she was lodged along with lunatic females.

Petitions were also filed on behalf of detenues for certain facilities. Mrs. Mrinal Gore who soon after the emergency went underground and later arrested, was detained in the prison at Akola, where she was lodged along with lunatic females. More than 150 lawyers appeared for Mrs. Gore with the sole object of indicating their solidarity against deprivation of civil liberties by the Government under the emergency rule. The Bombay High Court directed the Government to transfer her from Akola prison to Dhule prison where there was arrangement for the detention of female political detenues.



The government filed appeals in the Supreme Court against the judgements of the High Courts releasing the detenues. The case known as the *Habeas Corpus Case* was heard by a bench of the senior most five judges of the Supreme Court presided over by Chief Justice A. N. Ray. The other members of the Bench were Justices Khanna, Beg, Chandrachud and Bhagwati. With the exception of Justice Khanna, the bench upheld the constitutional validity of the Presidential order declaring the emergency and barring maintainability of the petitions for writs of *habeas corpus* as well as constitutional validity of the drastic provisions of MISA. Each one

If the majority had accepted the dissenting view of Justice Khanna and upheld the contention of the citizens, the lawyers would have been able to get released 90 per cent of the detenues detained under the MISA during the emergency.

of the Judges gave his separate opinion. An inconvenient question raised before the Judges as to whether the rule of law was abrogated and a person was shot dead without the authority of the law by an officer whether the same could not be questioned in the court of law saw these four judges fumbling for an answer who held that Article 21 was the sole repository of the right of personal liberty and as Article 21 was suspended during the emergency by Presidential order, no *habeas corpus* petition could be filed. If the majority had accepted the dissenting view of Justice Khanna and upheld the contention of the citizens, the lawyers would have been able to get released 90 per cent of the detenues detained under the MISA during the emergency.

It is worth noting that Chief Justice Ray presiding over the bench was a judge who had superseded three other judges and the other four judges of the bench were entitled to be promoted

as Chief Justices, if the convention of seniority was followed. Therefore, the prospects of the four Judges of the bench being promoted as Chief Justices was hanging in the balance. If any of them decided against the Government, he stood the risk of being superseded. This event actually took place, as Justice Khanna was superseded in February 1976, and his junior, Justice Beg was promoted as Chief Justice of India. There was every reason to believe that the judgement of the majority of judges in the *habeas corpus case* was the direct fallout of the supercession of the three judges that took place in April 1973, and of the power abrogated by the Union Government to itself in appointing and promoting Judges of the High Courts and the Supreme Court.

Fear was the watchword employed by the Government during the emergency in order to undermine the independence of the judiciary and make them toe the line of the Government.

A number of judges of the High Courts were *persona-non-grata* with the Government and were transferred against their will to other High Courts. Chief Justices Diwan and Justice Sheth of the Gujarat High Court were transferred to Andhra Pradesh. Justice Vimadalal of the Bombay High Court was transferred to Andhra Pradesh High Court. And there were orders to transfer Justice Mukhi, a heart patient, to the Calcutta High Court from Bombay. Ultimately he died of a heart attack in Bombay. Sixteen judges of the High Courts were transferred and further lists of judges who were likely to be

In India, Democracy had been given too much liberty to the people and they were trying to misuse it. The fault is ours that we were so tolerant and gave them so much of freedom.

Indira Gandhi, July 9, 1975.

transferred were mischievously leaked out from time to time in order to “discipline” the High Court judges. Fear was the watchword employed by the Government during the emergency in order to undermine the independence of the judiciary and make them toe the line of the Government.

The lawyers of the Bombay High Court and subordinate courts in the city decided to hold meetings of lawyers by invitation to discuss the issue of civil liberties. Public meetings could not be held without the permission of the Commissioner of Police in the city of Bombay. Therefore the lawyers approached the Commissioner of Police for permission which was duly refused. The order of refusal was challenged in the High Court. The petition came to be heard by a bench headed by Chief Justice Kantawala and Justice Tulzapurkar. In this case nearly 150 lawyers filed their appearances in order to show their solidarity against the Emergency rule. The petition was filed by Justice N. P. Nathwani, retired Judge of the Bombay High Court. It was argued by Palkhivala, Jethmalani, Cooper and other leading lawyers. The bench delivered a thumping judgement setting aside the order of the Commissioner and held that the Commissioner had no power to prevent such meeting of the lawyers. Pending the hearing of the petition, the Court allowed the lawyers to meet at the fixed venue in the Jinnah Hall near the Congress House and adjourn the same.

Accordingly, nearly 200 lawyers in black coats assembled in the Jinnah Hall. The meeting was attended by former Chief Justices Chagla and J. C. Shah and former Justice Nathwani. A number of armed police in their jeeps occupied the street as if 200 lawyers in black coats, by meeting in the Jinnah Hall under the orders of the Court merely for the purpose of adjourning the meeting pending the final hearing of the petition, were going to pull down the Government. Ultimately though the High Court decided in favour of the petitioner, Government appealed to the Supreme Court. Chief Justice Ray had departed from the practice of granting stay

of the order in the case concerned but started staying the operation of the judgement so that no other similar case could be filed in any other Court.

Thus the large majority of the lawyers carried on a continuous open battle against the rule of emergency. They held public meetings on any excuse that was available. On Mr. M. C. Chagla's 75th birthday, lawyers decided to felicitate him, in spite of his reluctance to have such a public function. We convinced the former Chief Justice that we wanted some excuse to meet. Ultimately a crowded meeting was held in the Bar Room of the Advocates' Association of Western India, when Chagla spoke everything against the emergency.

Similarly, a Civil Liberties Conference was organised by C. T. Daru at Ahmedabad in October 1975 since Gujarat and Tamil Nadu were the only states then with non-Congress governments. The Civil Liberties Conference at Ahmedabad was attended by a large number of persons including lawyers, Gandhians and freedom fighters – such of them who were not detained. It was presided over by former Chief Justice J. C. Shah and inaugurated by Chief Justice Chagla. The inaugural speech delivered by Chagla deserves to be included in any

anthology of great speeches. It is published as annexure to the second edition of his autobiography, 'Roses in December'.

During the emergency, all front rank and second members of the political parties in the opposition were arrested and detained without trial under the MISA. *It was surprising that none of the fire eating trade unions or organisations of teachers, employees of banks or LIC, associations of professionals like doctors, C.A.s or of industries raised a single finger of protest against the emergency. Even the journalists as a class or group did not show the courage to protest against the emergency.* But for the lawyers and freedom loving Judges, particularly of the High Courts, there would have been no open protest against the emergency rule. The people would have been required to resort to violence and terrorism. The Supreme Court of India failed the people of India in their hour of trial, when the entire country was turned into a prison house.



Four journalists who defied the censorship imposed during the emergency in 1975-76 along with their legal advisor. (From left to right) - C. R. Irani of the *Statesman*, A. D. Gorwala of *Opinion*, Soli Sorabji, Counsel, R. N. Goenka of the *Indian Express* and Minoo Masani of *Freedom First*.

Who Decides Our Freedom?

As I look at the world from my country, I begin to wonder whether people who have lived in freedom are not taking it for granted and, therefore, are reluctant to pay a continuing price for it.

Solzhenitsyn put the case very succinctly on BBC television recently.

How is it that people who have been crushed by the sheer weight of slavery, and cast to the bottom of the pit can, nevertheless, find strength in themselves to rise up and free themselves – first in spirit and then in body; while those who soar unhampered over the peaks of freedom suddenly lose the taste of freedom, lose the will to defend it, and hopelessly confused and lost, almost begin to crave slavery?

We are a poor country, but we have soared over the peaks of freedom. We certainly have not lost the will to defend it. But the question still survives – are we not throughout the world coming close to this riddle that Solzhenitsyn has posed in his incomparable language.

C. R. Irani,
Managing Director, The Statesman Ltd.
June 1976.

WILL INDIA SURVIVE AS A MEANINGFUL DEMOCRACY?

GANGADHAR GADGIL

I have been participating in seminars where people have waxed righteously indignant about this country; pointing out how everything is wrong with it; how it is almost beyond improvement. I am always amazed that this country has survived at all these last 50 years with a dismal rate of growth, called the 'Hindu rate of growth' of 3.5%. Incidentally, it is not the much maligned Hindu social order but the brave new socialist order that is responsible for this dismal rate of growth. Now suddenly this rate of growth has gone up to 6.5 and 7%. So this is a country which fools people all the time. It is full of ambiguities and ambivalences. It would seem that everything is wrong with it and still it seems to function. When we are convinced that this country will be sunk in debt, we suddenly find our foreign reserves soaring. I am therefore not willing to write it off. In any case, I have no option. This is the only country I have!

This is a country which fools people all the time. It is full of ambiguities and ambivalences. It would seem that everything is wrong with it and still it seems to function.

I have good reasons for feeling rather optimistic about this country of mine. We have just heard Mr. Mukhopadhyay on what is wrong with the Indian

economy. I am only going to ask him if all these things are wrong with the Indian economy, how is it growing at the rate of 6.5%? Logically it should not have grown by 6.5%, but it is and threatening to grow by 7% or more in the near future.

A Country Full of Surprises

So this country is full of surprises – many unpleasant and a few pleasant. Now looking to the possible dangers to our democracy, one is, of course, external aggression. I think by and large, the Big Powers are not interested in acquiring such a large empire like India these days. It is not a

I think by and large, the Big Powers are not interested in acquiring such a large empire like India these days. It is not a workable proposition because ruling India is a very troublesome and expensive business.

workable proposition because ruling India is a very troublesome and expensive business. When you can make money from India without ruling India, why rule India? Therefore I think no big power would be interested in taking over India though small powers in the sub-continent might like to grab parts of it. Bangladesh for example which is short of space would perhaps like to grab Assam and parts of North East India. And the Pakistanis may want bits of Punjab, Kashmir and UP. They may have some limited territorial ambitions, but I don't think any of them are in a position to do that. One reason is, whether we like it or not, we are a nuclear power

Freedom First, July 1997

PROF. GANGADHAR GADGIL was Honorary Economic Advisor to Hindustan Construction Company Ltd. He was a distinguished writer in Marathi literature.

and generally, people do not tangle with nuclear powers. In my view our military strength is quite enough to deal with Bangladesh, Pakistan or to contain China. In spite of all the weaknesses of our society, we have been able, time and again, to show that we can use our military strength to put down internal dissidence and also deal with external aggression. So there is no threat of external danger, atleast not in the immediate future. As for internal dissensions for the last 50 years we have had to contend with numerous inter-state river disputes and the desire for parts of India to secede from the Union, and we have done so with a fair measure of success.

The Unity of India

In most cases, the desire to break away from India does not seem to be so strong as to succeed. Three very violent efforts were made in the Punjab, in Kashmir with foreign assistance and in Nagaland too. In spite of these efforts we have held together. Are there any factors operative now which can turn the balance the other way? It doesn't seem so. Because, in the first place, if the South East Asian countries are prosperous, they won't be interested, and if they are not prosperous, they would be so weak, that they won't be able to do anything about it. So I don't think the break-up of this country through invasions or through violent uprisings of groups of people is possible. We have learnt to live with internal disputes and external threats.

Inter-state Disputes

For instance, the river disputes have been with us for 50 years. People get very angry. There are occasional riots. Maharashtrians want Belgaum. We make a lot of noise about it from time to time. But they manage to live without Belgaum and the people of Tamil Nadu manage to live with a smaller share of the Kaveri waters. So may be because we are a lazy people, or because we are people who don't have a strong will, or because we are a people who do not act effectively, it doesn't seem as if dissi-

dence is succeeding.

The Caste Factor

But there is another fact that is likely to result in, not the break-up of the state, but the disruption of society, and that is the caste and communal factor. The communal factor we have lived with and we seem to be reconciled or resigned to live with each other. But the caste factor is finding such violent expression for the first time. And it is this caste factor that is likely to so break up society that it will not be able to function effectively. This is happening in Bihar. Bihar is a state which seems not to function effectively. It is happening to some extent in UP. But it is not happening in the South. You will find that there is a greater measure of awareness in southern societies, where the lower castes have been engaged for half a century or more in movements for asserting their rights.

But there is another fact that is likely to result in, not the break-up of the state, but the disruption of society, and that is the caste and communal factor.

Take the example of *Dalits* in Maharashtra. Excepting the *Mahars*, other *Dalits* have not given up Hinduism. I am not saying that you must be a Hindu to be an Indian. I am not denying that one way of asserting that you are different is by saying you are a Buddhist. But you find that *Dalits* in Maharashtra, excepting *Mahars*, have not become Buddhists. And not all *Mahars* are Buddhists. In Tamilnadu there has been a powerful party in power which does not believe in God, yet I find that over the years, in Tamilnadu, people are returning to the temples. The rejection of the existing social order, that we are different, we cannot get along with you is an assertion that is not being made even when there is so much anger being expressed. Which

means that the caste factor is operating explosively only in the North where social reform movements have not been as strong as in the South. It is only in the North that you find caste dissensions becoming violent.

We Love to Quarrel

But then again it is the peculiarity of Indian society that we have too many castes and none of them is in a majority. And so ultimately, the BJP has to tie up with the BSP. And the *Dalits* who were opposed to the *Manuwadis* have to live with them and share power with them and tolerate them. They are able to do so because they have accepted each other for hundreds of years. Without knowing it, they are used to living together. And therefore they are not so violently desirous of breaking away from

It is the peculiarity of Indian society that we have too many castes and none of them is in a majority. And so ultimately, the BJP has to tie up with the BSP. And the Dalits who were opposed to the Manuwadis have to live with them

the rest of the society. They want to quarrel of course. They want to have big quarrels. That is the perversity of India – there are lots of arguments, lots of quarrels but we still live together because we love to quarrel with each other! So this I think is a very peculiar factor and which always surprises me and which I certainly fail to understand.

The structure of Indian society, particularly, Hindu society, is a hierarchy of castes. There are no two sharply divided social classes – one of the exploiters and the other of the exploited. The Marxists would have loved to see such a division in this country. This is because the exploiters at one level are the exploited at another level. And there-

fore you find society divided into small political groups, too small or too weak to assert themselves and grab power. They of course flex muscles and declare undying hostility. Ultimately they have to team up. The Indian mind has an amazing capacity to accept contradictions. This ambivalence of the Indian mind, this capacity to accept totally opposite things is considered a great weakness of Indian society. It seems to me also to be a great strength of Indian society. The Mandalisation of the community, has unnecessarily increased caste consciousness. I think the results which the Mandal report wanted to achieve can be achieved in other ways. But let us accept the fact that the Mandal Report has been accepted.

The Indian mind has an amazing capacity to accept contradictions. This ambivalence of the Indian mind, this capacity to accept totally opposite things is considered a great weakness of Indian society.

Where Mandal Will Fail

Still there are factors that will dilute the effects of Mandalisation. The economy which is going to divide jobs on a caste basis is the public sector economy. And this public sector is a declining sector; the expanding sector is the private sector. And the private sector is not going to accept caste as the basis for recruitment, particularly the multinationals. Take for instance, the banking sector. With the entry of foreign banks, employees find new opportunities and rush to these other private sector banks because the pay is more. So we find a number of capable people in the nationalised banks moving over to new private banks and foreign banks, getting much better salaries and prepared to take more risks. And, as time lapses and people become self-assured and feel that they can compete with other,

there will be a movement from the stagnant, caste-based public sector into the non-stagnant, non-caste-based private sector. I am not saying this will necessarily happen. I am saying this seems to me to be a possibility. In any case I want to see possibilities which gives me some hope. Because, as I said, this is the only country I have.

Law & Order

There are other major issues. One of them is the breakdown of law and order and corruption. Law and order is breaking up, certainly it has broken down very much in Mumbai, it has broken down in Bihar, UP and almost everywhere. Formerly if in my travels around Maharashtra – and I travel

Because we are India, we also seem to be able to grow at 7% when law and order is breaking down to such a degree. It is a vast society and its ability to suffer toxicity is very high.

around a great deal in Maharashtra – I met an MLA, he would say somebody has grabbed somebody else's land. Now when you go around, you find people casually mentioning that there has been a murder. Murders have become an accepted fact of life in Maharashtra. It was not so earlier. Life used to be pretty safe here. And despite this terrible law and order situation, you find some economic growth. This is just one of the contradictions in which this country seems to revel.

If law & order is breaking down, if there is insecurity of life and property, economic growth must take a beating. I am sure it is taking a beating. As I said, we could develop much faster. But because we are India, we also seem to be able to grow at 7% when law and order is breaking down to such a degree. It is a vast society and its ability to suffer toxicity is very high.

Corruption

Maybe growth has a tendency to perpetuate itself, to accelerate itself. It creates an appetite, an appetite for growth, for change, for liberalisation. And this is happening. Things are loosening up and if things are loosening up, then *may be* the kind of corruption that we have and the background of law and order, insecurity of life and property and the red tape that we have, tend to work in a funny manner. For example, take red tape, because of which you cannot get anything done. But there is

You find suddenly a city like Surat being cleaned up by a bureaucrat. I would never have believed that such a thing could happen,

corruption, and you can get every thing done with corruption! So corruption which is a bad thing becomes a good thing in Indian society. I am not condoning it. I am not for it. But I am only putting before you a picture of reality. During the days of Pandit Nehru and Indira Gandhi, if the private sector could expand, it could expand only because of corruption. And if it could function, it could function only because of corruption. Without it all of them would have been dead by now. Let me once again assert that I am not saying that corruption is the best way of dealing with red tape.

The Bureaucracy

I am in favour of the reform of the bureaucracy. And yet you find even among the bureaucrats capable, efficient and honest people. You find suddenly a city like Surat being cleaned up by a bureaucrat. I would never have believed that such a thing could happen, but the city of Surat has been cleaned up mainly because of the efforts of a bureaucrat. If the bureaucrat starts making this kind of contribution, then maybe while he will do a lot

of wrong, he may be doing some good. What is wrong will perish, because it ultimately leads to destruction. But the good things will survive because they lead to sustenance and growth. Take Mr. Seshan, the Election Commissioner. A peculiar kind of person, but he gave us clean elections which seemed impossible in a country like ours. But it happened. And it continues to happen even after he has retired. The same sort of thing is happening in the judiciary. Suddenly one finds that they can do something for this country. Of course, don't expect too much from them. They are not clean either and they are very inefficient. But they at least are a force which puts a check on certain tendencies in society. So you find again and again factors which were written off suddenly showing strength and usefulness. And this is happening again and again in Indian society.

If you go to Tamilnadu, they will say they have nothing to do with the Hindi language. But if there is a good movie in Hindi, they will watch it. This means that India is one market.

Commercialisation as a Factor

And you find the forces of commercialisation and modernisation bringing people together. For example, television. I have heard a lot of criticism about the programmes of Zee Cinema. But I must say that people from Tamilnadu to Kashmir watch their movies. And that is a unifying factor. If all people like the same movie, it is something good. At least there is one thing that is commonly accepted and enjoyed in this country. And automatically, the Hindi language also gets accepted. If you go to Tamilnadu, they will say they have nothing to do with the Hindi language. But if there is a good movie in Hindi, they will watch it. This means that India is one market. And one market for labour, one market for enterprise, one market for goods is a powerful unifying

factor. It works very silently. Then there is the apparel that an Indian wears. In the good old days, the way he clothed himself was his visiting card. Earlier you could identify an Indian – which part of India he came from – from the clothes he wore. But this is not the case now. We are becoming similar, in clothes, language, education, social habits. For example, the kind of food that Gujaratis once used to eat or the Maharashtrian ate is not the kind of food they eat today. And these factors are bringing us together. This is a hopeful factor for me – the commercial factor.

Opportunities for Liberalisation

There are many other things too which are wrong. Thus the Indian Railway system is rotten, the infrastructure is not working. But the very fact that these things don't work are, I think, an advantage! If the Indian Railways don't work, someone is bound to say 'let's have something else'. And at some point of time, we will become desperate and we will let the multinationals in because we are bankrupt, and have no dollars in our kitty. So one day we will say, our Railways a giant socialist enterprise, giving employment to a large number of people don't seem to do the work they are supposed to do, so let's give somebody else a chance. That much tolerance, that much flexibility the Indian has. He can do contradictory things at the same time very happily, which most people cannot! The failure of all the things which I have just said may carry within them the seeds of change.

Of Collapsing Societies & Revolutions

Of course there are instances of societies that have collapsed. I have read the history of societies that have collapsed and of revolutions that took place such as the French, the Russian and Chinese revolutions. But many of the factors that operated there and which brought about a collapse of society do not seem to be operating here.

We have not been occupied by foreign coun-

tries for 30 years as China was occupied. We are not so stagnant that there is no hope for the poor people. They have some ground for hope. They can come to Mumbai and live in *zopadpattis* which is bad for us, but good for them. For there, they can earn their living. So there is always an escape. And if there is an escape, then people do not want a revolution. Revolutions are dirty things. Revolutions have done immense harm to society. This was the case with the Chinese revolution, the Russian revolution and the French Revolution too. Had there been no revolution, France would have been comparable to England in economic progress. In fact, their textile industry was more advanced than the British industry – before it got mechanised. So this seems to be the situation in India where nothing seems to work and yet where there is hope – at least ground for hope.

I am also a student of history. And I find that our society has survived for thousands of years with changes and modifications. If the local people were failures, foreigners came; they were absorbed into society, thus more competent people, more brave people took over society. Later on, others came and so on. There has been a continuous willingness to absorb change and to survive. And still the basic structure of society has remained more or less the same. Isn't this a strength; isn't this a factor that has made democracy survive for 50 years here, when it collapsed in no time at all in Pakistan? Why did it not collapse here? It didn't even when Nehru died, it didn't when Indira Gandhi declared an emergency. At that time, I had given up all hope. But look at the resilience of this society. Democracy came back. Partly because Indira Gandhi herself was an Indian and partly because Indian society is Indian.

Individual Initiative & Enterprise

We always read about corruption, about law and order breakdown, failures of railways, etc. in the newspapers. But at the same time when I travel

around Maharashtra, I find a lot of constructive work being done by young selfless people in almost every town and district of Maharashtra. Recently I was in Malwan and there I met a young engineer. He had given up his job as he was interested in social work. He has improvised techniques of production for the simple people – for instance, a better way of breaking up cashew nuts. He brings together children of poor people, gives them education, trains them and sets them up as self-employed people and he seems to be getting help from politicians. He told me that money was not a problem. Elsewhere, I found somebody improving the quality of grapes, somebody exporting roses, somebody manufacturing champagne.

I find that the face of India has changed. For example, the Krishna Valley (Sangli, Kolhapur, Satara) in Maharashtra is completely transformed. They have a shortage of labour there. They get labour from Andhra and from Karnataka,

These things never appear in newspapers somehow. I find that the face of India has changed. For example, the Krishna Valley (Sangli, Kolhapur, Satara) in Maharashtra is completely transformed. They have a shortage of labour there. They get labour from Andhra and from Karnataka, because they do not have enough labour in the state. Isn't it a big thing that agricultural activity should find itself short of labour and be able to absorb people; that an overcrowded area of economic activity should need to get people from outside. This is happening. And once these people get used to a better standard of life, once they get used to having trucks and bicycles and motorbikes, once they get used to having banks and colleges, they are not going to look back, they are not going to give it up; they are going to ask for more.

And some of them are very enterprising. I am amazed at the number of women entrepreneurs in Maharashtra. Maharashtrians are not an enterprising people at all. Still I find a number of women setting up new enterprises. So I think, there are grounds for hope. There are a number of positive factors at work.

Maharashtrians are not an enterprising people at all. Still I find a number of women setting up new enterprises.

Negative Factors

And the negative factors are that nobody wants to take over India. I don't think the army wants to take over India. Their hands are already full. Kashmir is enough for them. I do not think they

would dream of taking over India and having so many insurgencies on their hands. And the Army is not in any case, a unified force as armies elsewhere. It consists of diverse people. And we internally are either too weak or too lazy or too tolerant or too willing to accept contradictions or too willing to express our anger in seminars and not let it really create problems for this society. And therefore I would say, Indian democracy will survive, seems to be able to survive – I don't know whether it will be meaningful and successful, because there will always be people at seminars who will say that it's not meaningful at all and that it has failed. It is a part of our tradition to be very disappointed with things as they are and be angry and to express righteous indignation. This is part of the Indian psyche. At the same time, all these constructive efforts that are being made, these forces that operate silently, invisibly hold promise of a society which will function and which is likely to be viable.

TECHNOCHEM AGENCIES (BOMBAY) PVT. LTD.

REGISTERED OFFICE:

16 Kitab Mahal, 1st Floor, 192 Dr. D. N. Road, Fort, Mumbai - 400 001.

Tel: 91-22-2207 4739 • 2207 9975

Fax : 91-22-2207 4869

Email : tcafort@technochemgroup.com

MARKETING & ADMINISTRATIVE OFFICE:

31-A, 1st Floor, Giriraj Industrial Estate, Mahakali Caves Road, Andheri (E), Mumbai-400 093.

Tel: 91-22-2687 3930 • 2687 3931 • 2687 3932

Fax: 91-22-2687 3933

Email: admin@technochemgroup.com

INDENTING & TRADING DIVISION

: Imports & Exports of Chemicals & Allied Products, Raw Materials for Pharma-Agro, Fine & Speciality Chemicals, Bromine, Bromine Compounds etc.

ENGINEERING, PROJECTS & TECHNICAL CONSULTANCY DIVISION

: Sales, Marketing of Technology & Services for: 1) IDE Technologies Ltd. Israel - Sea Water Desalination Systems, 2) Omat Systems Ltd., Israel - Waste Heat Recovery Power Generation Plants, 3) USA - Waste Water Treatment - Instrumentations - Valves - Chemical Projects, 4) Arad Technologies Ltd., Israel - Automatic Meter Reading (Water) Technology, 5) PRS Mediterranean Israel - Road Construction Technology

GROUP ASSOCIATES:

* INDIAN DESALINATION ENGINEERING PVT. LTD.

* BHAVANI ENVIRO TECHNOLOGIES PVT. LTD.

* INDRANEEL CHEMICALS

N.B.H. KULKARNI

FOUNDER - CHAIRMAN

THE INDIAN STATE VS. ITS CITIZENS

AN UNEQUAL CONTEST

J. B. D'SOUZA

Some of us believe in an 'Asian' concept of human rights, which holds that economic development has to precede the full flowering of human rights. Others have the delusion that the security forces need to be ruthless, unquestioned and unbridled, if they are to keep the country safe.

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in, the school or college he attends, the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.” That was Eleanor Roosevelt, chairing the UN Human Rights Commission in 1948.

A recent study on south Asia reported the shocking fact that one in every three Indian children under 16 is forced into child labour.

Of the violence within the home – the wife beating, the child abuse, the cruelty practiced on domestic servants – there is no measure. We know only that it happens everywhere, all the time. There is very little remedy, legal or societal. It hides behind closed doors.

Freedom First, October 1998

MR. J. B. D'SOUZA was a civil servant. He held senior positions including that of Chief Secretary, Government of Maharashtra and Municipal Corporation of Greater Bombay. He is active in a voluntary agency engaged in promoting low income housing.

Bonded & Child Labour

Far more openly and shamelessly practised in India are bonded labour and child labour, official denials notwithstanding. A recent study on south Asia reported the shocking fact that one in every three Indian children under 16 is forced into child labour. (Yet our governments happily adopt and report impossible school enrolment figures: The proportion of boys enrolled in primary school officially exceeds 100% everywhere except in Haryana and Kerala; our governments are not ashamed of proclaiming this ridiculous figure. For girls the official ratio is 93%.) Millions of Indians lose their rights well before they reach adolescence. Millions live in bondage and misery all their working lives. For all these millions, rights are costly irrelevancies; their struggle is for survival.

And there are the millions whose rights are suppressed by a cruel caste system, a system of which the excesses were outlawed by the Constitution we adopted in 1950, but which has lived on to this day.

Violations by State Agencies

To these societal assaults on human rights we have in these fifty years of so-called freedom added a persistent barrage from the security forces – the army, the paramilitary forces and the police.

Violations by the State agencies are much

more severe, more intense. They are perpetrated illegally as well as under cover, or colour, of law. And there is no redress; the transgressor is the very agency we taxpayers pay to protect us.

Let's look first at the transgressions that have the colour of law. Almost since the dawn of our independence our statute book has contained draconian provisions for detention without trial. Nehru had the Preventive Detention Act, although before 1947 he had himself castigated the British government for its resort to savage laws of this kind. Its recent *avatar*, TADA, could get you 6 months in jail for an innocent utterance, such as questioning our government's stance on Kashmir. A Punjab High Court judge who had lectured in support of civil liberties was arrested, handcuffed, and made to stand for hours in the scorching sun of a Chandigarh summer. And while he stood there the police burgled – not just searched – his home. TADA made a confession to a policeman admissible in evidence, overturning one of the cherished principles of Indian jurisprudence. Worse still, it introduced thereby a direct incentive to torture of prisoners, a course our police pounced on with alacrity.

Misuse of TADA

TADA was enacted to deal with terrorism in the Punjab, but it soon became a handy instrument of political tyranny that our governments applied to 22 States, imprisoning 50,000 Indians. And which State do you think contributed most prisoners to that total? It was Gujarat, the home state of that arch-terrorist Mahatma Gandhi; Gujarat, where terrorism was virtually unknown. Yet Gujarat jailed 19,000 persons under TADA!

TADA may have gone, but its spirit survives, and hundreds of citizens arrested before it lapsed still languish in jail.

The cover of law imposes further hardship and human rights violations on thousands of under-trial prisoners. A poor man accused of trying to kill

a former CM of Maharashtra was finally acquitted a few weeks ago, seventeen years after he entered jail. Who bothered about this innocent man's rights for seventeen years? Will his accusers be brought to trial?

TADA made a confession to a policeman admissible in evidence, overturning one of the cherished principles of Indian jurisprudence.

Violations by Security Forces

Turn now to the totally illegal violations that take place every day, at the hands of the police, the army, and the other security forces. In coping with insurgency in the north-east and Kashmir, the army has not been as virtuous as its generals claim it to be, even if it cannot take the entire credit for alienating the people of these two areas from the rest of us Indians.

In Manipur on 16th February last year the 57th Mountain Division arrested one Kanjugam Singh, suspected of links with insurgents. On the 19th he was delivered to the police, who sent him to hospital. He died the next day.

In March 1996 one Andrabi, a Kashmiri journalist who had campaigned for human rights, was arrested by a unit of the 35th Rashtriya Rifles. Less than a fortnight later his body was found. No explanation was forthcoming, nor was it safe to demand one.

These are only a few out of a large number of cases that stand out in my memory, and not even three swallows make a summer. In fact, the army's onslaughts on human rights are better concealed than those perpetrated by the police, because they are confined to limited areas of the country in which insurgency is particularly visible and media candour is actively deterred, as Andrabi's case shows. The army is also careful to turn its victims over to the

police after it has “dealt” with them.

Police Atrocities

The police are everywhere, and so are their atrocities. Just about a month ago the sight of two railway policemen thrashing a poor woman hawker at Andheri station in Bombay roused commuters into a violent protest. In retaliation the railway police came out in force to lathi-charge the protesters. The resulting stampede killed a woman commuter.

About a year ago a 14-year old was arrested in Tamil Nadu on a false charge of stealing a bicycle. That evening, his decapitated body was found on the track of a nearby railway station.

*What makes our security forces
so ready to resort to their own
terrorism, to trample freely on
our rights, is the virtual
immunity they enjoy.*

This list too could go on and on. But apart from such scattered excesses, Bombay witnessed during the 1992-93 riots systematic attacks on innocent people by the very police whom we pay to protect us. The Srikrishna Commission has named a number of police officers for prosecution, chief among them R. D. Tyagi, then Joint Commissioner of Police. For his pains Tyagi was promoted to be Commissioner!

Even in normal times, our police are ever ready to arrest people they don't like, on the slightest of pretexts. And once arrested you are in deep trouble. You are available to satisfy the sexual or sadistic instincts of your interrogators, available for assault, rape, torture and even murder. Last year the number of custodial deaths in India was up from 303 in 1996. Maharashtra led the States in this shameful tally: its score was 200. It led also in custodial rapes, testimony to the virility of the Maharashtra policeman. “In the name of custodial interrogation a reign

of terror is let loose, and people are harassed” — wise words from none other than Mr. Tyagi, the same Tyagi, now retired.

Police “Encounters”

Perhaps the worst form of assault by the State on human rights is its repeated use of ‘encounters’. Bombay's Police Commissioner recently told a meeting that in encounters the police shoot only in self-defence. On the platform with him another speaker cited 99 police encounters, in which 135 people were killed, but not one policeman was even injured. Someone was lying.

What makes our security forces so ready to resort to their own terrorism, to trample freely on our rights, is the virtual immunity they enjoy. Just try to register a complaint against a misbehaving policeman at a police station. You face a blank wall. You are lucky if you are not yourself charged with some crime and locked up. And the police strenuously resist enquiries into their misconduct, on the spurious ground that the force would be demoralised. What an exalted state of morale must pervade the police if it cannot survive a revelation of the truth!

Saddest of all is the apathy of the middle classes to such excesses, which mostly hurt the poor. Some of us believe in an ‘Asian’ concept of human rights, which holds that economic development has to precede the full flowering of human rights. Others have the delusion that the security forces need to be ruthless, unquestioned and unbridled, if they are to keep the country safe. Again and again one remembers Niemoller, speaking of Germany, in the thirties: ‘First they came for the Jews, and I did not speak out — because I was not a Jew. Then they came for the Communists and I did not speak out — because I was not a Communist. Then they came for the trade unionists, and I did not speak out — because I was not a trade unionist. Then they came for me — and there was no one left to speak out for me’.

THE TEHELKA TAPES – AN ANALYSIS

ASHOK V. KARNIK

There is competition in mud-slinging which will become worse if mere allegations start bringing down governments.

The tehelka.com expose of corruption in defence deals has shaken the country, not because of new facts brought before the country but because of the blatant venality of a few senior officers – both uniformed and civilian – shameless bragging and name dropping by self-appointed middlemen, the sight of senior politicians dealing innocently or otherwise with supposed arms dealers and innuendos regarding high level involvement in such corruption. The opposition parties did not allow the country to study dispassionately the implications

We are still an immature democracy; the parliament, the media and the political parties are ruled by emotions and not by logic.

of the tapes or even understand what the tapes meant. The opposition was interested in embarrassing and if possible dislodging the Government. The media was interested in publicizing the scandal and not in arriving at the truth. The Government was on the defensive and wanted to either condemn the tapes or defend the politicians. In any case, the atmosphere was so vitiated that whatsoever the Government did was construed to be wrong. Dispassionate, objective debate became impossible.

India's Misfortune

This was, and is, the misfortune of this country.

Freedom First, April 2001

MR. ASHOK V. KARNIK was a senior officer (ret'd.) in a central government security organisation.

We are still an immature democracy; the parliament, the media and the political parties are ruled by emotions and not by logic. That a two-man team of video journalists, by using means fair or foul, however intrepid, can shake the foundations of this country by recording the unguarded and foolish talk of a few individuals on the fringes of power is amazing and disturbing.

Implications

There is no reason to believe that the tapes are forged or bogus. *Prima facie*, these have to be accepted as genuine.

The real problem may be in the editing of the tapes. What does the omitted portion contain? Does the edited portion reflect the entire truth? Or does it highlight only a pre-determined conclusion? Do the deleted portions include interviews of honest officers who refused to talk to the bogus arms dealers?

Legally, the officers who have accepted money and entered into a dialogue with the tehelka pretenders should be penalized. To determine whether their action fits into the exact anti-corruption provisions may involve legal hair-splitting but they should certainly invite the provisions of conduct rules. They are a disgrace to their service and should not escape retribution by resorting to some legal trickery.

The politicians accepting money even for their party funds may be guilty of no crime but certainly of impropriety – particularly when they knew that the offer was made by a business house trying to

get a government contract. No favours might have been sought but the implications have to be understood at least by senior politicians. Jaya Jaitley was at least careful enough to make her position clear but Bangaru Laxman did not know right from wrong. To be fair, he may have same excuses to offer but he will have a lot to explain. Whether an MP (a public servant) accepting money for party work - from unverified sources - constitutes an offence is a question open for legal debate.

The middlemen were obviously trying to prove their reach and dropped names galore. Anybody analyzing their statements carefully would know that they were bluffing. They thought that they had come across a naive international dealer and were trying to get the maximum commission by claiming that they knew everybody from the Prime Minister downwards. One of them, a Nigam, made a very apt comment saying that all middlemen in Delhi claim that they know the PM; it is doubtful if they have access to the PM's gardener!

*Rules have to be amended to
check retired officers from
misusing their acquaintance.
Serving Defence Ministry officials
deserve to be penalized for
acting as touts.*

R. K. Jain and R. K. Gupta who have done the most name-dropping on the tapes fall in the above category. Jain has already confessed that he had lied just to get high commission. The lies were so obvious that if the Tehelka team was really keen to unearth the truth, it should have investigated their claims.

Retired defence officers and civilian Defence Ministry officials who led the Tehelka team to serving senior Army Officers are middlemen themselves. Rules have to be amended to check retired offic-

ers from misusing their acquaintance. Serving Defence Ministry officials deserve to be penalized for acting as touts. They are a part of the evil network.

One admires George Fernandes's simplicity in using only one room of the Defence Minister's bungalow, but he should recognize the sanctity of a minister's house and know that any activity therein acquires the stamp of government approval. Jaya Jaitley's activities from his bungalow do not remain only Samata Party's affairs. The government should frame rules to prevent use of Ministers' houses for collateral purposes.

*Is a journalist justified basing his
findings on unsupported gossip
(that is unknowingly recorded)
and damage the reputation of
any person?*

Journalistic Freedom or Licence?

The journalistic enterprise shown by the Tehelka team is *prima facie* praiseworthy - an unorthodox perhaps even unethical - effort in exposing corruption. One may not like Tehelka's method but one has to appreciate its results. However, Tehelka's intentions ought to be judged on further scrutiny of how the team handled the material collected by it. Did it want to present the facts to the world as the team found them? Or did it want to cause a sensation by highlighting certain facts and hiding others? Did the team try to verify the shocking claims made by some of the interviewees or did it allow the more explosive claims to remain, knowing fully well that the interviewees were lying? Some of the claims were blatantly false. What did the Tehelka team do to check the facts? They did not obviously check back with maligned leaders like George Fernandes, Yeshwant Sinha, Brajesh Mishra, Ranjan Bhattacharya, *et al.* Such checks

might have exposed the team prematurely but did it check the public records to verify facts?

The Tehelka team almost ruined the careers of many persons just on the basis of somebody bragging about what they could get done through such persons! Remember the Kapil Dev tapes publicized by Manoj Prabhakar for the same tehelka.com. Was Kapil Dev not exonerated by the CBI?

Is a journalist justified basing his findings on unsupported gossip (that is unknowingly recorded) and damage the reputation of any person? Normally, sworn affidavits are recorded in such cases to safeguard journalistic probity. In this case, loose talk was let loose to attack high officials. We are familiar with groups of persons in the comfort of private gatherings indulging in wild gossip ranging from politicians' lives, film stars' scandalous behaviour to cricketers' betting habits with apparently the fullest authority of personal knowledge. Should journalists publicize these as evidence of wrong doing? The affected persons should take Tehelka to court or at least to the body which seeks to regulate the electronic media.

How can you ask a Government to resign because some dubious middlemen have dropped names of Ministers and senior Government Officers in their tall claims of being wheeler-dealers?

Political Reactions

The reaction of opposition parties, particularly the Congress, to the Tehelka tapes was not surprising. The Congress thought that it had got a weapon to bring down the Government. That the Congress was desperate enough to grab any opportunity to bring down the Government was well known. What it could have legitimately expected

Do A Favour
to your friends
send them
a sample copy of
Freedom First
with your compliments.

Freedom First

3rd Floor, Army & Navy Building,
148, Mahatma Gandhi Road,
Mumbai 400 001.

Please send a sample copy of **Freedom First** to the following with my compliments:

Name: _____

Address: _____

Pin _____

*

Name: _____

Address: _____

Pin _____

*

Name: _____

Address: _____

Pin _____

*

Name: _____

Address: _____

Pin _____

*

Name: _____

Address: _____

Pin _____

Sender's Name & Address

Name: _____

Address: _____

Pin _____

was that the coalition government would collapse in the wake of the Tehelka shock. Once this did not happen, it went to the ridiculous extent of demanding the Government's resignation. The Congress when in power, had faced such scandals without even instituting inquiries into the allegations, refused to debate the issue in Parliament or trust an Inquiry Commission to arrive at the truth. Its insistence on the Government's resignation and registration of FIR are too lame to stand scrutiny. To say that what is seen on a video film does not require any inquiry is an irresponsible assertion. Even self-confessed murderers are allowed a trial after due investigation. How can you ask a Government to resign because some dubious middlemen have dropped names of Ministers and senior Government Officers in their tall claims of being wheeler-dealers? Or because some army officers have turned out to be corrupt? At this rate, no State or Central government can ever function. Witness the recent scenes in the Maharashtra Assembly! Let the Congress act as a responsible opposition party and not like a petulant child, asking the government's resignation one day or the formation of a JPC the next day! There is competition in mud-slinging which will become worse if mere allegations start bringing down governments.

Other opposition parties gleefully joined hands with the Congress to obstruct Parliament. To what depth the values of parliamentary democracy have sunk! Since the Government wants a discussion on the issue, the opposition should be happy to expose the government's negligence and not block parliamentary procedures. How the Speaker allows this and does not suspend the unruly members is a mystery. In any case, all this proves why democratic practices are still foreign to us.

The Sangh Parivar

While the reaction of the opposition parties was predictable, though inexcusable, the Sangh Parivar's was no better. Its recent propensity to

speak out on any and all subjects, is becoming its undoing. The pre-Sudarshanji Sangh might have waited, demurred and allowed the issue to take its normal legal course. The current Sangh practice is to jump in with both its feet. The description of Bangaru Laxman as a failed student (*swayamsevak*) was realistic enough, but some RSS leaders questioned the competence of the PMO's functionaries. That they had a bias against some PMO officials was well known but to use the Tehelka episode to exhibit this bias was unpardonable. Since they cannot attack the PM, the Sangh functionaries are using the PMO officials as whipping boys.

The Tehelka tapes have exposed a weakness. All parties together must seek remedies to control the virus of corruption. It cannot be totally eradicated.

Prognosis

It is high time, balanced minds and objective thinking came to the fore. The Tehelka tapes have exposed a weakness. All parties together must seek remedies to control the virus of corruption. It cannot be totally eradicated. No civilization has succeeded in eradicating the evil. It is the bane of the human species to be greedy, unethical and immoral. What can be done is to make it clear that corruption will have a heavy price to pay. Corruption should invite social condemnation and legal penalty. It should not become an accepted norm. The greater the power entrusted to an official, greater should be the vigilance over him. Theoretically, checks and balances are put in place but who checks that the checks are not bypassed? This is a national problem which cannot be solved by ousting one Government and bringing in another. The earlier this is realized by all political parties and social organizations the better it would be for the country.

THE CITIZEN'S RIGHT TO KNOW

ELECTORAL REFORMS : KEY TO EFFECTIVE DEMOCRACY

JAGDEEP S. CHHOKAR

It needs to be reiterated that the judgement is not about disqualifying people from contesting elections, it is about disclosure of the criminal background of the candidates, if any.

India is often referred to it as a vibrant and vigorous democracy. This might well be justified compared to a large number of other countries that gained independence from colonial rule around the same time. There is however reason to be concerned about the health of our democracy and its future. Just because we have elections regularly, some might even say far too often, does not necessarily mean that we have an effective democracy.

Just because we have elections regularly, some might even say far too often, does not necessarily mean that we have an effective democracy.

One view is that the kind of elections we have are the very antithesis of democracy. Following excerpts from a letter written to the editor of one of the newspapers in Ahmedabad on September 9, 1999 soon after the elections, testifies to this:

“Thank God! The vulgar cacophony, throwing of abuses and trading of charges by political parties with each other is over.

Freedom First, July 2002

MR. JAGDEEP S. CHHOKAR is a life member of the Indian Liberal Group and a founder member of the Association for Democratic Reforms. He is a professor, and currently Dean and Director In-charge, at the Indian Institute of Management, Ahmedabad. He can be contacted at chhokar@iimahd.ernet.in

“All political parties have made narrow-minded, extremely bigoted ... statements against each other as if they were in the race to prove who was more conservative and backward and who would be the first to destroy this nation by such ideologies, as Taliban has done for Afghanistan!

“No wonder people showed fatigue and displayed lack of enthusiasm in the type of democratic exercise now repeatedly held to elect the begging candidates so that on being elected they can sit in power and loot us, and amass wealth and power for their dynasties.

“Their slogan seems to be, ‘Cast your vote in favour of one whom you want should amass wealth!’

“Are our aspirations being fulfilled, even minimum security of life and basic services like food, water, shelter being met by the system created?

“What democratic values these bunch of self-appointed leaders will propagate with such narrow-minded approaches. Our democracy ends the day we cast our vote.”

The Election Process

If democracy has anything to do with freedom – and freedom with responsibility – then the electoral system might well be the very heart of

democracy. If this sounds like an over statement let me try and sketch briefly what all does the electoral system include. It determines who can or should be allowed to vote. When should electoral rolls be prepared, revised, and how? The formation, functioning including funding, etc. of political parties is also an integral part of the electoral system. Included also is the basic question of who can contest an election. Then comes the actual conduct of the elec-

If democracy has anything to do with freedom – and freedom with responsibility – then the electoral system might well be the very heart of democracy.

tion, which is what is most associated with the electoral system. On what basis is the winner of the election decided is another key element of the electoral system. These are some of the pre-election and during election activities. There is a whole range of post election activities during which the outcome of the electoral process are managed, such as post election disputes, election petitions, formation of the government, and subsequent functioning of the government including issues such as defections. This illustrative list indicates the critical role of the electoral system in ensuring an effectively functioning democracy.

The Current Situation

The widespread and increasing disenchantment with politics and politicians is much too widely known to require any substantiation. The way our legislatures, Lok Sabha, Rajya Sabha, and State assemblies, function does not make us proud. One of the major causes for the unruly and unproductive functioning of the legislatures is the quality of people who find their way into the legislatures. For example it was reported in the media that more than half of the MLAs elected to the current state assembly of Uttar Pradesh had significant criminal records. When

the recognised political parties were not able to form a government because no single party or coalition had more than half of the MLAs supporting it, one of the newspapers went to the extent of saying that if all the MLAs with criminal background decided to get together, they could comfortably form a government of their own!

It is quite common to put almost the entire blame for the current state of affairs on the so-called political class in the country. But all those who would have us believe that all that is wrong has been caused by the political class seem to overlook the fact that the political class does not exist or develop in isolation or in a vacuum, but that it emerges and evolves out of the society at large. Therefore the society at large, of which all of us are a part, cannot escape responsibility for the existing state of affairs. While the so-called political class cannot be assigned the complete responsibility for the current state of affairs, they cannot be entirely absolved of it either.

I believe that a substantial portion of the behaviour of the political class can be explained as a logical response to the broader social system within which they have to operate.

As a student of human behaviour, I believe that a substantial portion of the behaviour of the political class can be explained as a logical response to the broader social system within which they have to operate. And the electoral system is a major and immediate part of that broader social system. Consequently, one way to change the behaviour of the political class would be to change the system in which they have to operate and to which they have to respond. This is where electoral reforms become important.

While “token” attempts at reforming the electoral system have been made from time to time over

the last many years particularly whenever it suited the party in power, there has been hardly any attempt at making any significant and substantial changes in the electoral system. There have been any number of reports and recommendations on what needs to be done. Some of the significant examples are the Indrajit Gupta Report, the Dinesh Goswami Report, the 170th Report of the Law Commission of India on Electoral Reforms, and the Recommendations of the National Commission to Review the Working of the Constitution (NCRWC) submitted earlier this year. The remarkable fact however is that almost none of the recommendations of these learned and painstakingly prepared reports have been implemented.

Not only have there been no serious attempts to reform the electoral system, some of the actions that have been taken seem to be in the opposite direction.

The Dilemma

Not only have there been no serious attempts to reform the electoral system, some of the actions that have been taken seem to be in the opposite direction. A prime example relates to election expenditure. It has been more than 25 years since Explanation 1 was inserted in Sub Section (1) of Section 77 of the Representation of People Act which enabled unaccounted money to be brought into the election system by maintaining that expenditure incurred or authorised by any one other than candidate, including the political party, and friends and supporters of candidates, will not be counted as the election expenditure of the candidate. There has been widespread comment on this issue for more than 25 years now, but Parliament has not found time to delete Explanation 1. Why? Possibly because it is convenient and comfortable for the politicians to have a system which can be manipulated. Big money is brought into the elections under

the garb of Explanation 1 (which in the opinion of the Supreme Court, has removed even the “fig leaf to hide the reality” of the impact of big money on the outcome of elections). Big money is contributed by those elements who look for favours and paybacks in kind from the politicians after they get elected. And the politicians are an active and willing party to the arrangement. This is why it seems clear that left to the politicians, significant reforms of the electoral system are unlikely. Given this stalemate what does one do?

Big money is contributed by those elements who look for favours and paybacks in kind from the politicians after they get elected. And the politicians are an active and willing party to the arrangement.

Citizens' Action

There is no option but for concerned citizens and civil society groups to create conditions where politicians will have no choice but to make changes. Examples of a few such initiatives exist, such as the work of the Mazdoor Kisan Sangharsh Sangathan (MKSS) led by Aruna Roy resulting in the passage of the Right to Information Act in Rajasthan. Another initiative which has been in the news recently is by the Association of Democratic Reforms. This group filed a Public Interest Litigation in the Delhi High Court in December 1999 requesting the Court to direct the Election Commission to:

1. Amend the nomination form which a candidate has to fill for contesting an election, so that it asks the candidate whether there are any criminal cases pending against him/her at the time of filing the nomination; and if there are, to provide details of such cases. It was believed that this could be done under the Conduct of Election Rules without the need to amend any laws and therefore Parliament need not come

into the picture.

2. Collate the above information provided by the candidates and make it available to the public on request, and to the print and electronic media for wide dissemination.

The petition was guided by the following:

1. A voter interested in finding out whether there are any criminal cases pending against any of the candidates in her/his constituency, should be able to get this information without much difficulty.
2. There was, and still is, a firm belief in a voter's right to choose whichever candidate s/he wants to vote for. After finding out the above information, in case one wants to find it out, if a voter still wants to vote for a particular candidate who may have several criminal cases pending against him/her, that choice of the voter must be respected.

There is no option but for concerned citizens and civil society groups to create conditions where politicians will have no choice but to make changes.

The Delhi High Court announced the judgement in November 2, 2000 and directed the Election Commission to make even more information available to the voters than was requested in the original petition.

The Union of India appealed against the High Court judgement in the Supreme Court although the High Court had issued directives only to the Election Commission and not to the Government of India. Several political parties such as the Indian National Congress and the Samata Party became "intervenors" to the appeal and also presented their views, generally against the High Court judgement.

The Supreme Court pronounced its judgment on May 2, 2002 directing the Election Commission to call for the following information from candidates in exercise of its power under Article 324 of the Constitution of India by way of an affidavit to be filed by the candidate along with his/her nomination form.

- "(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past, if any, whether he is punished with imprisonment or fine?
- (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
- (3) The assets (immovable, movable, bank balances etc) of a candidate and of his/her spouse and that of dependants.
- (4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.
- (5) The educational qualifications of the candidate."

The Supreme Court gave the Election Commission two months to implement the judgement. Considering that "the most efficacious manner of implementing the judgement and the order of the honourable Supreme Court" was through the amendment of the nomination forms. The Election Commission wrote to the government on May 14, 2002, for amending these forms. The government responded on June 19, 2002 saying that the amendment of forms could be done only after developing consensus amongst political parties and for that an all party meeting had been convened on July 8, 2002. The government also requested the Election Commission to approach the Supreme Court to seek further two months time for implementation of the

judgement. The Election Commission responded to the government on June 21, 2002, saying that if the government thought it necessary to seek an extension from the Supreme Court, it should approach the court directly!

Since there was no extension of time by the Supreme Court, the Election Commission issued an order on June 28, 2002, implementing the Supreme Court judgement.

This seemed to create a flutter in the entire political establishment. In the all party meeting on July 8, 2002, twenty-one political parties representing the entire political spectrum, in a rare show of complete unanimity, decided that the Supreme Court judgement and the Election Commission's order could not be allowed to be implemented. The all party meeting unanimously decided to introduce a Bill in the monsoon session of parliament to appropriately amend the Representation of People Act, to prevent implementation of the Supreme Court judgement and Election Commission's order.

In the all party meeting on July 8, 2002, twenty-one political parties representing the entire political spectrum ... decided that the Supreme Court judgement and the Election Commission's order could not be allowed to be implemented. The all party meeting unanimously decided to introduce a Bill in the monsoon session of parliament to appropriately amend the Representation of People Act, to prevent implementation of the Supreme Court judgement and Election Commission's order.

With remarkable and almost unprecedented alacrity, the Law Ministry drafted a Bill for amending the Representation of People Act and circulated it amongst political parties on July 15, 2002 asking for their comments with the specific intention of introducing and getting the Bill passed in the monsoon session of parliament.

The Draft Bill

Several provisions of the Bill create doubts about whether the Bill is really intended to reform the electoral system or to prevent any improvement of the system.

The Bill proposes that "a person against whom charges has been framed in two separate criminal proceedings concerning heinous offences, at least six months prior" to the filing of the nomination paper, will be disqualified. Heinous offences specified in the draft Bill include murder, rape, kidnapping or abducting in order to murder or for ransom, dacoity and dacoity with murder, waging war against government of India. One wonders why is it that a person with one heinous crime is suitable to become a law maker, and committing a murder or rape three or five months before filing the nomination is not serious enough.

Another issue worth considering is: Shouldn't the voters know if candidates seeking their votes have been involved in white-collar, financial crimes such as embezzlement of crores of public funds?

Arguably the most significant provision in the draft Bill is one which maintains that "no candidate shall be liable to disclose or furnish any information which is not required to be disclosed [under the proposed bill]. Notwithstanding anything contained in any judgement, decree or order of any court or any direction, order or any other instruction issued by the Election Commission." It is clear from this that while talking about disqualification, the draft bill appears to be against disclosure. The reason for this apparent aversion to disclosure is not hard

to seek. It finds mention at two places in the draft Bill which is that the amendments to the Representation of the People Act proposed in the draft Bill “shall be deemed to have come into force on the 2nd day of May, 2002”. It is not a mere coincidence that the “2nd day of May, 2002” also happens to be the day when the Supreme Court judgment was delivered.

The Supreme Court has also acted in accordance with the voters’ right to information, observing that “the voters are required to be well informed and educated about contesting candidates

While the alacrity shown by political parties and the government to deal with what has been projected as judicial interference in legislative matters is commendable, what seems to have been lost sight of is that Supreme Court had no intention whatsoever to interfere in legislative matters. This is clear from a reading of the Supreme Court judgment in which the Court has explicitly accepted that only the legislature can make laws. The Court however has also said that “if the field meant for legislature and executive is left unoccupied detrimental to public interest, this Court [has] ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest [italics added].” The Supreme Court also said that what it was doing was “to fill the void, in the absence of suitable legislation” pending action by the legislature. The court has held that it is a “constitutional obligation” of the Supreme Court as well as the Election Commission “to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field”. The Supreme Court has also acted in accordance with the voters’ right to infor-

mation, observing that “the voters are required to be well informed and educated about contesting candidates so that they can elect proper candidates by their own assessment”.

It needs to be reiterated that the judgement is not about disqualifying people from contesting elections, it is about disclosure of the criminal background of the candidates, if any. The Supreme Court judgement and the order of the Election Commission require that the candidates wanting to contest elections for Parliament and State Assemblies declare, by way of an affidavit to be filed along with the nomination paper, details of criminal cases pending against them, if any; their assets and liabilities including those of their dependents; and their educational qualifications. This information is to be made available to voters to enable them to make an informed choice while casting their votes. Neither the Supreme Court judgement nor the Election

Voters will have the freedom to vote for a candidate with a criminal record if they decide to do so.

Commission’s order say that any candidate will be disqualified just on the basis of the information provided on the affidavit so long as the information provided is correct. Voters will have the freedom to vote for a candidate with a criminal record if they decide to do so.

It is evident from the above that changing the electoral system is not going to be easy but it must be done if democracy has to be preserved and strengthened. Concerned citizens and civil society groups will have to work really hard and in a sustained manner to achieve anything worthwhile. Being committed to freedom with responsibility, all Liberals need to contribute to this.

TWO FREEDOM STRUGGLES

USHA MEHTA

One lesson to be learnt from the two struggles is that preserving freedom is as important as winning it.

The declaration of Emergency on June 26, 1975, came as a rude shock to many a freedom fighter who cried out almost in anguish, "This is certainly not the freedom we fought for!". After getting over the initial sense of bewilderment, their minds went back to the stirring times of the historic Quit India struggle, when the Mahatma had given the call "Do or Die".

As in 1942, with the declaration of Emergency, the press was gagged and the voice of the people muzzled; meetings and processions were banned and leaders of the nation and many party workers arrested.

The Quit India movement was unique and unprecedented; far from being a revolt of an oppressed minority against a tyrannical majority, it was a spontaneous upsurge of the whole people - a people's revolution.

The Quit India Movement

So far as the Quit India movement was concerned, it was unique and unprecedented; far from being a revolt of an oppressed minority against a

tyrannical majority, it was a spontaneous upsurge of the whole people - a people's revolution. For the first time since the great revolt of 1857, a vast number of people rose to challenge the British Raj without arms or ammunition but with the firm resolve to march forward on the path of freedom. Explaining this, the late Dr. Ram Manohar Lohia said in one of his speeches: "This is no movement: it is a revolution. In a movement, there is victory or defeat; in a revolution, there is victory or death as there is no going back in it".

The call was irresistible. If the Government was ready for tyranny and severe repression, people in their turn were ready for utmost suffering and sacrifice. Thus all sections of society, rich and poor, young and old, men and women, students and teachers, workers and peasants came forward to contribute their mite to the sacrificial fire lit by their leaders at the Gowalia Tank maidan in Bombay.

1942 and 1975

Though in 1975 people were more fear-stricken than in 1942, and resistance took some time to build up, it would be wrong to conclude that they approved of the Government or were reluctant to retaliate. Small groups dominated by teachers, students and lawyers functioned in most of the major towns and cities, tried to collect funds for the prisoners and their families and bring out secret news bulletins containing news from overseas journals and newspapers which were critical of the Emergency. In 1942, the major problem that faced us in organizing an underground radio-station was that of

Freedom First, October 2002

DR. USHA MEHTA was a prominent freedom-fighter and a Gandhian.

finances. When we were almost at our wits end an old auntie of mine put us at ease by offering to put all her "*Stridhan*" including her precious jewellery, at our disposal saying "at this sacred moment, no sacrifice is too great for the country". During the Emergency, there were several families which gave monthly instalments for the prisoners' families. An old businessman, more than 80 years old, used to come on the first of every month to deliver a sealed packet to us in the office of the PUCL (People's Union for Civil Liberties). On some of us volunteering to go to him, his reply reminding us of the reply of our auntie in 1942 was: "This visit of mine to your office, far from being a routine visit, is a pilgrimage for me. So, please do not stop me from coming here. Even if I die, I will have the satisfaction of dying in the cause of preserving our hard-won freedom, freedom for which I with innumerable other countrymen have contributed our mite. For me this is the second battle for Freedom".

In 1942 ... one highly placed officer in the Air Force came to Dr. Lohia and assured: "You can, therefore, rest assured, the Air Force will be with you when you give the next call."

In 1942, appealing to the Government servants not to keep aloof from the movement, Dr. Lohia asked: "Would you like to become good residents of free India which is going to come into being soon or would you like to be enemies of India for ever?" In response not only did loyal government servants resign their posts but one highly placed officer in the Air Force came to him and assured: "The Air Force ought to have plunged into fire in the very beginning; however, we did not know our duty then. Now we do. You can, therefore, rest assured, the Air Force will be with you when you give the next call."

The Role of the PUCL

In December 1976, we of the PUCL in Bombay were busy planning programmes for students and workers for Republic Day. We had to hold frequent meetings. Not only were contributions from trade-unions and student organizations pouring in but many ingenious suggestions were discussed and detailed instructions worked out. Each time a police officer somehow managed to smuggle himself in at the time of our meetings. Once he came with the intention to arrest all of us. He, however,

In December 1976 a police officer said, "I came with an order to arrest you and your colleagues. I am going back with the resolve to assist you and your work".

arrived just a minute too late. All the other members had left and I was just leaving. He put several questions about the meeting and our preparations. I replied to all of them without giving any clue about our programme for Republic Day. He knew we were planning to print badges and wanted to know the details about their design and distribution. I said the design was left to the artists, and the distribution pattern to the local groups but promised to give him a badge as soon as it was ready. Almost with tears in his eyes, he said: "I came with an order to arrest you and your colleagues. I am going back with the resolve to assist you and your work". He was apologetic about the work he was doing. On being told that we knew he had a family to support and that circumstances compelled him to do his duty, he interrupted saying "It is not I but you and your colleagues who are doing your duty towards the country in this darkest hour of its history. I am merely doing my job. My fullest sympathies are with you, with JP and with leaders of the PUCL. I promise you that I shall give you prior warning as soon as I smell some danger to you or your organization".

Underground Activities

In accordance with Mahatma Gandhi's advice to young men to act as citizens of an independent country and to work as live news bulletins, students and youths brought out underground new-bulletins and distributed them freely among the people during the Emergency. As in 1942 and the earlier struggles, during the Emergency too there was no dearth of underground literature. *Satya Samachar*, *Satya Vani*, *Lok Kranti*, *Lok Jagran*, *Sadhana*, *Satya Bapta*, *Marshal*, *Darpan*, and several others in many regional languages carried the message of resistance all over the country. That their aim was, whether in 1942 or 1975-76, not to spread violence and anarchy but to assert their rights, fight

The slogan given by Loknayak Jayaprakash Narayan "Hamla chahe jaisa hoga, hath hamara nahi uthega" – However grave the provocation, we shall not raise our hand – also underscores the moral basis of the fight.

the dictator and preserve democracy, is clear from a statement which a leader in 1942 declared: "The Ganges will flow with blood but it will be the blood not of the Britisher but of the Indian soldier fighting for the motherland". Similarly *Satya Samachar* explained its policy thus: "In this venture, the emphasis will always be on truth. Our self-imposed code will forbid incitement to violence, to communal passions and to anti-social behaviour; we shall scrupulously avoid character-assassination and tendentious writing. Our constant endeavour will be to remind people that a personal dictatorship is working to perpetuate itself and that they have to fight it. Today's fighter will command tomorrow – not for power but for justice, not for politics but for ethics". The slogan given by Loknayak

Jayaprakash Narayan "*Hamla chahe jaisa hoga, hath hamara nahi uthega*". 'However grave the provocation, we shall not raise our hand, also underscores the moral basis of the fight.

The Difference between 1942 and 1975

One marked difference between the underground literature of 1942 and that during the Emergency was the coverage given in the foreign press to India and the attempts at resistance as also to efforts made by formal and informal international organizations like Friend of India, Amnesty International and others to see that the rights of the Indian people were restored and at least the health of the prisoners preserved.

The horror stories of the British regime emanating from General Dyer's dogged determination to destroy everyone including innocent women and even babies in arms at Jallianwala Bagh or the brutal atrocities, including the rape of innumerable innocent women at Ashti and Chimur in 1942, were disgusting and heartrending. It was a general belief that no civil government would ever think of taking recourse to such leonine violence or ruthless repression. Similarly the cases of torture and inhuman atrocities including rape and ill-treatment of pregnant women in different jails of the country during the Emergency reign of terror reported in the underground pamphlet *Torture of Political Prisoners*, not merely came as a rude shock to liberty loving people but made them hang down their heads in shame.

One lesson to be learnt from the two struggles is that preserving freedom is as important as winning it and that all those who cherish freedom and justice have to make a firm resolve not to fall a prey to the evil designs of autocrats or surrender to despots but carry on a relentless struggle without rest or respite.

With Compliments From
S. A. A. Pinto

INCREASING INTOLERANCE AND SUPPRESSION OF DISSENT

SOLI SORABJEE

The need of the hour, if you ask me, is tolerance. It must be realized that there is an essential linkage between tolerance, human rights, democracy and peace. On the other hand if there is unchecked intolerance, the inevitable consequence will be violence and that would ultimately endanger peace.

One criterion to determine whether a country or society is truly democratic as it professes to be, is the extent of dissent permitted. The right to dissent and tolerance of dissent are the *sine qua non* of a liberal democratic society. It is not sufficient to grant freedom to those who differ from us in respect of minor matters, matters that do not touch the heart of the existing order. We must learn to accord freedom for the thought we hate and to accord a fair field and an honest race to all sections of society. That is the real credo of a liberal.

In a Liberal democracy all groups in the country accept the fact that in a free country one can have different opinions and should have the equal right in voicing them.

In other words, radicals, reactionaries, industrialists, workmen, the religious and the free thinkers; capitalists, communists and all the infinite variety of platforms, fanatics and self-appointed saviours of mankind must have the freedom to express their own voice, subject, of course, to one very important qualification – that there is no incitement, to violence, no incitement to racial hatred. In a Liberal democracy all groups in the country accept the fact that in a free country one can have different opinions and should have the equal right in voicing them. Disagreement with the beliefs and

ideologies of others is no reason for suppression, because tolerance recognizes that there can be more than one path for the attainment of truth and for securing salvation.

Assumption of Infallibility

On the other hand, intolerance stems from an invincible assumption of the infallibility of one's system, the dogmatic conviction of the rightness of one's tenets and beliefs and their superiority over others. When intolerance reigns, reason takes a back seat. Intolerance is based on prejudices, irrational beliefs and stereotypes. It fosters feelings of ill will, enmity between different classes and communities. Intolerance ultimately leads to the forcible imposition of one's ideology and dogma on others. Religious persecution, as we know, is a result of intolerance and is once again rearing its head in the name of Almighty God.

An authoritarian regime cannot tolerate the expression of ideas which challenges its doctrine and ideology

Suppression of dissent emanates from intolerance. An intolerant regime does not brook dissent. An authoritarian regime cannot tolerate the expression of ideas which challenges its doctrine and ideology in the form of writings, or plays, or drama or music or painting. Why do people in power want to suppress dissent? One reason is, again, the unshakeable conviction of the regime about the

Freedom First, October 2005

MR. SOLI SORABJEE is a distinguished lawyer and until recently India's Advocate General.

rightness of its ideologies and the policies it is following. And that makes it necessary to suppress unconventional and heterodox thoughts and theories, which will endanger its cherished beliefs. That is indeed the prime motivation for censorship. Besides, the objective of the authoritarian regime is to popularise its policies and practices among its people in order to gain their support. This it does in two ways. First by massive propaganda through State-owned and controlled media for praising the regime's so-called successes on account of its current policies. Another way is by imposing strict censorship with a view to suppress any criticism or questioning of its policies. This suppression of dissent by censorship is an indispensable instrument for a totalitarian regime. An intolerant authoritarian regime and censorship are indeed natural allies.

Today, the rise of intolerance in our country is really alarming. ... The consequence of all this intolerance is that dissent dries up and vigorous debate is no longer possible.

In his excellent work, *The Tolerant Society*, Lee C. Bollinger suggests that it is perhaps less the certainty of one's conviction that prompts one into intolerance than the uncertainty. In other words, it is fear about the stability of the current regime, apprehension about its security, which impels intolerance and the consequent suppression of dissent to ensure the popularity and continuance of the regime. In other words anyone who is sure of one's position and is not uncertain about it can take criticism in his stride and counter it.

Two Prerequisites of a Democracy

Whenever I go abroad and they ask me to lecture on democracy, I tell them I am not a social scientist, but I know one thing. Whenever someone says, my country is a democracy, I say, 'do me a

favour, just send me two or three of your newspapers and just send me the law reports. I will go through the newspapers and law reports and tomorrow I will tell you whether you are a democracy or not'. Because the two indispensable prerequisites of a democracy are a free press and an independent judiciary which, thank God, we have in our country.

Today, the rise of intolerance in our country is really alarming. About three years ago, a friend of mine, Jairus Banaji, made some critical remarks at a function about Gujarat Chief Minister Narendra Modi. Before he could complete what he got up to say, Modi's strongmen came in and threw him out of the hall. This happened here, in India, in Ahmedabad. Any criticism of Madam Sonia Gandhi's style of functioning by any Congress person is visited with unpleasant consequences. No one dare criticize Bal Thackeray without incurring the wrath of the Shiv Sainiks. And you know what that wrath means. The consequence of all this intolerance is that dissent dries up and vigorous debate is no longer possible. When vigorous debate is no longer possible and people cannot engage in healthy discussion, then democracy comes under siege. What are the reasons? Why this intolerance? Again arrogance and insecurity of one's position. A party which is sure of its position and standing will take criticism in its stride and confront it.

Fascist Tendencies

Let me give you another example which was one of the worst which I have come across. A U.S. scholar, James Laine, by name, wrote a biography of Shivaji in which he cast some doubt upon the paternity of Shivaji. Naturally you may not agree with it, you may condemn him. But what happened? Not only was his book burnt, but there was a demand for his prosecution. One even went to the absurd length of saying that he should be extradited. But the worst part was that a fine institute in Pune called the Bhandarkar Institute, with its archives and valuable documents was vandalized. Why? Because Laine wrote his book sitting there, making use of this Institute's archival material. Now this is fascism

at its worst. I only remember these things happening in Nazi Germany. You vandalize an institute which has such valuable documents because Laine wrote something which some people found very unpleasant. In the West, people sometimes suggest that Christ had some elements of homosexuality. People do get upset. They criticize it, they ban it, but they don't indulge in this kind of violence. This trend we have to arrest. This is not the India that we know. Not the India where people can freely discuss. The sad thing is that this intolerance has acquired a global spread.

You know of course what happens in Pakistan. If there is any criticism in which any religious overtones are discovered, or discerned, the Blasphemy Law is invoked and terrible consequences follow. In Bangladesh, the novel written by Taslima Nasreen, *'Lajja'* (Shame) was banned. Thanks to the Bangladesh High Court, the ban was struck down. Malaysia is no different. Any foreign journal criticizing Mahathir at one stage used to be taken off the stands and burnt or confiscated. Singapore is no different. And UK, the oldest democracy is also not immune from this virus. At a recent Labour Party conference when Prime Minister Tony Blair was defending his country's action in the Iraq war, an old and respected Labourite who disagreed with Tony Blair said 'nonsense'. Immediately a hurly burly Labourite manhandled him and threw him out. The only saving grace in this case was that the Prime Minister gave a public apology for the disgraceful incident.

Now we need not follow what is happening in other countries. We must preserve our tradition of tolerance which we have had. If anyone asks me to write a biography of a religious leader, I would say first, I want an insurance policy for my safety! But one bright spot is that our courts have consistently and steadfastly upheld the right of dissent and emphasized the necessity for tolerance. Let me give you a very interesting case that the Bombay High Court decided in 1968. The 1962 emergency was still continuing and we had the 1965 war with

Pakistan. In a case involving critical references to Gandhiji the High Court of Bombay held thus: "Everyone ought to have the privilege of expressing opinions which are unpopular or distasteful. The right to dissent is the very essence of democracy. Conformity with accepted norms and beliefs has always been the enemy of freedom of thought."

But one bright spot is that our courts have consistently and steadfastly upheld the right of dissent and emphasized the necessity for tolerance.

Jehovah's Witnesses

The high watermark of judicial endorsement of tolerance, is the Supreme Court judgement in the case of V. J. Emmanuel *versus* the State of Kerala. Jehovah's Witnesses is a religious denomination and it is part of their religious belief that no one should sing the prayers of any country. Only God, no other country. Now, I am not concerned whether this belief is right or wrong. It is a belief, which is conscientiously held by adherents of Jehovah's Witnesses faith. Now when the National Anthem was sung, two students of Jehovah's Witnesses stood up in silence but did not sing. The authorities expelled them. The Kerala High Court upheld their expulsion. The matter came to the Supreme Court and the Supreme Court reversed the order of expulsion saying: 'it is not that they did not sing the National Anthem of India, it is their religious belief which prevented them from singing. We cannot go into its rights or wrongs because it is a religious belief genuinely held that they must not sing the national anthem of any country. And therefore, if they remain silent, the right to remain silent is as much a part of the fundamental right of speech and expression. Compelling these students and expelling them for exercising their right to remain silent is unconstitutional. The Supreme Court concluded its judgement with a ringing note and I want that ringing

note to be in your minds and hearts all the time:

“Our tradition teaches tolerance, our philosophy preaches tolerance, our Constitution practises tolerance, let us not dilute it”.

And this judgement has put to shame some other judgements in other countries where they took a little different view about Jehovah’s Witnesses.

“Freedom of expression protects not merely ideas that are accepted but those that offend, shock or disturb the state or any section of the population. Such are the demands of pluralism, tolerance and broad mindedness without which there is no democratic society”.

Ore Oru Gramathil

Let me give you another example. There was a Tamil movie titled ‘*Ore Oru Gramathil*’ (In One Village). The theme of that movie was that the reservation policy is being abused, people make false claims of being scheduled caste or backward class and then they get into positions. It was just a movie. In principle, what it tried to portray was good. We must have preferential treatment, we must have special preferences for people who are handicapped and who have suffered discrimination over the centuries. The Board of Censors passed it. It even got an award. But the Madras High Court somehow banned it. The matter came up to the Supreme Court. And the Supreme Court reversed the judgement. Justice Jagannath Shetty gave the leading judgment of the Court and this is what he said:

“Freedom of expression protects not merely ideas that are accepted but those that offend, shock or disturb the state or any section of the population. Such are the demands of pluralism, tolerance and broad mindedness without which there is no democratic society”. If the film is unobjectionable

and cannot constitutionally be restricted under the constitution, freedom of expression cannot be suppressed on account of threats of demonstrations and processions or threats of violence.” Because there was a threat people had threatened to burn down the theatre, release snakes and so on). If you yield to such threats, that would tantamount to negation of the rule of law and surrender to blackmail and intimidation. Freedom of expression which is legitimate and is constitutionally protected cannot be held to ransom by an intolerant group of people.

Suppress Bigotry Not Freedom

When I was the Attorney General, they used to tell me ‘Sir, if we don’t ban this book, there will be violence.’ I would reply ‘first of all you go on the merits, is there anything intrinsically wrong with the book? Does it offend any provision of law? Is it obscene, is it sacrilegious?’ Are we going to judge and ban books because some hypersensitive people who have very different notions of what should be published or not, are going to give you threats? If there are threats, suppress the people who give the threats. Don’t suppress the book. Don’t suppress freedom of expression. Otherwise you are being completely held hostage by very bigoted, intolerant sets of people.

Fostering a Culture of Tolerance

The need of the hour, if you ask me, is tolerance. It must be realized that there is an essential linkage between tolerance, human rights, democracy and peace. On the other hand if there is unchecked intolerance, the inevitable consequence will be violence and that would ultimately endanger peace. The preamble to the Charter of the United Nations proclaims, that to achieve the goals of the Charter, we need to “practise tolerance and live together in peace with one another as good neighbours”. You see in history everywhere what has happened because of intolerance. But tolerance cannot be legislated. You cannot pass a law that you will be tolerant any more than you can pass a law that you

will not have more than two pegs of whiskey. You cannot legislate prohibition, you cannot legislate tolerance. These are virtues that are to be instilled. So what is necessary is, we must develop a capacity for tolerance by fostering an environment of tolerance, a culture of tolerance.

If we desire to convert the others to our point of view, it should be done by persuasion and constructive debate without forcible imposition of one's views.

And education has to play a vital role in this connection. Pseudotypes, prejudices about certain classes and communities must be eliminated. The Press too has an important role to play. I would make a special appeal to the members of the Press that they should ensure that prejudices and pseudo

types about certain communities or classes are not perpetuated and the Press should speak out against those trends which you find in the country. The Press should be insistent and eloquent in preaching the message that no group or body has the monopoly of truth and wisdom and we must respect the point of view of the other-minded. If we desire to convert the others to our point of view, it should be done by persuasion and constructive debate without forcible imposition of one's views.

So, friends, as Minoo Masani would say, let us promote tolerance in our multi-religious, multi-cultural nation and thereby strengthen our pluralist democracy and ensure freedom of speech and expression so that the right to dissent will always be a living reality and not a casualty. I think if we do that, if we strive in that direction, that is the best tribute that we can pay to one of the finest liberals and democrats we have had, Minoo Masani.

Freedom First Goes to Court

During the emergency, intolerance was at its peak and dissent was out of question. The Censor prohibited publication of 11 items in *Freedom First* by affixing the stamp 'Not for publication'. No reasons were given. The banned items, had nothing to do with national security. Minoo Masani, as you all know, was not the one to take it lying down. He went to court; in fact he was the first to go to court. So on 17th of July, 1975, Minoo Masani filed a writ in the High Court of Bombay, challenging the action of the censor.

The writ petition, came up for hearing before Justice R. P. Bhatt and he quashed the order of the Censor saying that all the items which had been banned were not objectionable at all and it was not within the power of the censor to ban them. And in his order Mr. Justice Bhatt enunciated an important principle: "If publication in praise of any action is allowed in regard to governmental action, publication of constructive criticism of governmental action will also be permitted. And in my view, it is permitted under the provisions of the Central Government Order dated 26th June 1975". But this judgement was not allowed to be published in the press. High court judgements were not allowed to be published. Another landmark judgement delivered on 10th February 1976 by the Madras High Court upheld the right of dissent even during the emergency.

I quote some of the passages from this judgement:

"It is not the function of the censor acting under the censorship order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single line or to speak in chorus with one voice. It is not for the censor to exercise statutory powers to force public opinion into a single mould, or to turn the press into an instrument for brainwashing the public. Under the Censorship Order, the censor is appointed the nursemaid of democracy and not its gravedigger. Merely because dissent, disapproval criticism is expressed in strong language, it is no ground for banning its publication".

- Soli Sorabjee

PARLIAMENT VS. SUPREME COURT

– EXPULSION OF MEMBERS OF PARLIAMENT

S. P. SATHE



Professor S. P. Sathe
(27.03.1931-10.03.2006)

Our highly esteemed Speaker of the Lok Sabha, Somnath Chatterji has decided not to accept the notice of the Supreme Court in the matter of the expulsion of members of Parliament by the two Houses for having accepted money as consideration for asking questions. While I entirely agree with him that the Supreme Court

*Does the House have the
privilege to disqualify a member
on the ground of her having
acted improperly as adjudged
by the House or its committee?*

has no jurisdiction to deal with this matter, it is in my view necessary to get such position accepted by the Supreme Court and laid down by it in the form of a ruling. This is the requirement of the rule of law. In my opinion, the Attorney General or the Solicitor General should appear in the Court and state the correct legal position.

Freedom First, January 2006

PROFESSOR S. P. SATHE was Honorary Director, The Institute of Advanced Legal Studies, Pune and a highly regarded teacher of Law, and formerly Pro-Vice Chancellor, University of Pune.

Article 105 (3) of the Constitution says that the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

A similar provision regarding the powers, privileges and immunities of the state legislatures is stated in article 194 (3). Before the Forty-fourth Amendment, the powers, privileges and immunities of the House and its members and committees were to be those which were possessed by the House of Commons and its members and committees in England on the day of the coming into force of the Constitution.

Does the House have the privilege to disqualify a member on the ground of her having acted improperly as adjudged by the House or its committee? If the House of Commons or its committee had such a privilege, such a privilege inhered in the houses of Parliament and the state legislatures and their committees by virtue of Article 105(3) as it existed in the original Constitution. The Forty fourth amendment has not made any change in this position, though it says that the powers, privileges and immunities of the House of Parliament, its members and its committees would be those that were enjoyed by the House immediately before the coming into force of S.15 of the Forty fourth Amendment Act because the Houses of Parliament and state legislatures had the powers, privileges and immunities as those of the house of Commons

in England on the date of the commencement of the Constitution.

The question that the Court will have to examine is whether the House of Parliament enjoyed the privilege of expelling a member from the House for improper behaviour, immediately before the commencement of S.15 of the Constitution (Forty-fourth Amendment) Act, 1978. Since the powers, privileges and immunities of the House of Parliament before the commencement of S.15 of the Constitution (Forty-fourth Amendment Act) were those of the House of Commons in England at the time of the commencement of the Constitution of India, the court will have to examine whether the House of Commons in England had the power and privilege to expel a member for improper behavior. The next question would be whether the exercise of such power and privilege is subject to judicial review.

In *M.S.M. Sharma v. Srikrishna Sinha.*, the Supreme Court held that where powers and privileges of the House of a legislature under article 194 (3) conflicted with the citizen's fundamental right of freedom of speech and expression, guaranteed by article 19(1)(a), the latter must yield. The power, privileges and immunities of the House of Legislature were held to prevail over the citizen's fundamental right to freedom of speech and expression. In the dissenting judgment, Subba Rao J, (as he then was) gave the opposite opinion holding that the exercise of legislative privilege by Parliament had to be consistent with the citizen's fundamental right to freedom of speech, which included freedom of the press. The majority's judgment clearly held that if Parliament made a law listing its powers, privileges and immunities, it would have to stand the test of article 13(2) of the Constitution which says that the State shall not make any law which takes away or abridges the rights conferred by Part III (Fundamental Rights) and therefore its validity could be examined with reference to article 19(1)(a). But until Parliament enacted such a law, it would have the powers, privileges and immunities that were possessed by the House of Commons in England on

the day of the commencement of the Constitution of India and the validity of the exercise of such powers, privileges and immunities could not be assailed as being violative of the fundamental right to freedom of speech and expression.

It is submitted that, on law, Subba Rao J was right but on facts, the majority was right. In that case, the appellant had published some thing which the house had expunged from its proceedings. The appellant therefore could not have asserted her right to freedom of the press because she had no right to publish what was expunged by the Speaker. The majority view that powers, privileges and immunities of the House would be immune from judicial review as long as they were not codified by Parliament or a state legislature, encouraged Parliament

At times the legislatures have acted extremely arbitrarily in exercising their privileges and have shown intolerance towards criticism.

as well as state legislatures against enacting a law codifying their powers, privileges and immunities. At times the legislatures have acted extremely arbitrarily in exercising their privileges and have shown intolerance towards criticism.

The question of legislative privileges came up once again before the Supreme Court in 1965 on a reference made by the President of India seeking its advisory opinion under article 143 of the Constitution. A crisis had erupted in U.P. where the Legislature had passed a sentence of imprisonment against a person called Keshav Singh who had committed breach of its privilege. This person approached the High Court of Allahabad, which admitted his petition and granted him bail.

The Legislature thereupon issued notices against Keshav Singh, his lawyer and the two judges of the Allahabad High Court why action should not

be taken against them for contempt of the House. Two judges to whom such notices were issued filed a writ petition before the High Court and the entire High Court, barring those two judges, quashed the resolution of the legislature. The Legislature thereupon was likely to proceed against the entire High Court. In order to avert a further conflict between the legislature and the court, the President referred the matter to the Supreme Court. The Supreme Court in *Re. Art 105 of the Constitution* (*Keshav Singh's case*) dealt with this question comprehensively, though not satisfactorily. From Seervai's account of the whole untold story behind this litigation, one gets the impression that the Supreme Court which held in favour of the High Court by a majority of 5 against 1 had been predisposed in favour of the High Court. It held that where an order of the House of the Legislature affected the fundamental right of a citizen, a court of law had the jurisdiction to entertain it and decide its legal validity. The Court, however, did not overrule the previous decision in *M.S.M. Sharma's case*, thereby allowing the law regarding the prevalence

How can a House keep discipline and conduct its proceedings if every action is going to be challenged in a court?

of the legislative privileges over the freedom of speech to continue. It was held that where a privilege of a legislature was exercised against a person that resulted in the denial of her fundamental right, such a person could approach the High Court under article 226 and the High Court could grant remedy under that jurisdiction.

The Supreme court could have disposed off the case by holding that the issue of a contempt notice against the judges of the Allahabad High Court violated article 211 of the Constitution which provides that "no discussion shall take place in the Legislature of a state with respect to the conduct of any judge of the Supreme Court or of a High

Court in the discharge of his duties". Similar provision prohibiting any discussion about the conduct of any judge of the Supreme Court or of a High Court in Parliament exists in article 121. Keshav Singh's insolent behaviour had taken place in the House and the House was clearly within its rights to punish him for contempt. This was certainly not a case where a person had been deprived of his personal liberty without the procedure established by law. Therefore there had not occurred any violation of a fundamental right given by article 21.

The majority's decision that exercise of a legislative privilege resulting in breach of a fundamental right would be subject to judicial review in my view cannot be faulted. Where, however, no breach of a fundamental right or any right other than those arising out of the membership of the House had occurred, the court would not have any jurisdiction. Exercise of powers, privileges by the House which it possessed by virtue of article 105(3) or 194(3) and which were those that the House of Commons in England possessed on the day of the commencement of the Indian Constitution is immune from judicial review. The British House of Commons had the privilege of committing a person for contempt by an unspeaking warrant."

The majority's decision suffers from two contradictions. One that since it did not overrule the majority decision in *M.S.M. Sharma*, the legislative privileges prevailed over the right to freedom of speech. Of all the fundamental rights, it was this right that needed protection against legislative intolerance. It was left unattended. Second contradiction was that the law laid down by it clearly went against the spirit of the Constitution. If independence of the judiciary is important, autonomy of the legislatures is no less important in democracy. Therefore the Constitution says in article 122 and 212 that the validity of any proceedings in the Parliament / the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. The courts have imposed upon themselves similar restrictions. They will not

issue a writ of *mandamus* to a legislature to pass or not to pass a law. They can hold a law invalid if it is contrary to any provision of the Constitution but they do not interfere with the proceedings while that law is being debated. It is only when the President seeks its opinion under article 143 that the Supreme Court may give opinion on a bill or a law in the making. By owning responsibility for reviewing the exercise of legislative privileges in respect of matters which happened within the House, the Court exceeded its powers and thereby abridged the autonomy of the legislature. How can a House keep discipline and conduct its proceedings if every action is going to be challenged in a court?

In both the above cases, it was an outsider, a non member, against whom a privilege had been exercised. In the case of the members of Parliament who have been disqualified for having sought money as a consideration for asking questions, the above two precedents do not apply. This is a case where the House of Parliament has by a resolution disqualified a member for having behaved in an improper manner. This was done after a committee found those members guilty. The committee had heard the members. There had been no violation of the rules of natural justice in the proceedings of the committee. It was entirely within the domain of the Parliament and Parliament rightly acted firmly against such members. It must be accepted in toto because the disqualified member cannot complain of her fundamental right having been violated since she has no fundamental right to be a member of the House. This action of the Houses of Parliament is entirely a domestic affair and no court should intervene. The House of Commons in England has had an absolute privilege regarding its internal proceedings and its actions in so far as they pertain to such internal matters are totally excluded from the jurisdiction of any court. Basically judicial review is exercised only to make sure that the subordinate bodies, courts or tribunals, act within their jurisdiction. If they act within their jurisdiction, they can decide rightly as well as wrongly. Judicial review is posited on this principle. Judicial review, unlike an appeal,

does not go into the merits of the decision. It is restricted to ensuring that the subordinate body acts within its jurisdiction and according to the principles of natural justice.

Mr. Chatterji therefore must fight out this matter in the Court and obtain a ruling in favour of the autonomy of the Parliament. This is a golden opportunity to settle the law on this issue. The Supreme Court may lay down the limits of the powers and privileges of the Legislatures while reconciling them with the important fundamental rights. For example, the Court could be invited to state the law on the conflict between the legislative privileges and

The Supreme Court may lay down the limits of the powers and privileges of the Legislatures while reconciling them with the important fundamental rights.

the fundamental right to freedom of speech. Several cases in which newspaper columnists or editors have been hauled by legislatures for contempt have arisen out of intolerance and arrogance of the legislatures. This law like the law of contempt of court needs to be made more democratic. It may be noted that in the *Reference Case* mentioned earlier, Seervai, who had appeared for the U.P. legislative Assembly had submitted before the Court that the state assembly would not be bound by what the Court held and his appearance on their behalf should not be understood as the assembly's submission to the Court's jurisdiction. But that submission of Seervai was because the matter had been taken up under the advisory jurisdiction of the Supreme Court, the decision under which according to Seervai was not binding. Somnath Chatterji does not have that leeway since the matter before the Court is through regular petitions filed by the disqualified members of Parliament. Therefore it will be desirable if the matter is sorted out by obtaining a clear decision of the Court on the extent of the powers and privileges of Parliament under the Constitution.

THE BANE OF COALITION POLITICS

SHARAD BAILUR

In a coalition the knives remain out among the partners and they are being perpetually sharpened. Coalitions in a democratic set-up can therefore only be the worst choice because they cannot ensure concerted action.

There was a time when a number of knowledgeable people amongst us spoke of coalitions in India as though it was the dawn of a new maturity in democratic politics in the country. At that time I had warned readers of *Freedom First* about the inadequacy of coalitions in a democracy in my article "Coalition Politics and the Need for Electoral Reform" (*Freedom First*, No.438, January-March 1998).

The article then appeared in this magazine as a "contrary" piece, apparently because the received wisdom at the time was that in coalitions, India had invented for itself a unique brand of consensual politics and that the age of one party rule was over. This was aimed at "diluting the grip of the Nehru-Gandhi Congress on the Indian political scene".

I am still not clear how senior journalists and constitutional experts are so blinded by their hatred of the Congress that the entire future of the nation is treated as piffle before the all important task of dispensing with the Nehru-Gandhis. I can understand such rabid hatred among the BJP. After all Jawaharlal Nehru did treat them with ill-concealed contempt. And they have long memories. But the rest of us liberals? And when this huge task, of ensuring what Dr. Manmohan Singh so facetiously calls, "not missing the bus", stares the country in the face?

As is clear, with the Congress having to face a situation similar to the one faced by the BJP earlier, the chickens have finally come home to roost. The Communists will continue to try their damndest to run the reform process into the ground. They must, for they have Big Brother across our northern border to answer to. The Lalus and the Paswans will try their damndest to ensure that the Congress cannot take on the Communists on its own because it goes against their own personal agendas. All this because of the aberration of minority parties capable of bringing down a minority government in a twisted verdict which makes the democratic exercise in India laughable.

In essence a mess of pottage exactly of the sort I had warned about.

A New Political Maturity?

What is it about coalitions that was supposed to be so good? It was said that such a vast and diverse nation is bound to have a large number of parties reflecting different interests. It reflected a new and growing political maturity among the electorate. As is clear the country continues to run. What then is the problem?

First the patronage: It is transparent, unnecessary and stupid. Illiterate masses are not expected to take correct decisions. They take voting decisions most often based on a bottle of local hooch and a sari. What prevents their wrong decisions from doing its worst in the mass is that they are all conflicting and therefore cancel themselves out. The

Freedom First, January 2006

MR. SHARAD BAILUR is a freelance journalist.

voting pattern has nothing to do with political maturity. It can only be the worst form of democracy. Unfortunately democracy, bad as we have it, is better than all the others

Besides, the wrong word often makes for wrong interpretations. The country does not continue to run. It continues to hobble, held back very efficiently by the inevitability of the conflicting interests being compelled to form governments in spite of being fragmented like so many pieces of a broken mirror.

Coalition politics efficiently ensures that the government is on the verge of passing out at any moment. No decision on any matter can be taken.

The divisive nature of our religions, cultures, languages, castes and creeds, the general lack of education among the representatives whom we send to Parliament, the fact that we have encouraged this over the last fifty plus years and the sheer size of the country, effectively converts governance into an exercise of a very Indian form of elephantine drunkenness even if there is no coalition government at the centre.

Coalition politics efficiently ensures that the government is on the verge of passing out at any moment. No decision on any matter can be taken. Conflicting political interests just do not permit it. When it is over something as straightforward as the airport privatisation issue we have a national crisis kept on the boil by the Communists.

Bankruptcy of Informed Opinion

Opinions about the goodness of coalitions come about because of our inability to understand the badness of human nature, and to make adequate provisions to prevent it from doing its worst. This is because it is much easier, more tempting and definitely more popular to tell ourselves what wonderful fellows we are. Hence the patronage about the "new maturity among the electorate". But then any idiot can pat himself on his back. And a lot of informed idiots can pat the mass of uninformed ones on theirs.

Coalitions result from a splintering of parties. The splintering of parties is not a sign of growing political maturity. It merely reflects the realisation among professional politicians that splintering helps them individually to gain their personal ends more than by being loyal to one large party. The splintering is therefore not on ideological lines. The ideology is much more single minded: Me and Mine.

A Genuine Two Party System



What would happen if the Communist Party came to power in Delhi? Where will there be the physical force to remove them ever from power? Once the communists get into power in a country at the Centre, that is the end of democracy, the end of all decent existence. We realise this and we want the people of India to have a choice not between the Congress and the Communists but between two democratic parties – the Congress Party and the Swatantra Party. That way no harm can come. If the people of India are tired of the Congress Party, let them vote for the Swatantra Party. If, after some years, the people of India get tired of the Swatantra Party, then – as Rajaj has said – you can throw them out and bring the Congress back. But the country will be safe. Democracy will survive because both parties are pledged to handing over power when they are defeated – something that the communist does not understand. That is why I say that, far from helping communism as some misguided people believe, the emergence of the Swatantra Party is the best guarantee against this country being taken over by communism.

Mino Masani

From a speech delivered at a public meeting at the C. J. Hall, Bombay on 2nd August 1961, to commemorate the Second Anniversary of the Swatantra Party.

Coalitions Cannot Do Harm?

There is another view: Coalition governments cannot do much harm. This is about as stupid as the assertion that MiG 21s are safe and do not fall out of the air. Fighter aircraft have to go up there and fight better than the planes sent by the enemy. The ability to remain safe in the air should be the least of its problems.

But is that all we want from a government? That it cannot do harm, when it is looking for a 10% annual growth path? When such a huge responsi-

Coalitions result from a splintering of parties. The splintering of parties is not a sign of growing political maturity. It merely reflects the realisation among professional politicians that splintering helps them individually.

bility is put on it to look into the infrastructure muddle? When education is the prime need of the hour? When rural incomes have to be raised to a level where farmers can take part in the economic prosperity of the nation?

In a coalition the knives remain out among the partners and they are being perpetually sharpened. Coalitions in a democratic set-up can therefore only be the worst choice because they cannot ensure concerted action. They are an aberration in the democratic process – not a normal part of it.

We need governments that can lead the country out of the harm done already. The acceptance of and *post facto* admiration for coalition politics comes of a bankruptcy of ideas on how to restore the situation to a non-coalitional polity. It is not because coalition politics is itself worthy of admiration.

A change in the electoral system is needed.

And yet keeping our major pillars of democracy standing is important. Pillars like universal adult suffrage, notwithstanding the opinion of Nani Palkhivala who suggested a suffrage of the educated. Since the emergence of a multiplicity of parties has contributed to the emergence of coalitions, it is here that reform should be aimed.

The election to the government should be made a two step process. In the first round all parties should be permitted to contest irrespective of

We need governments that can lead the country out of the harm done already.

whether they are almost atomic in size. In this manner nobody can say that their political rights have been denied, because if they do wish to form a party or contest the elections as independents, they can do so in the first round.

In the second round the two parties that have secured the two highest vote percentages would have the right to contest and put up their candidates against each other. The other parties would stand automatically disqualified. This will ensure that the Lok Sabha has the absolute majority of one party and the concerted opposition of the other. It will also discourage the purchasable independent and the formation of splinter parties. The bane of coalitions will have been routed.

This will require an amendment of the Representation of the People Act. Do we have a choice? In a recent article a report of which appeared in *The Times of India*, the Rashtriya Swayam Sevak Sangh has suggested that the BJP should offer the Congress outside support even as it keeps its identity distinct. It accepts the fact that the Congress of Manmohan Singh and Chidambaram has nothing in common with the socialistic Congress of Nehru and Indira Gandhi; that its economic policies

are the same as the ones that the BJP was fostering during its term of office as part of the NDA.

It is here that the RSS suggestion comes into the picture. It is clear that such an amendment to the Representation of the People Act goes against the interests of every single party except the Congress and the BJP. Other parties will therefore oppose any move to amend it. But as suggested by the RSS, and by me in my earlier article, it would be an uncommon act of political wisdom for the BJP to join hands with the Congress to push through such an amendment to the Act to ensure their own futures.

This possibility is not as remote today as it was when I had first suggested it, or else the RSS would not have come up with something similar. Take recent developments as they have occurred. The

the issue.

Since this has come about on the heels of the domestic spat about private participation in the modernisation of two of its largest airports which also the Left (its partners) was against, the Congress, which is the largest party in the ruling coalition stands in danger of having the rug pulled from under its feet. The question is will the largest party in the opposition stand by and watch its discomfiture or will it offer a hand and save the government?

After all one thing unites both the BJP and the Congress – the all-encompassing gravity of power. Just one move on the part of the BJP offering outside support to the Congress will lead to a collapse of all coalitions. Will the BJP put the country's interests before the interests of its individual members?

*After all one thing unites both
the BJP and the Congress –
the all-encompassing
gravity of power.*

Indian stance on the Iran nuclear issue in which India stood with the rest of the civilised world, including the Communists' Big Brother China, in voting against Iran, is being criticised by political parties of the left who are the Congress's partners in the ruling coalition. Oddly enough the main opposition party the Bharatiya Janata Party is significantly silent on

A further move by both parties to amend the Act will put a permanent quietus on this aberration of splinter parties and the bane of coalitions. After all in the best of its moods the BJP could not pretend that it was in love with its coalition partners either.

Once the amendment goes through and the new electoral process is set in motion the Congress and the BJP can go back to making their respective political noises at one another. But the 10% growth path will then have been assured.

'Failures' as a Measure of 'Success'



It was the favourite saying of Tolstoy that the moment one believes that he has reached his ideals his further progress stops and his retrogression begins and the virtue of an ideal consists in that it recedes from us the nearer we go. To say, therefore, that Tolstoy on his own admission failed to reach his ideal does not detract a jot from his greatness, it only shows his humility. Constant development is the law of life, a man who always tries to maintain his dogmas in order to appear consistent drives himself into a false position. Tolstoy's so called inconsistencies were a sign of his development and his passionate regard for truth...He was great even in his failures and his failures give a measure not of the futility of his ideals, but of his success.

Jayaprakash Narayan

Cited in Jayaprakash Narayan: *Prophet of People's Power*, by Sudhanshu Ranjan, National Book Trust, India.

THE RESERVATION CONUNDRUM

... AN OVERVIEW

USHA THAKKAR

If birth identity takes precedence over other identities, the identity of an equal and responsible citizen takes a backseat.

The issue of reservations needs to be understood in its historical as well as contemporary contexts. Our democracy, though it may at times appear messy and unwieldy, has remained vibrant and functional. We, however, have a long way to travel before translating this participatory form of democracy into an emancipatory one.

The makers of the Constitution had provided for protective discrimination in the form of reservations for the SCs and STs, till such time as the necessary foundations of an egalitarian society were established firmly. Such reservations were meant to be 'enabling provisions' for a limited period only. But the politics of identity and opportunism have overshadowed the egalitarian dream. The political parties and leaders, ever in need of more and more of voter support, seek to expand the network of reservations; the various castes and groups, lured with the intention of reaping benefits, strive to be included into the charmed circle of beneficiaries. After the appointment of the Mandal Commission and the implementation of its report, caste has now emerged as both the most decisive and divisive factor in the political calculus.

The electoral system has played up the potential of caste, and particularly marginalized castes and sections in the political arena. The gain of mobility and power by the OBCs has added to the

intricacies of the power game. The position differs from state to state and even within a particular state. In addition, the internal dynamics of our highly heterogeneous society are complex, giving rise to conflicts of all kinds – ethnic, communal, religious, casteist and regional – and at all levels, from local to national.

The electoral system has played up the potential of caste, and particularly marginalized castes and sections in the political arena.

Real Goals of Education Ignored

The importance of education in this context cannot be overemphasized. Education is perceived as a tool to have access to power and position. India has over 250 universities, 15,000 colleges and around 10 million students. The growth, however, has not been well-planned. Recent growth is much greater in professional colleges (especially engineering, management and medicine), as well as in private institutes professional/vocational courses. The education system however remains under constant stress. Over-regulation by the state co-exists with discretionary privatization. The fierce competition for seats in the institutions of excellence has also to contend with the reservation of seats. The number of colleges of liberal education increases with a decreasing capacity of the educated to secure jobs. India's education system suffers from the crisis of governance. Unimaginative policy makers, academic entrepreneurs and maneuvering persons

Freedom First, July 2006

DR. USHA THAKKAR is Honorary Director, Institute of Gandhian Thought and Rural Development.

who take education as a commodity, rule the sphere of education. The contours of higher education are shaped by many players in the arena like the University Grants Commission (UGC), the legislature, the executive and decision-making bodies in various institutions and the universities. There is hardly any coordination among them; instead of a comprehensive vision, they have different programmes and paths.

Education is a very important component of human development. But how do we understand the goals of higher education? To strengthen democratic norms? To prepare responsible citizens? To provide equal access to opportunities? To build a vibrant economy?

Instead of pursuing the goals with vision, well-formulated policies and political will, the state takes recourse to unimaginative steps like uniform pattern for all educational institutions and politically expedient short cuts like reservation. The latest announcements of the government regarding reservations prove this once again. The fact that there are deprived sections that need to be assimilated in the mainstream cannot be denied. The underlying principles of freedom, equality and justice enshrined in the Preamble of the Indian Constitution demand removal of discrimination, inequality and oppression in all spheres. This calls for innovative policies and firm commitments to the norms of freedom and equality. What happens, however, is that the rhetoric of social justice and equality attempts to silence different viewpoints and perspectives. Instead of serious deliberation over the issues of discontent, the discussions on reservation end up in a blame game. The judiciary and the legislature often differ in their interpretations of social justice and equality resulting in important judgements being sought to be annulled through legislation including constitutional amendments.

The OBC Arithmetic

The recent decision of the government to increase the quota for the OBCs raises many issues.

To begin with, the data available is neither sufficient nor reliable enough to justify the declared percentage. Currently 22.5% seats in higher education institutes under the Central Government are reserved for the SCs and STs. Their combined share in the population is 24.4% (SCs 16.2% and STs 8.2%). Now the proposal to increase the quota to 49.50 % to include OBCs does not have the required data to arrive at this figure. Exact figures of the OBCs are not collected in the census. The last available caste-data is in the 1931 census; it was wisely decided that Republic India would not require such data. The Mandal Commission estimated around 52.4%. The National Sample Survey of 1999-2000 puts the OBCs between 32% and 36% excluding Muslims. Social Scientist Yogendra Yadav puts it at 40% to 44%, on the basis of the election data worked out by the Centre for the Study of Developing Societies (CSDS). The Minister for Human Resources himself was not sure of the figure. In addition, it is extremely difficult to decide the line of backwardness and delineate the OBCs. The economic, social and political parameters in identifying differ from state to state and even within the state.

The rhetoric of social justice and equality attempts to silence different viewpoints and perspectives.

Secondly, the number of the OBC castes keep increasing. Political wheeling-dealing is a major factor for such additions. In 1999, OBC status was conferred on the Jats in Rajasthan barring those from the districts of Bharatpur and Dhaulpur, ruled by the members of that caste before independence! Significant additions to the OBC list have been made on the recommendation of the National Commission for Backward Classes on the premise that 'identification of backwardness is an ever-continuing process of inclusion and exclusion.' However, we have so far seen only inclusion and expansion, not

exclusions.

The Easy Way Out

It is difficult to put SC, ST and OBC on one footing and in the same group. Instead of finding an alternative and encouraging fresh thinking on the issue, the government has adopted an unimaginative and populist approach. As pointed out by Pratap Bhanu Mehta (in his letter of resignation from the Knowledge Commission addressed to the Prime Minister), what we needed was space to design more effective mechanisms of targeting groups that need to be targeted for affirmative action. For instance, there are a couple of well-designed deprivation indexes that do a much better job of targeting the relevant social deprivations and picking out merit. The action of the government, however, has prematurely foreclosed these possibilities. Reservation is the way of avoiding the things that really create access, e.g. increasing good quality institutions at all levels, more robust scholarship and support programmes, combining economic reform with social justice. Not enough is being done to empower the marginalized groups. We are not doing enough to genuinely empower marginalized groups, but are offering condescending palliatives like quotas as substitute.

What we needed was space to design more effective mechanisms of targeting groups that need to be targeted for affirmative action.

Such reservations encumber the autonomy and independence of academic institutions. They leave no space for the institutions to try protective policies suited to their environment. By putting all the institutions at the same level, the government has displayed its insensitivity and apathy.

Playgrounds of Politicians

These provisions politicize the education

system and convert academic institutions into a playground for politicians. Strong and independent educational institutions bring prestige and prepare the young generation for formidable challenges. Vitality of educational institutions is important for the strength of the nation.

It hardens caste consciousness and entraps the young and emerging generation into the whirlpools of caste identities.

Not Meant to be Permanent Crutches

The provisions have to be considered in the context of the Constitution. As H. M. Seervai has pointed out in his article 'Reservation: In Education and Public Service, *Freedom First*, July 1985, No.386, two provisions in our Constitution have produced a social revolution. One is the abolition of untouchability and the other is the acceptance of universal adult suffrage. Article 16(4) grants power to the state to reserve seats. According to Article 15(4), the state can make special provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. It is to be noted here that this discretionary power is an enabling provision which neither creates any obligation on the government nor confers any right on any citizen, backward or otherwise. What Articles 15 and 16 provide for is what has come to be known as 'discrimination in reverse.' It means that certain classes have been so handicapped by social conditions, by previous history, by the nature of their employment that some advantage should be conferred on them in order to bring them up to the level of others. Such discrimination must be for a reasonable and limited period, but cannot continue indefinitely. Again, the relaxations made in favour of Scheduled Castes and Scheduled Tribes have overlooked the injunction of Article 335 that the claims of the Scheduled Castes and Scheduled Tribes in public services shall be considered having regard to the efficiency of the administration. To quote Seervai, "just as we condemn the injustices

of the past, we cannot cure one injustice by perpetuating another injustice. Reservations of seats and posts was meant to be a help and not meant to be permanent crutches”.

Identity Politics is Explosive

Identities of people are overlapping and multi-layered, which include class, caste, religion and gender, with each group having internal diversities. India is a nation of extreme diversities, hierarchies and economic disparities. Intersections of identities are complex, varied and at times unpredictable. Various political and economic forces bring to the surface different identities at different crucial moments. Caste is an identity, but not the only identity. Reservations form shifting alliances guided by emotional pulls and practical calculations for self-interest of such identity for immediate gains. They tie economic and political benefits to identity politics and result into explosive politics.

Stark realities are often camouflaged under the colorful slogans of social justice. Social inequality cannot be seen divorced from economic inequality. Social justice has to be considered with economic well-being. *The Economist* (June 1, 2006) has important comments on the Indian situation. “Higher rates of growth are essential, if India is to find jobs for the 70 m or so young people who will join the labour force in the next 5 years; if the 260 million who live on less than \$1 a day are to be lifted out of poverty; if the benefits of India’s success are to be shared by the 70% who live in the countryside; and if India, in 15 years time, is to become something like China today”.

If birth identity takes precedence over other identities, the identity of an equal and responsible citizen takes a backseat. Social justice cannot be converted into numerical calculations; neither can commitment to democratic norms be proclaimed by taking recourse to the blame game. Political correctness cannot stifle openness of ideas. The rational arguments based on democratic norms have

to override narrow considerations. Society and especially the youth are under pressures not experienced earlier. Opportunities are abundant, but competition is fierce. A liberal economy, globalization and changing social relations have brought new challenges.

If birth identity takes precedence over other identities, the identity of an equal and responsible citizen takes a backseat.

Innovative Solutions Needed

To talk about affirmative action only in terms of quota and numbers amounts to ignoring the challenges of the twenty-first century. Issues of excellence and access need not be seen as contradictory; just as castes and merit need not be perceived as connected. There cannot be two opinions that the deprived and marginalized sections have to be integrated into the mainstream. But quotas do not provide blanket solutions. Our democracy nurtures plural voices and diverse opinions by its very nature; all of them do not result into irresolvable conflicts. In fact not listening to them will result in that. The bitter history of past inequalities cannot be erased by playing on the casteist paradigm. Realities of life are that there are conflicts in every identity group. The tensions between SCs/STs and OBCs and between various sub-castes amongst SCs cannot be sidelined. What is required is sensitive understanding of the issues at stake and far-reaching policies towards the goal and political will.

Inequalities must be removed in a democratic system, but they demand targeted and innovative policies of affirmative action, which facilitate a sense of shared interests rather than competition among groups resulting in zero-sum games. Contemporary challenges demand new discourse, new paradigm and new strategies to translate the ideals of equality and justice into reality.

CHINESE CHAKKAR

INDIA-CHINA RELATIONS – A REVIEW

T. C. A. RANGACHARI

In a few weeks, India will be commemorating 60 years of Independence. These 60 years have been an eventful period in the life of our nation and peoples as we have gone from an impoverished, colonial possession whose future, even survival as a nation, was a matter of continuing wonderment to a country that is hailed as the largest democracy, a rapidly growing economy that might be in the front ranks of the world before we commemorate our centenary.

India has gone from a chronically food shortage country with a begging-bowl image, import dependent and ship-to-mouth food lines, 'Non-Cereal Days' to being the largest or second largest producer of all food items.

China is the only other country that has similarly risen from the depths of ruination to riches. Today, China is proving Napoleon right and the sleeping giant, now awakened, evokes fears in the developed world of not just being overtaken economically, but also of becoming so dominant as to pose a security threat.

India : From Scarcity to Plenty

India has gone from a chronically food

shortage country with a begging-bowl image, import dependent and ship-to-mouth food lines, 'Non-Cereal Days' to being the largest or second largest producer of all food items. There was a time, not long ago, when baby food was being rationed one tin per family. Today India is the largest producer of milk in the world, having overtaken the US. For several years after Independence, books written on India had titles like *Who After Nehru* and *Whither Indian Democracy*; today books on India are morale

China, till it closed the chapter on the 'Great Proletarian Cultural Revolution', was in chronic short supply of food and other items ... Today, China is the factory of the world, the vacuum cleaner of global FDI.

boosting with titles like: *The World is Flat*. The skepticism regarding the future of democracy in India has given way to approbation and admiration as Indian democracy is held up as a model for study and emulation. At the height of Bangladesh's War of Liberation, the then US National Security Adviser Henry Kissinger was telling the Chinese that the US would look the other way if China chose to take military action against India. Today, the US wants to build India into a Super Power, bestow a nuclear status, even if somewhat 'Trishanku' like, upon India, and bring India - and China - into the group that would shape the world. From being a closed economy with a 'Hindu' rate of growth straining to reach 4%, India's rate of growth, today, whether

Freedom First, July 2007

MR. T. C. A. RANGACHARI, IFS (Retd.) was Ambassador to Algeria, Germany and France. He has served in China and spent long years dealing with China at India's Ministry of External Affairs. He can be contacted at tcrangachari@gmail.com

still 'Hindu' or 'secular' is galloping to reach double digit. India and Indians are sought after, Indian companies are becoming global players and India is even cited as a possible threat to future prosperity of the developed world.

So, as India approaches the 'senior citizen' status, India and we prepare ourselves for the 'Shashtiabdapoorti' we can consider ourselves doubly blessed – for being Indians and for living in an India that is resurgent and enroute to prosperity!

China : From Poverty to Prosperity

The China story is not different. China, till it closed the chapter on the 'Great Proletarian Cultural Revolution', was in chronic short supply of food and other items and what was available in the 'Bai Huo Ta Lou(s)' and the 'Friendship' stores - as the Super Markets were then called - was basic and shoddy in quality. Men, women and children in cotton padded blue jackets and trousers waited

The Chinese positions on issues of interest to India – J&K, nuclear weapons, permanent membership in the UNSC etc – have changed with the vicissitudes of China's relations with India. India, on the other hand, maintained its position on the admission of China into the UN and UN Security Council seat, even after the Chinese aggression in 1962.

endlessly in queues, the streets were crammed with bicycles and the odd bus would trundle along at unpredictable intervals. When the first five-star hotel - the Peking Hotel - was constructed, not far from the Tian An Men square, in the mid-seventies, there were long lines of people outside the compound waiting to see the doors open automatically! Today, China is the factory of the world, the vacuum cleaner of global FDI. Beijing has three ring roads with no

red lights and which are forever full of cars causing traffic jams that would make peak hour traffic in Mumbai seem free flowing. Luxury goods makers are opening stores at break neck speed and complaining of product shortages to service a growing Chinese consumer market. All the hotel chains of the world operate establishments in different cities in China as China attracts some 50 million tourists annually; Japan, Korea and Singapore provide the patronage for the globally famed golf courses including Pebble Beach Golf Course in Liaoning in the North East that has weekend ferries bringing in South Korean golfers! Inter city roads rival the autobahns; China has the first MagLev train in the world and is preparing for TGVs; and in an engineering marvel as well as tribute to human endurance, built a rail line to Lhasa. There are nearly a million foreign funded enterprises in China. The Chinese have really taken to heart Teng Xiao Ping's exhortation "To be rich is glorious." They have discarded Mao's dying dictum "Class struggle is the key; rest is secondary."

China, Too, Has Come a Long Way

China is far ahead of India in growth, reforms, infrastructure, FDI, scale of productivity, foreign exchange reserves, nuclear, space and military prowess. They have had a double digit growth for several years, hold a trillion dollar foreign exchange reserve, (India's is \$200 billion); have attracted some \$750 billion in FDI cumulatively (India has attracted \$ 55 billion FDI); have put a man in orbit and are working on a manned moon mission, (India's Chandrayan project is just getting off the ground); demonstrated anti-missile capability and acquired capability to project military power well beyond their borders. An argument is made that China is ahead of India because of a head start of 10 years. This is feel-good and is self-serving. It detracts from the single-minded determination and commitment of the Chinese to modernize and develop. It does not do justice to their hard work of three decades. Remember – in 1980, China set the goal of doubling

its GDP in twenty years by 2000; it achieved that goal in fifteen years and then set a new target of redoubling the 1995 GDP in the next five years and achieved that too. And there has been no let up since. So let us be fair and give them credit for their success. Let us learn from what good they have done for themselves.

China's Foreign Policy: Pragmatic ...

In foreign policy, as in economic policy, China has followed pragmatism and not allowed itself to be constrained by ideology or, for that matter, even principles! At the time of the founding of the People's Republic in 1949, Mao Tse-tung had declared that China would follow a policy of *Yi Mian Tau* (Lean to One Side) – to the side of the Soviet Union. Within ten years, China had broken away from the Soviet alliance and was in an open confrontation that nearly led to war in 1969 over the Ussuri river clashes. Since then, China has 'leaned' to the other side as it developed a close relationship with the US even if there has, periodically, been coldness. If it was hostility to, and of, the US that motivated an alliance with the USSR, it was hostility to, and of, the USSR that motivated an alliance with the US! National interest, pure and simple.

... India's Beyond National Interests

In contrast, Indian foreign policy has been more consistent. It has been rooted in a world-view that promotes but goes beyond considerations of national interest alone. This is nowhere more evident than in the conduct of India-China relations. The Chinese positions on issues of interest to India – J&K, nuclear weapons, permanent membership in the UNSC etc – have changed with the vicissitudes of China's relations with India. India, on the other hand, maintained its position on the admission of China into the UN and UN Security Council seat, even after the Chinese aggression in 1962. There are other examples of Indian willingness to set aside its national position in order to evolve a consensus within the international community.

In 1940, Nehru wrote that India-China friendship "is very precious to us not only because of the thousands of golden links that have bound us in the past but also because of the future that beckons both of us." That still holds good. As two large neighbours, as home to two fifths of the world population, as two fastest growing economies, it serves mutual interest for India and China to have friendly, co-operative relations. It suits China's interest too, at this juncture, to have good relations with India. But we have to be mindful that China maintains contrary positions on a number of issues of interest to India that could be brought to the fore should China's interests demand a relationship of a different kind.

*Should India be a clone of China?
No. Our freedoms are too precious. So much so that even though India and China have many of the same problems – poverty, unemployment, internal migration, rural-urban divide, income inequality, corruption, alienation – it is China's long-term stability that is more often in question.*

China & India : The Essential Difference

Should India be a clone of China? No. Our freedoms are too precious. So much so that even though India and China have many of the same problems – poverty, unemployment, internal migration, rural-urban divide, income inequality, corruption, alienation – it is China's long-term stability that is more often in question. Forty year ago when comparisons were made between India and China, it was smart to say that China has distributed its poverty much better than India! No longer so. According to one report, nearly two-thirds of the GDP was in the hands of less than half a percent of the population. China's National Development and Reform Commission has reported that the

poorest 20% of urban population received only 2.75% of urban income while the richest 20% took 50%. The income of the rural population is one third that of the urban population. At the regional level, the eastern region was five times as prosperous as the western region and two and a half times as prosperous as the central region. Not very different from our BIMARU phenomenon! The Chinese themselves are partly responsible for bringing long-term stability into question since they take recourse to the argument of social instability whenever the question of political freedoms is raised.

The Indian state, even at the highest levels, is open to dialogue with the Hurriyat, Nagas, Mizos, and various others with a sense of alienation. With varying degrees of success, no doubt, but dialogue nevertheless. Does China have the will for a similar dialogue with the Dalai Lama?

Indian democracy provides a mechanism for dialogue and accommodation that China has yet to develop. The Indian state, even at the highest levels, is open to dialogue with the Hurriyat, Nagas, Mizos, and various others with a sense of alienation. With varying degrees of success, no doubt, but dialogue nevertheless. Does China have the will for a similar dialogue with the Dalai Lama? Or the Fa Long Gong? Would China's stability be eroded or enhanced if it were willing to have a multi-party system like India? Would the Taiwan problem not be easier to resolve if China carried forward the economic reform process to the political front also and instead of seeking to make Taiwan one Small China, transform China into one Big Taiwan? Democracy with a market economy?

Democracy is not simply a theory of statecraft in the abstract. It is the freedoms that we enjoy in

our daily lives. We do not run the risk, ordinarily, of being uprooted from our homes to be re-located in distant places because, say, 600 square kms of rice paddies in Pu Dong has to be redeveloped to help make Shanghai the financial capital of Asia or the Three Gorges Dam has to be built. However irksome Medha Patkar, Arundhati Roy, Sunder Lal Bahuguna and others might be, they are heard, not muzzled or exiled, when big projects are taken up. A former CM of Maharashtra once remarked, in response to a question regarding why India lags so far behind China, 'Get rid of the Parliament, the Judiciary and the Press and India will progress even faster'! It is unlikely that we will see the lively debates on the Executive's populism vs Judicial Activism in China. Having said that, one should also note that China has the will to sentence even very senior communist party functionaries to death for corruption – and charge the family for the bullet used for the execution. Do we really believe that the fact that no political leader or even senior government official has even been sentenced to a jail term for corruption in India is a testimony to our honesty? Or take the economic side. Do we want Indian industry to be predominantly in the hands of Indians or would we prefer to be a manufacturing base for foreign funded firms? Do we want FDI mainly to develop and expand domestic demand or for purposes of export earnings? Learning from China is a definite yes; emulation, questionable.

If India and China are to regain their place and play the role they played in the global hierarchy before the advent of imperialism and colonialism when they, together, accounted for nearly half of the global output and trade, they must empower and enrich their peoples, work together and learn from each other, and be friendly competitors rather than hostile rivals. If India and China can agree upon that as their common destiny, they would have done all of humanity – not just the two-fifths that constitute Indians and Chinese – a service, they would be lauded by history and blessed by the Gods.

MAOIST MENACE

NAXALITE OFFENCE

ASHOK SAHU

The Left Wing extremism spearheaded by the Communist Party of India (Maoist) constitutes what Prime Minister Dr. Manmohan Singh rightly described as the “single biggest internal security challenge” confronting the country. From March 2006 to August 2007, the Maoist presence spread from 165 districts in 14 states to 192 districts in 16 states, the total districts in the entire country being 602.

Unlike Jehadi terrorists, the Maoist terrorists are Indians. It is a movement which does not believe in democracy, does not accept the constitutional system and intends to establish “Peoples’ Republic” through the use of extreme terror. The

Unlike Jehadi terrorists, the Maoist terrorists are Indians. It is a movement, which does not believe in democracy, does not accept the constitutional system and intends to establish ‘Peoples’ Republic’ through the use of extreme terror.

target is to hoist the ‘Red Flag’ on the Red Fort in New Delhi. The root causes (for the outbreak) are poor governance, want of social justice, lack of electoral reforms, corruption in the judiciary and bureaucracy, poor state of rural roads, absence of

primary health care, education and employment opportunities. In order to understand the gravity of the Maoist threat, it is necessary to delve into its immediate history.

Background

The first spark of the movement was witnessed in 1948 in the Telengana region. Later in 1967-71, it is traced to the agrarian movement that started in Naxalbari, a small village in West Bengal, led by leaders like Charu Mazumdar and Kanu

Maoist groups all over South Asia formed a Coordination Committee of Maoist Parties and Organisations of South Asia (CCOMPOSA) in July 2001, which is said to be the first such international conclave.

Sanyal. There were many factions in the movement due to ideological cleavage and differences on tactics and strategy. Maoist Communist Centre (MCC) was formed under Kanhai Chatterjee’s leadership in 1975. In 1980, Kondapalli Seetharamaiah formed the Peoples War Group (PWG) in Andhra Pradesh. The growth of MCC in the North and PWG in the South marked an important milestone in the history of Maoist growth in India. During 1990 there was reassessment of their ‘protracted movement’. It was decided to spread it to areas adjacent to a Communist country like Soviet Russia or Peoples Republic of China. Accordingly the MCC group in Bihar trained the Maoists in Nepal. And now, though there were as many as 44 factions in the

Freedom First, April 2008

(Edited by MR. ASHOK KARNIK from the original paper by Mr. Ashok Sahu, IPS, retired Inspector General of Police, Assam)

CPI (ML) they are united since September 2004.

Maoist groups all over South Asia formed a Coordination Committee of Maoist Parties and Organisations of South Asia (CCOMPOSA) in July 2001, which is said to be the first such international conclave. PWG and MCC have joined as its integral parts. The most important development after the formation of CCOMPOSA is the merger of the PWG and the MCC in India to form the Communist Party of India (Maoist) on 21 September 2004.

Ideology

Both organizations share the belief in ‘annihilation of class enemies’ and in extreme violence as the means to secure organizational goals. Marxism-Leninism-Maoism is the ideological basis guiding its (CPI-Maoist’s) thinking. The new entity has reaffirmed its commitment to the classical Maoist strategy of ‘protracted armed struggle’ for seizure of power. In this mainstream communist allies, the Communist Party of India (CPI) and the CPI (Marxist). The party secretary, Ganapathi, also announced the formation of a ‘People’s Liberation Guerrilla Army’ and extended support to ‘revolutionary struggles’ in Nepal, Peru, the Philippines, Turkey and other places.

In a press statement dated October 14, 2004, General Secretaries of the Central Committee of the two outfits, Kishan of the MCC and Ganapathi of the PWG, declared that “the immediate aim and programme of the Maoist party is to carry on and complete the ongoing and advancing New Democratic Revolution in India as a part of the world proletarian revolution by overthrowing the semi-colonial, semi-feudal system ... This revolution will be carried out and completed through armed agrarian revolutionary war, i.e. protracted people’s war with the *armed seizure of power remaining as its central and principal task, encircling the cities from the countryside and thereby finally capturing them*. Hence the countryside as well as the Protracted People’s War will remain as the ‘center of

gravity’ of the party’s work, while urban work will be complementary to it.”

The PWG is estimated to have 5000 armed cadres and around 4500 firearms, including a large number of rifles of AK variety, light machine guns, self-loading rifles, carbines, grenades, and landmines technologies. The MCC is estimated to have cadre strength between 4000-4500, and around 3500 firearms of similar varieties. The two guerrilla armies of the PWG and the MCC – the People’s Guerrilla Army (PGA) and the People’s Liberation Guerrilla Army (PLGA) respectively – have also merged under the agreement. The new armed force reportedly operates under the name of PLGA since December 2, 2004.

The intention is to have a continuous stretch of territory under their control, with the ultimate goal of eventually “liberating” the entire zone.

Areas of Operation

Following the merger, the outfit, according to current estimates is active in 192 districts of 16 States that include Andhra Pradesh, Chhattisgarh, Jharkhand, Bihar, Orissa, West Bengal, Uttar Pradesh, Uttarakhand, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Gujarat, Rajasthan, Punjab, Karnataka, Tamil Nadu, and Kerala.

The merger now makes the CPI (Maoist) a pan-India revolutionary group, and brings the Maoists closer to their objective of ‘liberating’ their proposed Compact Revolutionary Zone (CRZ), which extends from Nepal through Bihar in the North to Dandakaranya region (forest areas of Central India) and Andhra Pradesh in the South. The intention is to have a continuous stretch of territory under their control, with the ultimate goal

of eventually “liberating” the entire zone. Once achieved, the CRZ will virtually drive a wedge through the middle of the country, and would help crystallize linkages with other Maoist groups operating in South Asia, including the Communist Party of Nepal-Maoist (CPN-M) and the Communist Party of Bhutan-Maoist (CPB-M).

As per Intelligence reports, MCC and PWG have established close links with LTTE, Islamic terrorist groups, Nepali Maoists and Pakistan’s ISI.

Poor governance, increasing corruption in administration, growing unemployment both in the rural and urban sectors are being exploited by the Maoist insurgents to build a mass base against the establishment.

Ground reality and suggestion for solution

Poor governance, increasing corruption in administration, growing unemployment both in the rural and urban sectors and lack of definite policy for settlement of displaced population in the acquired areas for Industries have been some of the ground realities, which are being exploited by the Maoist insurgents to build a mass base against the establishment. The Government has placed great faith on ‘developmental initiatives’ in Maoist-affected regions. These neglect realities in the conflict zone, where the delivery mechanisms and administrative machinery of the state cowers under the shadow of violence, with Government officials often paying extortion sums and ‘revolutionary taxes’ to the Maoists. ‘Land reforms’ will have little impact in regions where a red flag on a piece of land conclusively alters its title; and the funds flowing in for various developmental schemes have no channels into the rural hinterland, where only the para-military column dares to venture.

The threat perception of the Government in the context of Maoist Insurgency has to be reoriented to the bigger game plan of the Maoists designed for the whole South Asia region. In the national context, our approach all along has been, as if, it is the concern of the affected State and the Centre can only extend help on request by sending reinforcement of para-military forces. It is to be noted that the threat of the Naxalites is not limited to the areas of immediate violence. It is in the complex processes of political activity, mass mobilisation, arms training and military consolidation that the Maoist potential has to be estimated. The Maoist menace continues to expand, except where it has been confronted by coherent use of force – as is presently and substantially the case in Andhra Pradesh. The Andhra Pradesh Police has developed its capacities to engage with the Maoists in their strongholds, though it has been repeatedly inhibited by political constraints from effective action.

Other States, however, remain far from prepared. Indeed, a consistent feature across all the major Maoist-affected States is that they have extraordinarily poor policing infrastructure. The Central Government has to reorganize the State police with requisite funds both in matters of resources and training. State intelligence wings need to be strengthened by introducing incentives to attract capable officers. Village defense organisations have to be revamped to bring the rural population closer to the Police administration, which would also help in collection of intelligence. The Forest Department has to function in close coordination with the Revenue and the Police departments in the States.

The Central Government has also woken up to the need for a centralised force to fight this menace in a coordinated manner and is raising special armed police battalions for the purpose. It will take some time for this force to be functionally effective.

With Best Compliments from :



SUMMARY OF MAJOR ERECTION WORKS CARRIED OUT / UNDER EXECUTION

Name of the Project	Rating	Scope of Work				Status
		Turbo-Generators	Boilers	Power Cycle / SG / CW Piping	C & I	
NTPC-Sipat	660 MW	3	-	-	-	Under Execution
Various Projects	500 MW	17	1	9	1	Completed
Jhajjar, Dadri, VTPS, KTPS, Korba, Bhusawal,		3	4	3	-	Under Execution
Various Projects	250 MW	5	4	4	-	Completed
Parli		1	-	-	-	Under Execution
Various Projects	210 MW	27	9	10	2	Completed
Various Projects	110 MW & Below	18	9	2	6	Completed

INDWELL CONSTRUCTIONS PVT. LTD.

Regd. Off. : 40-9-94, Sai Nagar, Vijayawada - 520 008, Andhra Pradesh, India.

Tel. : +91 866 2478725; Fax : 2479817; e-mail : indwell@gmail.com, Web : www.indwell.in

31 YEARS OF EXCELLENCE IN THE POWER SECTOR



THE BANKER TO EVERY INDIAN

An appreciation of talent, and the skill to manage that talent.

Another strand in the intricate pattern of relationships that makes up India's social fabric.

Over two centuries we have managed the money of people
with very many different skills. We understand their traditions and dream their dreams.

It's the reason why we're the banker to every Indian.

To know more, visit our website www.statebankofindia.com or call our toll free number 1800-11-22-11.