

COURT UPHOLDS PRESS FREEDOM

IN our January issue we had mentioned that the hearing of the appeal filed by the censor against the judgement of Justice Mr. R. P. Bhatt, quashing the decisions of the censor, had been fixed for January 5, 1976. That appeal was duly heard and judgement was delivered by a Division Bench of the Bombay High Court consisting of Justice Mr. D. P. Madon and Justice Mr. M. H. Kania on February 10, 1976.

Readers of *Freedom First* will be happy to know that the Division Bench upheld the judgement of Mr. Justice Bhatt on all the important points of law involved and also issued a Writ of Mandamus in favour

of the Editor in respect of nine out of eleven items in dispute. Quantified damages were also awarded to the Editor.

We are grateful to our Counsel, Mr. Soli Sorabjee and Mr. A. G. Noorani, who ably argued against the appeal on our behalf. We are also thankful to Counsel G. A. Mehta, Subhash Parikh and Arshad Hidayatullah, who were all ably instructed by Mr. D. H. Nanavati, our Attorney.

This is an exhaustive and, in a way, a historical judgement spelling out the role of the censor and the rights of the press and we carry below a summary in this journal for the benefit of our readers.

RULE OF LAW PREVAILS

AT the outset in their judgement the Judges considered the preliminary objection to the very maintainability of Mr. Masani's Petition. It had been argued that it was not maintainable as the right under Article 19(1) — freedom of speech and expression — remained in suspense by reason of Article 358. Reliance was also placed on the Presidential Order taking away the right to move courts for the enforcement of certain fundamental rights.

Examining this contention on behalf of the appellant, the Judges said:

"What is suspended under Article 358 on making a Proclamation of Emergency are not rights under Article 19 (1) but restrictions upon the power of the State to make laws or take executive action inconsistent with those rights. In other words, the making of the Proclamation of Emergency removes the fetters which were placed upon the State's power to make laws or take executive action restricting or abridging rights mentioned in Article 19(1). While Article 358 suspends restrictions or fetters placed on the State's power to make laws or take executive action inconsistent with rights under Article 19(1), Article 359 confers power on the President to make

an order suspending the right to move the courts, for the enforcement of fundamental rights.

"The position in law thus is that the Petition must fail if the challenge therein is founded upon a violation or infringement of the Petitioner's right under Article 19(1), but not if the ground of challenge is *de hors* the infringement or violation of any such right.

"The right to freedom of speech and expression is a right under the Common Law of England which is recognised and enforced by courts in India prior to the coming into force of the Constitution. Under Article 372(1) all laws in force in the country immediately before the commencement of the Constitution continue in force until altered or repealed.

"*Prima facie*, we are unable to accept the contention that all rights which existed prior to the coming into force of the Constitution got merged in the rights mentioned in the Constitution and did not exist independently thereof."

The Judges were of the view that the words "executive action" in Article 358 could mean only "executive action taken under the law". It did not authorise the State, during the Proclamation of Emergency, to

take any action it liked. Such executive action though contrary to the provisions in Part III of the Constitution could not be contrary to the provisions of all other law.

Continuing, the Judges observed:

"The operation of the Proclamation of Emergency and the Presidential Order do not confer upon the executive the power to take illegal or arbitrary action to the prejudice of the citizens. In spite of the Proclamation of Emergency and the Presidential Orders a citizen is free to say, write and act as he likes so long as he does not transgress the law and so long as what he does is not prohibited or regulated by law. Whether before or after the Proclamation of Emergency and Presidential Orders, a man does not need permission of the executive authority to do or say or write what he likes unless such permission was or is required to be taken by law.

"In the domain of private actions the law regulates or prohibits. It is in the domain of public activities that the mandate of the law is required. If, therefore, even after the Proclamation of Emergency and issuance of the Presidential Order under Article 359(1) a citizen is prejudiced by an executive action he can challenge it on the ground that it lacked the authority of law and if the authority taking such action were unable to support it in law the court would strike it down."

The Judges thus overruled the appellant's preliminary objection and held that Mr. Masani's Petition was maintainable. The Judges next proceeded to consider the contentions on the appellant's behalf that (i) the censorship order having conferred permissive powers on the censor the court could not issue a *mandamus* permitting publication of the material, (ii) the censor's decision was not justiciable, unless it was *mala fide* or perverse, as he was the sole judge of the matter on the basis of his subjective satisfaction, and (iii) the court could not set aside his orders since as a subordinate officer he had acted in pursuance of lawful instructions given to him by his superiors in the form of guidelines which he was bound to follow.

On these contentions the Judges made the following observations:

"Censorship is too important a matter for the exercise of it to be left to the volition of an officer appointed under the censorship order. Censorship is not and cannot be optional to the censor. The censorship order casts upon every censor appointed thereunder a duty to consider the written material submitted to him for scrutiny, to apply his mind to it and either to give his authorisation to its publication or refuse to give such authorisation or to give it subject to such conditions and restrictions as he thinks necessary.

"Even assuming that the censorship order confers

permissive power upon the censor appointed thereunder, in the present case the censor has in fact interpreted the censorship order and taken action thereunder and this brings him squarely within the rule set out in Halsbury, namely: "When a statute is interpreted and action taken in the light of matters which ought not to have been taken into account, that is to say, which the court considers not to be proper for the guidance of the discretion entrusted to the persons concerned, the latter would be considered not to have exercised their discretion according to the law and a *mandamus* will issue commanding them to exercise the powers given to them under the statute in question."

In regard to the Court's power to grant relief the Judges examined a number of judicial precedents and spelt out the principles deducible from them. According to them: (1) The Court's scrutiny and review are not totally barred where, in the exercise of statutory powers, an authority is empowered to make an order in its discretion on subjective satisfaction; (2) An order made by an authority on its subjective satisfaction can be set aside by the Court on the ground of (i) non-application of mind, (ii) exercise of power dishonestly; (iii) *mala fide* exercise of power, (iv) exercise of power for a purpose not contemplated by the statute, (v) an authority's action under the dictate of another body or authority, or (vi) where the authority has disabled itself by application of mind to facts by self-created rules of policy, (vii) where satisfaction is based on a wrong test, (viii) where satisfaction is based on misconstruction of the statute, (ix) where satisfaction is based on irrelevant grounds or on grounds extraneous to the scope and ambit of the statute, (x) failure of regard to matters required to be taken into consideration, expressly or by implication, by the statute, and (xi) where the decision based on the subjective satisfaction is such that no reasonable person could possibly arrive at it, i.e. where the satisfaction is not real or rational; (3) If one of the grounds is vague, irrelevant or bad, the whole order must fall; (4) An authority cannot avoid the court's scrutiny by failing to give reasons and the Court could compel it to state reasons; (5) When reasons are bad the court can order reconsideration; and (6) Where all reasons are found by court to be bad and unsustainable the court will not direct reconsideration, for then there is nothing for the authority to reconsider, but the court will direct the authority to carry out what it has, by the impugned order, refused to do.

According to the Judges, "matters which would affect public safety, internal security and maintenance of public order and measures necessary or expedient for securing public safety, internal security and maintenance of public order must be judged in the

(Continued on page 14)

Between You & Me and The Lamp Post



Barnard's Big Heart

LIKE a breath of fresh air in a fetid atmosphere, the handsome and talented Dr. Christiaan Barnard swept through India capturing all hearts in the process. Not that he followed the usual foreigner's recipe of telling us Indian what we like to hear.

An opponent of apartheid, Dr. Barnard stood up for fair play to his country. He objected to integrated teams in various sports put up by South Africa being boycotted at the Olympics, and proceeded to counter attack: "We have seen how the minorities have been treated in black majority ruled African countries. Look what happened to Indians in Uganda." Dr. Barnard claimed with pride that, in the medical profession in his country, they refused to observe "petty apartheid rules". He has not yet met any doctor who practises apartheid.

Dr. Barnard deplored the fact that the "United Nations has created the necessity for hypocrisy in international politics," and named his own country, along with Taiwan and Israel, as three nations which were the victims of this hypocrisy.

Among those whose hearts he captured in India appears to be that of the Prime Minister. In a press interview published in the *Indian Express* of 21st January, 1976, he described his meeting with the Prime Minister and said: "I told her not to talk about medicine. We talked about the problems of white Africa. She listened to me in silence." He said: "Almost all the talking was done by me. In fact, I did not allow her to speak! I told her things of which she was not aware." He told her: "Friendship is a bilateral affair." According to him, his country would be willing to have friendship with India.

Dr. Barnard did not accept the statement of Tanzania's President Nyerere that South Africa was an aggressor in Angola. He asked: "Why should South Africa not take interest in Angola? It is right on our boundary. Will not India take interest in what is happening in Bangladesh?"

"How long did your talk with the Prime Minister last?" a journalist queried. "She was not looking at her watch," he replied. He was happy to note that the Prime Minister believed in friendship. Good for Dr. Barnard and good for Mrs. Gandhi.

Britain's New Amazon

TO be called the "Salome of politics", the "Iron Lady" and the "Warring Amazon", all within a few days, are three feathers that adorn Mrs. Margaret

Thatcher's cap and are all part of the process by which the men in the Kremlin have succeeded in making the British Conservative leader a world figure.

Not that Mrs. Thatcher was very original in what she said on the subject of Soviet imperialism. "The Russians," she said "are bent on world dominance... The Russians put guns before butter! We put just about everything before guns. We shall reverse these processes when we return to government." Mrs. Thatcher promised to pull Britain out of "its long sleep" and drew attention to Angola as evidence of the trends to which she drew attention. Mr. Ronald Reagan, Senator Jackson, not to mention your own Editor and many others have made these comments before.

If Moscow thought that its broadside would weaken the Conservative leader in her own party or even otherwise, it once again miscalculated, as it is in the habit of doing about the reactions of free men whose minds are beyond the Kremlin's ken. Not only did the Conservative Party rise to a man and rally round its leader, but, cruellest blow of all, so did Prime Minister Harold Wilson. The gist of his remarks answering questions in the House of Commons was that, while Mrs. Thatcher's famous speech the previous week might be considered silly and naive, he agreed with almost every word of it. The British Prime Minister went on to observe that the person who had come out best from this entire controversy was the Minister of State for Foreign and Commonwealth Affairs, Lord Goronwy-Roberts, who had told the Soviet envoy, when he called at the British Foreign Office to protest against Mrs. Thatcher's blast, that Britain was a free country where people could say anything they liked and that if the Russians did not like it they were free to argue the matter out publicly. The Prime Minister evidently enjoyed the Soviet diplomat being dismissed with a flea in his ear.

Possibly goaded by Mr. Thatcher's prod, Tass decided to conduct an enquiry into what the English people think about the USSR and published what it described as British "misconceptions" about the Soviet Union which it found appalling. At Westminster School, for instance, the Tass correspondent complains that he was asked such stupid questions as: "Is it true that you are not allowed to criticise your leaders?" "What about persecution of the dissidents?" and "How about lack of liberties?" Not bad for public school boys!

British workers were even worse than the school boys. A factory worker in Sheffield, when shown a collection of Soviet newspapers, exclaimed: "I thought you had only one newspaper, *Pravda*!" So they have.

The height of wickedness was, however, reached by a woman worker who said that she had only heard of one Soviet scientist, and that was Sakharov!

Perhaps the most apt remark with which one can close this amusing chapter is to be found in a letter that Mr. Reginald Maudling wrote to the Soviet Government in response to its letter to the Conservative's shadow Cabinet. "Many people in this country, remembering the famous phrase of Comrade Litvinov (the pre-war Soviet Foreign Minister), will say that if peace is indivisible, then detente must be indivisible too."

Daniel Leaves the Den

ON February 3, the star turn in what has aptly been called "the theatre of the absurd" departed from the stage of the United Nations, and the debates of that body will lose a great deal of their glamour and realism and revert to that sickening hypocrisy against which Daniel Moynihan rebelled. It has been a scintillating innings and the batsman now retires "not out" to the pavilion of Harvard University to resume teaching.

Pleading for a sense of proportion with those who could not accept Moynihan's caution: "This animal is dangerous; it defends itself when attacked," the *Guardian* in an editorial article on 31st January, 1976, recalls: "In the 1940s and 1950s Molotov and Vyshinsky, the mighty Moynihans of Soviet diplomacy, expressed themselves in terms that were several degrees ruder than those used by Ambassador Moynihan."

It is good to know that while Mr Moynihan has left, the US Government proposes to carry on his campaign. This has been made clear by President Gerald Ford in a tribute he has paid to the departing diplomat: "You have consistently elevated public discourse by puncturing pretence and by eloquently advocating the cause of reason. Nowhere has this been more evident than in your service at the UN where you have asserted our position forcefully, cogently and honestly."

Freedom First would like to pay its tribute to Daniel Moynihan, this great fighter for human freedom, by publishing an article by Bernard Levin which appeared, a little before his resignation, in the *Times* of London.

Equality Ad Absurdum

INTERNATIONAL Women's Year may have ended, but its echoes will continue to reverberate through the corridors of time for a long time to come.

The first blow in setting this historic trend was struck by the Headmaster of Heaton Comprehensive School at Newcastle-on-Tyne in England, who was perverse enough to apply the logic of the equality of the sexes by arguing that, if male hoodlums among the inmates of his school could be caned, so could delinquent girls of a corresponding age.

Reasonable enough, you might think. But not so. The

police had to be called in to help settle what was described as one of the first applications of the Sex Discrimination Act which the British Parliament had recently passed. It would appear that three hundred girls had walked out of their class-rooms, fought with the prefects and broken the windows in protest. Nothing daunted, the headmaster, Mr Harry Askew, who deserves to be immortalised, told the girls of his 1300 pupil school "the strap will be used on girls to combat the uncouth and nasty behaviour of a certain section in the school." The Headmaster explained that the girls would be given the strap for smoking, using obscene language to teachers, or if they received detention for misbehaviour twice in the same week.

This application of the principle that "if women are equal, they should not be superior" has started a national debate in British educational circles and in the press. A meeting was convened of the Executive of the National Association of Head Teachers to consider this crisis. The Committee finally passed a resolution agreeing that schoolgirls can be caned but only on the hand by women teachers and only in circumstances where a reasonable parent would do the same at home. Posteriors were in any event banned from chastisement. The resolution did not say whether boys could expect some similar relief.

The climax to this development comes, however, with the lodging of a complaint of sexual discrimination by the parents of a schoolboy before the Equal Opportunity Commission. The form this takes is the failure to make early provision for their son to take cookery lessons like the girls.

All this provokes one to repeat the old slogan so popular with Don Salvador de Madariaga: "*Vive la difference!*"

Debunking — Communist Style

A GATHA CHRISTIE'S numerous readers in India, who must be mourning her departure from the scene, may perhaps temper their admiration for this master of the art of telling detective stories after reading the tirade in the Chinese Communist Party's leading daily *Ta Kung Pao* which denounces her as "a running dog for the rich and the powerful", the gravamen of the charge being that she "described crimes committed by the middle and lower classes of British society but never exposes their social causes". Thank God she didn't! How dreary her books would have been if she had!

Almost simultaneously, not to be left behind, Moscow decided to cut Jean Paul Sartre, the French philosopher, down to size. In the latest edition of the Great Soviet Encyclopaedia, in the 1965 edition of which he had been acclaimed as a champion of peace, Sartre is now described as a confused intellectual whose thoughts are "marked by sharp oscillation between liberal democracy and left-radical extremism."

Our enquiries of the NKVD as to what has provoked this demotion of the French intellectual have elicited the response that, between the two editions Sartre committed two crimes. One, he condemned the Soviet invasion of Czechoslovakia in 1968; and more recently he has presumed to call for greater human rights in the Soviet Union. Intellectuals, beware! You may, to parody Marx, have nothing to lose but your brains, unless, that is, you have an Order of Lenin to hug!

Buns or Loaves?

IF one man's food is another man's poison, one country's drought can become matter for another country's amusement. Ridiculing efforts made by Mr. Brezhnev to make the Soviet people conserve grain by arguing for the "superiority of small buns to ordinary bread loaves", the Chinese official news agency *Hsinhua* in a broadcast not only blames Mr. Brezhnev's personal leadership for the poor 1975 harvest, "the lowest in a decade even according to the most generous estimates", (see cartoon in February *Freedom First*) but goes on rudely to observe that "as the array of shining medals grew on Mr. Brezhnev's chest, the country's grain production shrank significantly and bread available to the Soviet people became less".

IN THIS ISSUE

Much of this issue is naturally concerned with the historic judgement that has made headlines in the press both abroad and in India. For lack of space we carry a summary of the Judgement which deserves careful and detailed study by lawyers and laymen alike. On pages 12 and 13 the reader will at long last be able to read much of what he was prevented from seeing in July and August last year. He will naturally find some of it a little out-dated but all of it, we hope, utterly unobjectionable.

Even now, we must desist from publishing the text of the Resolution passed by the Maharashtra Bar Council in December 1975 disapproving of the Proclamation of Emergency by the President, despite the Division Bench of the Bombay High Court finding it unobjectionable because of a statement made in Court by our Counsel that we would not publish it in this issue, pending the hearing of a Petition by the Censor seeking special leave of the High Court to appeal to the Supreme Court.

music in his ears

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gushing out of a Jyoti pump—
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surging from a Jyoti Thresher*

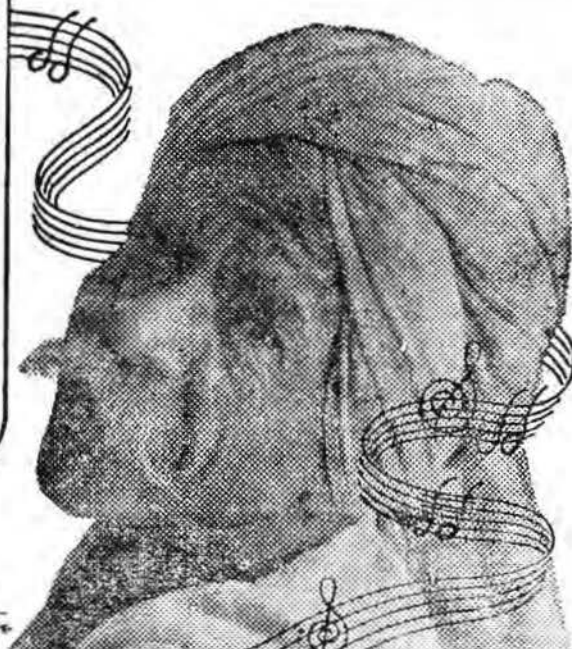
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A LONE VOICE THAT SHOULD STOP US ALL IN OUR TRACKS

Bernard Levin

EVEN the human race has something to be said for it. This feeling has been growing on me lately, whenever I contemplate the existence and behaviour of Mr Daniel Moynihan, American Ambassador to the United Nations. There has been a good deal of unease and hostility, in the United States and elsewhere, at Mr Moynihan's habit of going about stating some ancient truths, accompanied by a selection of modern ones, in forthright language, and since even this newspaper last week had some tempered editorial criticism of him to offer, I think it proper today to say that I have no criticism of him, tempered or otherwise, and to add that he seems to me as wise, farseeing, realistic, honourable and appealing as any statesman the world has seen for a very long time indeed, and considerably more so than any contemporary political figure.

In this world, it is not enough to be right, or even to be both right and good. One of the greatest problems liberalism faces is its desperate shortage of adherents who recognize the brutal reality of an illiberal world, and who know that it is not possible to preserve freedom and everything that goes with it unless the defenders are as hard, single-minded and, when it becomes necessary, ruthless as our enemies.

This is a bitter truth to swallow, but swallowed it must be for the good of our health. It would be hard to think of a more attractive and inspiring contender for the American Presidency in modern times than Adlai Stevenson; but I have always been certain that one of the reasons for his failure was the American people's undeceivable nose for the ultimate political weakness in a man, their X-ray vision that can always tell those from whom the final inch of political steel is missing. John Kennedy had that steel and won; the final degradation of the Stevensonian tradition was seen in 1972, and whatever the crimes of President Nixon, for which he has been condemned to the oblivion of history, nothing can wipe out from his record the fact that he saved America, and the world, from George McGovern.

The question that has to be asked of liberals—and in view of Mr Moynihan's background and tough upbringing he will, I am sure, recognize it—is: do they, or do they not, know where to put the razor-blades in the potatoes?

It is on that antithesis that our future may rest: the debate, that is, between those who think that freedom should do nothing to provoke the hostility of its enemies, and those who think that freedom is every-

where on the retreat precisely because this attitude has been dominant for so long, and who are determined to carry the war of ideas to the enemy. I have no doubt at all on which side of that argument I stand, and it is the same side as Mr Moynihan, which is also the same side as such American heroes of mine as Professors Sidney Hook and Arnold Beichman, and such British freedom-fighters as Mr Reginald Prentice and my beloved WW.

Mr Moynihan's position at the United Nations is an easily understood one. In the first place, he sees free countries especially his own, denounced and traduced by some of the vilest tyrannies the world has ever known. In the second place, he sees countries run by gangs of corrupt and rapacious beggars denouncing and traducing those nations, again especially his own, which have poured gigantic cataracts of aid into the beggars' open mouths, and thus enabled them to survive. In the third place, he sees racist oppressors denouncing as racist oppressors peoples who are not so much as one-thousandth part as racist or oppressive as the denouncers. He sees these things, which all his predecessors in his present post have seen, and he does not like them, which could also be said of those who have previously borne his responsibilities. But unlike them, he goes further; he does not confine himself to defending freedom when it is attacked, which has hitherto usually been the American way, and still less does he adopt the abject posture of the present British Government, which refuses even to defend freedom, preferring instead to denounce those who do. (Whence the mewling of Mr Ivor Richard, the other day, on the subject of Mr Moynihan himself.) Mr Moynihan takes the offensive, and when he sees a spade his first thought is to call it a spade, and his second thought, on which he usually acts, is to call it a bloody shovel.

Noticing that President Amin is a racist murderer, Mr Moynihan does not say that, by and large and taking one thing with another, President Amin's policies do sometimes seem to suggest that he is apt to pay too little attention to ensuring that Ugandan standards of justice and race-relations are as high as could be wished; instead, he says that President Amin is a racist murderer, and he deliberately compounds his offence by drawing attention to the fact that President Amin is the elected titular head of the Organization of African Unity.

Then again, Mr Moynihan has observed that the

democratic countries, which have no empires or subject peoples, are constantly denounced by the representatives of the Soviet Empire, and by the various tyrannies of the Third World, for being insufficiently unselfish towards the latter, although they have in the past quarter of a century or so, contributed many millions of millions of dollars to their upkeep. He does not, as a McGovern or a Harold Wilson would, cringe in acceptance of this impudent rebuke: pausing only to remark on the "superior capacity of Marxism to induce guilt", he continues: "It is said that if a Communist regime were to take over the Sahara there would in time be a shortage of sand. But we can be fairly confident that to the very end there would be those in the West convinced that the sand had gone to build swimming pools for the rich—in the West."

Further, Mr Moynihan sees that, at the United Nations, resolutions are often introduced denouncing regimes such as those of South Africa and Chile for imprisoning hundreds of people on the ground of their beliefs. Mr Moynihan does not dissent from such denunciations; on the contrary, he supports them vigorously. But he does not fail to make plain that they come ill from countries such as those of the Soviet Empire, which between them have hundreds of thousands, if not millions, of political prisoners.

The consistency, vigour and truth of Mr Moynihan's speeches (I am sorry he allowed himself to be persuaded to remove from his speech on the infamous Zionist resolution a statement to the effect that it marked the takeover of the asylum by the lunatics) deserve the highest praise.

For too long now we have gone on accepting all the lies our enemies tell, apologizing for things we have not done, to those who have done far worse than the worst they falsely accuse us of paying to support those whose principal activity is siding with our enemies, undermining the efforts of those who not only see the danger we are in but wish to do something about it. And where have we got with the policy of speaking in whispers and obligingly turning our backs to any boot that wants to kick us? Is freedom stronger now than it was a decade ago, or weaker? Has our influence among the tyrannies of Black Africa or the Arab world or Asia increased, or diminished? Do the aggressors and imperialists fear us more, or less? Are our own peoples increasingly tenacious of their hold on their democratic beliefs, or has that hold slackened?

In the answers to those questions lies the value of Mr Daniel Moynihan. The policy we have pursued is not only wrong, it is foolish, too; it not only betrays what we stand for, it helps ensure that what we stand for will lose in the battle against those who wish to destroy it. Mr Moynihan has begun to sound the trumpet to end the long retreat; it sounds sweet in my ears, and I suspect that it may awaken echoes long silent in the minds of many who have almost ceased to hope. Long may he continue to blow.

Courtesy: *The Times*

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Reviews

FREEDOM AT MIDNIGHT

By Larry Collins and Dominique Lapierre (Vikas, 474 pages, Price Rs. 45.)

THE story of India's struggle for freedom, the demand for a separate Muslim State, the agonising discussions and decisions which led to partition, the birth of two sovereign nations — India and Pakistan — is by now familiar to most of us in India but this book will certainly make that story far more vivid and popular than earlier, more learned, detailed and weighty accounts of the same events.

History made easy by being dramatised can be quite unhistorical but it can be said to the credit of the authors that a substantial measure of historical truth survives their dramatic style of writing. Based on research, travel, and interviews that is journalism at its best with a good measure of imaginative reconstruction of events which may not appeal to historians but will surely attract the layman. Particularly impressive is the painstaking unravelling of the conspiracy to assassinate Gandhi, culminating in his tragic and heroic death.

It is unfortunate that in trying to be popular the authors should mar the effect of their beautifully told story by introducing gimmicks made familiar by popular news-magazines. Wholly unnecessary and irrelevant are the many pages describing the antics of the Indian Princes. There are also quite inappropriate incursions into Gandhiji's attitude to sex which, by no stretch of the imagination, could affect the freedom movement. Undoubtedly these pages will increase sales but they cast some doubt in the sincerity of the authors' admiration and reverence for Gandhiji which they have taken pains to establish throughout the book. Was that also a gimmick to increase sales?

Every account of the transfer of power in 1947 has been written from some particular point of view. It is interesting to see the differences between accounts by Indian political leaders, Britons who served India at the time, Indian officials concerned with the day to day work involved in the transfer of authority from British to Indian hands, and so on. This is Mountbatten's book, projecting as it does his ideas, reminiscences and his version of the various controversial aspects of the story.

Mountbatten, the hero of this drama, is obviously well cast. His good looks, unimpeachable record of bravery in war, his ability of mind, his obsessive capacity for work and for decisive action, his informality tempered by his love and flair for pageantry, all help to build the image of Mountbatten as he sees himself. "He had been sent to New Delhi to get the British out of India, but he was determined they would go in a

shimmer of scarlet and gold, all the old glories of the Raj honed to the highest pitch one last time."

The question whether Mountbatten worsened the catastrophe by hastening the partition of India is not fully answered in this book. The authors quote Mountbatten as writing that "partition is sheer madness . . . responsibility for this mad decision must be placed squarely on Indian shoulders in the eyes of the world, for one day they will bitterly regret the decision they are about to make."

Throughout the book the villain to Mountbatten's hero is Jinnah — rigid, inflexible, impossible in negotiations. In the light of later events, the communal rioting in India long after independence, is it fair to suggest that it was the whim and obstinacy of one Muslim leader which made partition inevitable? Would it have been possible for the Muslims of North India and Bengal to accept being ruled by Hindus for all time? This is a question which will perhaps never be answered but Jinnah's intransigence has come in handy to defend Mountbatten against the charge of a hasty and ill considered decision.

While hero and villain play out their parts in the drama, Gandhi fights his gallant battle against communal frenzy in Noakhali, in Delhi and in Calcutta. The book describes with the utmost sympathy and admiration Gandhiji's single-handed struggle against the partition of India and his conviction that generations of Indians would, for decades, pay the price of the error which the British, supported by Indian politicians, were preparing to commit. Gandhiji's alternative to partition was to ask the Muslim League to form the Government of undivided India. That would convince the Muslims that the Hindus had no desire to dominate but his was indeed a voice in the wilderness because, thanks to Mountbatten's persuasion, Gandhiji's trusted lieutenants had already accepted the inevitability of partition.

Barring Rajaji, who receives well-deserved praise for his statesmanship and sagacity, Gandhiji's other lieutenants make a rather poor show. Such debunking is refreshing in a country in which the rulers are usually regarded as demi-Gods. There has been much speculation in India whether it could possibly be true, as the book suggests, that, unable to cope with the magnitude of the task of governing India, Nehru and Patel, like "chastened school-boys" asked Mountbatten to take over the Government. Nehru admitted, according to the book, that he and his colleagues were unable to control the violence in Delhi and in the Punjab. They needed Mountbatten's capacity for organisation and swift decision. When Mountbatten objected that, if people found out, the charismatic Indian politician and his colleagues would be destroyed, Nehru said that it must be a closely guarded secret. And so the Emergency Committee of the Cabinet was formed under

Mountbatten's chairmanship and with a British Secretary, to tackle the steadily worsening situation.

True or false? Galling as it might be to the leaders of the Indian National Congress, it has to be admitted that there is considerable substance in this story. It appeared in "My Reminiscences of Sardar Patel" by V. Shankar in 1974 before "Freedom at Midnight" was published.

Discussing Sardar Patel's anxiety over the deteriorating situation, Shankar says:

Sardar Patel happened to remark that it was a pity that even Lord Mountbatten was not available in the Capital since he was at that time in Simla. I suggested that it might be a good thing to request him to come down to Delhi and take charge of the situation, particularly since both he and Pandit Nehru would be away. Lord Mountbatten, I added, with his military insight and outlook, might be able to introduce some order. He told me to convey to V. P. Menon his view that Lord Mountbatten should be persuaded to come down to Delhi. V. P., after some discussion, readily agreed that Lord Mountbatten was, in the present situation, the best bridge between Pandit Nehru and Sardar and could also ensure that the Central Government's decisions to deal with the situation were taken in a comprehensive and orderly manner. . . . Lord Mountbatten readily agreed to come down and was quick to suggest that an Emergency Committee be set up. Sardar and Pandit Nehru both suggested that Lord Mountbatten should head such a committee. Sardar's faith in Mountbatten's leadership was eminently justified. He organised matters scientifically and according to the needs of the situation, including a command headquarters and regular daily meetings of the Emergency Committee."

Mountbatten's 'chastened school-boys' were a disappointment to him but they broke Gandhiji's heart. Whether they were aware of it or not, Mountbatten certainly sensed Gandhi's agony at the break-down of his cherished values. But, his affection and respect for Gandhi notwithstanding, the warrior got the better of the Saint as is inevitable in State-craft.

The book ends with a moving tribute by the authors to Gandhi's legacy to the cause of freedom, not only for his own people but for mankind. Describing the departure of the last British soldiers on Indian soil, they say:

"If an era was ending there at the Gateway of India, another was beginning, the one Gandhi had opened for three-quarters of the inhabitants of the earth, the era of decolonization. The last of the race of the captains and kings were departing and the freshening breezes speeding them on their homeward journey were the heralds of those winds of change which would remake the map of the world

and realign the balance of its forces in the next quarter of a century. Because of Mohandas Gandhi and what he had wrought in India, many a spot on the globe would witness in the years to come a ceremony similar to the one that took place in Bombay on 28 February 1948.

Not many of them, however, would be marked by the goodwill manifested that morning in the shadows of that once triumphant arch of empire. It was the final accolade to India's murdered Mahatma."

MEHRA MASANI

MEMOIRS OF A CIVIL SERVANT

by Dharma Vira (Vikas, 1975, pp. 154. Rs. 35/-).

THIS book belongs to the increasing number of autobiographies or more correctly, the memoirs of former civil servants. Several of them have written of their experiences and three among the lot do attain near classic status—*My Several Worlds*, by K. P. S. Menon, *Commitment My Style*, by Mangat Rai, and *Under Two Masters* by Bonnerjea. The present autobiography while being eminently readable and full of interest falls very much below those mentioned above in quality, human interest and analysis. However, this

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1st March, 1976 J. R. PATEL
Signature of Publisher

is made up by a range of experience that has been recorded by the author—for he was a very successful civil servant, a diplomat and a Governor.

The sheer width of experience that our civil servants have had and their capacity to raise themselves to meet the most unexpected challenges are very well presented here. Particularly insightful are the pages dealing with the unenviable task of the civil servant before independence in tackling political agitators.

Again, once given a free hand and full protection by the political chief, the civil servant can indeed do a great deal, even accomplish the impossible. And the author instances several of these—such as the building of seven airstrips, cleaning the mess that Delhi was, and refugee rehabilitation. In all these he had the full support of Nehru which helped in hacking through heaps of red tape. Later too, as Governor, Dharma Vira was to prove what a determined government could do to put down public disorder and restore normality. This he did in the Punjab before the partition of the State into Haryana, Himachal Pradesh and Punjab. From a perusal of these pages what is more than evident is the gradual demoralization of politics by elected political elements which for immediate advantages would do anything—even ruin the administration of the country.

Dharma Vira dwells again on the jeep scandal, the tractor scandal and the bane that the late Krishna Menon was to the office of the Indian High Commission. His experiences as Ambassador to Czechoslovakia, a country that then was more socialist than socialist Russia makes for most amusing and interesting reading and these pages tear off more effectively the veil of democratic pretence in the politics of East European countries than many a scholarly piece.

It is, however, as Governor of the Punjab, West Bengal and Karnataka that Dharma Vira faced the greatest of difficulties and he narrates from his point of view the role that he played in the partition of the Punjab and Haryana. Again, all the political sagacity and wisdom of the Governor was more than put to test during the ministries of Dr P. C. Ghosh and later Ajoy Kumar Mukherjee. Indian politics reached a feverish pitch that has rarely been matched since; the drama, the sudden developments, the crowded but shifting scenes, the charges, and the counter-charges, the total debacle of parliamentary procedures, all were lessons eloquent of the pathology of democratic politics in modern India.

It could be said that during the hectic days of coalition experiments and defections, the responsibilities laid on the Governors of the states were indeed onerous. Totally unexpected challenges were met and Shri Dharma Vira does remain one of those who met their responsibilities with determination, grit and honour. The concluding pages reflect upon the office of the governor and his duties and responsibilities.

R. SRINIVASAN

Letter

The Original Fascist

While discussing the nature of Fascism, in your issue of February 1976, you have quoted the following portion of an editorial in *The London Times*:

"There is therefore a characteristically corporatist transfer of rights or liberties from the individual to the corporate bodies concerned and to the state. . . . Some people would say that this is indeed corporatism but not fascism, since fascism implies illegality. Yet if you control the state and pass laws which are binding on other people, and other laws which remove restraints on yourself, you are left with no advantage from illegality. All corporatism is oppression, because it is inherently anti-individual; in this sense, all corporatism is fascism."

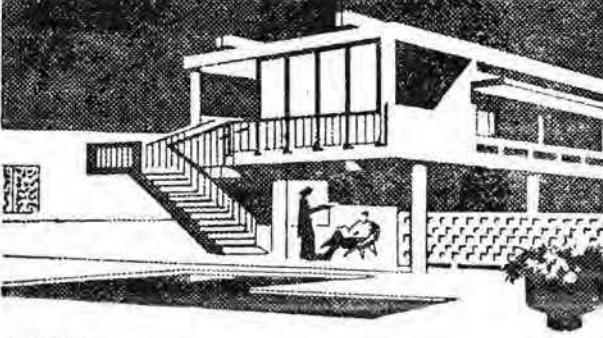
If this description is correct, which no doubt it is, Fascism originated not in Italy but in Russia and its father was Lenin and not Mussolini.

GOPAL MITTAL

Touché—Ed.

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WORLD NEWS

Aides Brand Nasser 'Dictator & Communist'

Cairo: June 30, 1975

In what appeared to be the first public trial of Gamal Abdel Nasser's era, two colleagues of the late Egyptian leader have been branded him a "dictator and a Communist."

Mr. Abdel Latif Bahdady and Mr. Kamal Hussein, member of the former Revolutionary Council that joined Nasser in overthrowing the Egyptian monarchy in 1952, yesterday told a court:

"Most of the decisions taken by Nasser were unilateral. He ruled alone without consulting any of the members of the command."

The two said that they resigned in 1963 and 1964 respectively, protesting against Nasser's 'dictatorship'.

"He was slowly changing the society into a communist one", Mr. Hussein said.

The Court was hearing a case raised by Mr. Mustafa el Alam who had been accused of complicity in a plot to overthrow Nasser in 1954.

El Alam, now living in Saudi Arabia, was represented at the session by an attorney who told the court that El Alam was convicted to life imprisonment by a court that was "not constitutional".

The attorney subpoenaed Bahdady and Hussein as witnesses to the "unconstitutional decisions" taken by Nasser.

Meanwhile, former President Mohamed Naguib (75), who had the 1952 coup in its first two years, said in an interview with the weekly magazine "rose el Youseff" that "Nasser's revolution offended the Egyptian people more than it benefitted them."

President Anwar Sadat is now exerting a legendary effort to save the people. Had it not been him, Egypt would have been last forever."

Indian Express, July 1, 1975

Policeman's Duty to Disobey Sadistic Orders

The Hague: June 21:

Amnesty International has said that police officers have a duty to disobey orders to torture people in their custody. Draft principles of an international code of police ethics approved at a private two-day meeting convened by Amnesty International, which is campaigning for the abolition of torture, have called on police officers to disobey orders contrary to fundamental human rights.

The meeting which ended here yesterday, was attended by representatives of police forces and the police authorities from Austria, Belgium, Luxembourg, France, Britain, Ireland, Norway and Holland.

An Amnesty International statement issued after the

WITH MANY VOICES

Public-sector commercial corporations are resorting to unfair trade practices without any hindrance.

—Mr. Justice J. L. Nain quoted in the *Times of India*, May 6.

Ours is not a wicked country, and we cannot abide a wicked government.

—Senator Church quoted in *Time*, June 16.

meeting said a police code of ethics should apply to all people or organisations, including secret services, military police, armed forces or militia action in policing capacities.

Professor Peter Baehr, Amnesty International's representative in the Netherlands, said the draft principles adopted at the meeting would be discussed at the U.N. in September—*Reuter*.

—*Times of India*, June 22, 1975

Calling a Spade a Spade

Dealing with the guilt complex from which many Americans, and particularly their so-called "Liberals" suffer, the *Swiss Press Review and News Report* has something interesting to say:

"A stay in India is probably the best way for such Americans to rid themselves of their guilt. There is in India a mode of criticising Americans which is so widespread and so unfair—in view of India's own aggressive record over the years—that it makes even the anti-American stand up and look for things to justify his own country. This is what the last Ameri-tenure, and he expressed the feeling succinctly in an can Ambassador to India discovered during his tenure, and he expressed the feeling succinctly in an article in the latest issue of the American monthly, *Commentary*.

"It is time we ceased to apologise for an imperfect democracy, writes Mr. Moynihan. And he tells the Indians, and others: 'Find its equal.' Mr. Moynihan also says, very unfashionably for the leaders of many newly independent countries, that their problems are very largely of their own making. Among the developing countries, we can identify those which have made a good job of trying to solve their problems, and those which seem to have made no such attempts at all. He quotes Brazil, Nigeria and Singapore as examples of those where a serious effort has been undertaken and he draws the lesson that the

failings of others have little or nothing to do with the failings of Americans. 'It is time we grew out of our initial—not a little condescending—supersensitivity about the feelings of other nations.'

MADRAS COURT ADMITS WRIT

Express News Service

Madras, July 4 — Mr. Justice G. Ramanujam in the High Court admitted a writ petition from Mr. T. S. Sadashivam, Publisher of *Swarajya*, questioning the validity of an order of the Deputy Secretary to the Government, Public Department, deleting a passage from an article in the issue of the weekly dated July 5.

The respondents impleaded are the Union Government in the Home Ministry, Delhi, the Tamil Nadu Government represented by the Chief Secretary and the Deputy Secretary to the Government, Public Department, to whom Mr. Justice Ramanujam directed notice. Justice Ramanujam also issued an interim injunction restraining the respondents from enforcing the impugned order and taking any further steps in pursuance of the order pending further orders on the petition.

The Judge added that the above order was without prejudice to the rights of the respondents to proceed against the Petitioner for contravention of the rules (DOI Rules).

The Union Government issued an order called the Censorship order on June 26 which, among other things, stated that any action taken under the provisions of MISA shall not be published in any newspaper, periodical or other documents unless such matter had been submitted to the scrutiny of the authorised officer and no such publication shall be made except in accordance with such conditions and restrictions as might be imposed by the officer.

The issue of *Swarajya* of July 5 was submitted to the scrutiny of the Deputy Secretary, Government of Tamil Nadu, the authorised officer and the officer passed the impugned order deleting a portion of the leading article in the issue.

The Petitioner submitted that the passage ordered to be deleted formed part of a review of the working of *Swarajya* for the past twenty years under the heading "Twenty Today."

The censorship order required submission of reports on events, rumours etc., relating to matters specified therein and authorisation of the same before publication. The matter deleted in this case did not require any such authorisation. Further, the censorship order did not empower the authorised officer to direct portions to be deleted. The Deputy Secretary had no authority to impose pre-censorship or direct deletion of any particular passage unless such publication

related to any contravention or alleged contravention of any of the provisions of the DIR.

The censorship order did not lay down any guidelines or guiding principles for imposing conditions or restrictions even in such matters. Guidelines of a general nature issued by the Press Information Bureau could not enlarge the scope of the censorship order or prohibit publication of things or events in regard to matters not covered by the censorship order. If there were any such guidelines, they were not valid as they were beyond the scope of the statutory order under Rule 48(1) of the DOI Rules.

The Petitioner submitted the Deputy Secretary's order was, therefore, liable to be quashed and prayed that the officer be directed not to enforce the impugned order.

— *Financial Express*, July 5, 1975

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RULE OF LAW PREVAILS—(Continued from page 2)

light of facts made binding upon the Court by Article 358(5) of the Constitution of India.

Referring to "another important factor which the censor must also bear in mind", the Judges observed: "The Press is not only an instrument of disseminating information but it is also a powerful medium of moulding public opinion by propaganda. True democracy can only thrive in a free clearing-house of competing ideologies and philosophies — political, economic and social — and in this the Press has an important role to play. The day this clearing-house closes down would toll the death-knell of democracy.

Role of Censor

"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 file or to speak in chorus with one voice. It is not for him to exercise his statutory powers to force public opinion in a single mould or to turn the Press into an instrument of brain-washing the public. Under the censorship order the censor is appointed the nurse-maid of democracy and not its grave-digger.

"Dissent from the opinions and views held by the majority and criticism and disapproval of measures initiated by a party in power make for a healthy political climate and it is not for the censor to inject into this the lifelessness of forced conformity. Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication for, as Sir Maurice Gwyer said (in 1942 F.C.R. 38), 'hard words break no bones'.

"But there are permissible limits to dissent and disapproval. The voice of dissent cannot take the form of incitement to revolutionary or subversive activities, for then instead of serving democracy it would subvert it. It is here that the censor's real role begins, for though it is not for him to stifle all dissent and protest, it is certainly his duty to see that dissent and protest do not overstep permissible limits.

"The role which the censor is called upon to play is a delicate and important one. On his shoulders rests a great responsibility. Though his work must bring him public disfavour, he has not to compensate himself for this by seeking to win governmental favour by a display of excessive zeal. He has to preserve a fine balance.

"On the one hand he should not stifle all free expression of opinion by imagining lurking dangers in every corner and discovering sharp curves and hair-pin bends when all that exists is a straight road;

on the other hand he must be vigilant to detect all attempts at breeding violence and creating public disorder.

"A mischievous rumour, a false report, or a passionate exhortation with this potentiality, open or covert, gains wider currency when circulated in print than when spread by word of mouth, and it is the censor's duty and responsibility to see that such writings are not published."

In repelling the argument on behalf of the appellant that the censor, as a subordinate officer, was merely following the guidelines issued by his superior, the Chief Censor, the Judges said:

"Executive directions issued under a statutory order for the implementation of that order cannot travel beyond the scope and ambit of such statutory order, nor of the parent Act or the parent rules. This position in law is too well-settled to need citation of authorities.

"Both on principles and authorities, we do not find it possible to hold that under the censorship order the Chief Censor could issue instructions in the guise of directions containing principles and guidelines travelling beyond the scope of the censorship order. To hold that this can be done would be tantamount to placing the Chief Censor and other authorities upon whom such power is conferred on a higher pedestal than Parliament which passed the said Act or the Central Government which made the said rule 48 and the censorship order.

"We are equally unable to hold that the subordi-

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nate authorities under the censorship order are bound to follow the directions and guidelines issued by the Chief Censor and officers authorised by him in this behalf, however plainly and obviously these directions and guidelines may be beyond the scope of the censorship order.

"We find it equally not possible to hold that even when the appellant followed any such unwarranted guidelines, nonetheless no writ could issue against him."

The Judges said that the censor must also bear in mind section 38 of the Act. The position in law was that a censor must exercise his authority having regard to the purposes and objects set out in the censorship order and "in such a manner as to interfere with the ordinary avocations of life and enjoyment of property as little as may be consonant with these purposes".

They observed:

"In judging a writing the censor must first consider the effect it would produce upon his own mind and also on the average reader. That postulates he takes into account the reputation and importance of the paper. The article must be read as a whole and in proper context. Stray sentences and isolated passages are not to be taken as a guide to the intent of the writer. He must consider whether the consequences he apprehends have a reasonable proximate

nexus with the views expressed in the article or whether those consequences are problematical and far-fetched."

Nine out of Eleven

Having thus disposed of the legal issues raised in the appeal in favour of Mr. Masani the Judges proceeded to examine the eleven pieces of material that raised the controversy between the Editor and the censor. They upheld Bhatt J.'s judgement setting aside the censor's orders prohibiting publication in respect of nine pieces, but held that the trial Judge was in error in clearing the remaining two pieces. The appeal was allowed only to the extent of reversing Bhatt J.'s judgement in respect of the two articles.

One of the matters the publication of which was initially prohibited by the censor but which was held to be unobjectionable by Bhatt J. and his decision was upheld by the appellate Judges concerns a Court report sought to be republished from a Madras daily. On this subject Madon and Kania J. J. said:

"We must strongly deprecate this practice of prohibiting publication in newspapers and journals of reports of cases decided by courts merely because the decisions in such cases would be unpalatable to the concerned officer or authority or to the Government."

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WITH MANY VOICES

"The deep
Means round with many voices. Come, my friends,
'Tis not too late to seek a newer world."
—Tennyson.

The Kremlin leaders had found a way to "sow wheat in Kazakhstan and reap it in North America".

—*People's Literature*, Chinese monthly magazine, January 23.

I think a lot of the indiscipline in schools today results from some teachers looking as if they had dressed from the nearest dustbin.

—Dr. Rhodes Boyson, MP, in the *Observer*, January 18.

Step by step, week by week, Mrs. Gandhi is preparing to end her emergency — by turning it into a permanent way of life.

—*The Economist*, December 13.

I want to be Prime Minister and 1976 would be a good year for it.

—Mrs. Margaret Thatcher in the *Observer*, January 11.

I think it's appalling that in pursuit of votes pledges are made which are then retracted after the votes are secured.

—Mr. James Sillars, Scottish Labour MP in *The Guardian*, January 15.

The trouble with statistics, someone once observed, is that they are too often used as a drunken man uses a lamppost — for support rather than illumination.

—*The Economist*, January 10.

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Fifteen years more of a deterioration of our position in the world such as we have experienced since World War II would find us reduced to a Fortress America in a world in which we had become largely irrelevant.

—Henry A. Kissinger, fifteen years ago, quoted in *Washington Report*, December.

Remember! Only dead fish flow with the stream.

—Melville de Mellow in *Himmat*, December 30.

As 1975 draws to an end, detente is dead. The second cold war is under way.

—William Safire in the *International Herald Tribune*, December 30.

How will Russia's leaders feel if they achieve their object in Angola at the cost of helping in President Reagan next year?

—*The Economist*, January 17.

How many Jugoslavia's — to take the most liberal existing communist state — could western Europe contain, and still be western Europe?

—*The Economist*, January 17.

There is no nation so poor that it cannot afford free speech, but there are few elites which will put up with the bother of it.

—Daniel Moynihan in *Time*, January 26.

Am I embarrassed to speak for a less than perfect democracy? Not one bit. Find me a better one. Do I suppose there are societies which are free of sin? No I don't. Do I think ours is on balance incomparably the most hopeful set of human relations the world has? (I mean by ours those two-dozen-odd democracies of the world.) Yes, I do. Have we done obscene things? Yes, we have. How did our people learn about them? They learned about them on television, in the newspapers.

—Daniel Moynihan in *Time*, January 26.

Please remember, at the Security Council on Monday, that if you Palestinians want Israel to recognise you, you have to recognise Israel.

—*The Economist*, January 10.

As Egyptians say, Nasser was what they wanted to be and Sadat what they are.

—A. N. Dhar in the *Indian Express*, January 10.