

# TWO MODELS-I

## Drawbacks Of The Presidential System

By SUBRATA MUKHERJEE

IT is preposterous to compare the recent Florida recount episode with the perpetual rigging and violence connected with the election process in Bihar as some sections in the Indian print media have done. A much more serious concern for us is the suitability or otherwise of the American presidential system which many advocate periodically. The affirmation of the parliamentary system as basic in the on-going constitutional review has put the debate in abeyance for the time being. But one can predict with near certainty that the question will be revived in case there is a constitutional crisis or in a situation of stagnation or non-performance.

As such a detailed examination of the debate between the suitability of the parliamentary versus the presidential system is not only theoretically desirable but also holds practical relevance for us.

The universal acceptance of liberal democracy following the collapse of communism has been one of the major achievements of the late 20th century. However, liberal democracies are broadly divided into presidential and parliamentary forms of government. This vital question of choice assumes an unprecedented significance in the contemporary world as more countries move towards democracy. There is also a greater debate about the desirability of the two models. In countries as diverse as Argentina, Brazil, Chile, India, South Korea and Turkey, concerned citizens, policy makers, public figures and constitutional experts have argued about the relative merits and demerits, suitability and viability of the two systems.

### FEATURES

The presidential system has at its apex an independent chief executive who has the dual task of executing and initiating policies. He is checked, assisted and supervised by an independent legislature. The United States is an example of the presidential system. The other countries, which follow different variants of the presidential system are Costa Rica, France, the Philippines, Uruguay and Venezuela. Normally in such systems, the chief executive is chosen for a fixed term in a direct national election. He can be removed from office only in very exceptional circumstances through extraordinary legislative or judicial procedures.

The President wields enormous powers and enjoys important privileges. He has the power to veto legislative bills and also has the important responsibilities of initiating budgetary legislation, foreign treaties and other crucial policies. He enjoys emergency and war powers.

He appoints major executive officials who hold their offices at his will. With a concern for limiting the abuse of power in such systems where the President enjoys considerable power, as exemplified by the well known statement that except for a few dictators, the US President is the most powerful elected head, there are special constitutional provisions prohibiting presidential re-election.

The other major model is the

parliamentary system, which is dominant in continental Europe (Austria, Belgium, Denmark, Finland, Italy, Netherlands, Norway, Sweden and Turkey). In the parliamentary system the individual chief executive is the leader of the majority party in the legislature and is accountable to the national legislature. Though the Prime Minister's is the most important office, there is collective responsibility of the Cabinet. The Prime Minister continues to be in office as long as his party has a majority in the legislature.



India opted for the Westminster model of majoritarian parliamentary system after Independence. This was not an unexpected development as the Government of India Act of 1935 provided the necessary grounding for the practice of the British model in India. No nation that gained independence after the Second World War was "institutionally as well prepared as India for self-government".

In fact the founding fathers of the Indian Constitution showed considerable wisdom and foresight in choosing the parliamentary system for India. That and the almost uninterrupted functioning of the parliamentary system is one of the positive aspects of independent India's evolution, nullifying the popular European misconceptions about oriental despotism and debunking the myth that parliamentary democracy can be practised successfully only by the British. However, this does not mean that there are no problems or shortcomings.

### PROBLEMS

First, the question of cost. In India, when Parliament is in session, the expenditure is a staggering Rs 30,000 per minute. Second, the quality of parliamentarians. Third, the important role of lobbies and pressure groups, which undermine the very basis of representative democracy. Fourth, the vexed problem of the legislature's relationship with the executive and the judiciary especially when parliament is dominated by a single party. Fifth, the vital role of the media. Sixth, the problem of how elections are financed. Seventh, the inability and the slackness of the system as compared to the presidential form. Eighth, the weakness of the party system. Ninth, the capacity of the parliamentary system to bring about basic structural changes.

In order to remedy these problems the presidential system is advocated as an alternative. But a close examination

separated from the executive and the other important components of the parliamentary system like the Cabinet and the political parties continues, though in a much more personalised form. The US primary system for the presidential candidates is also expensive and since legislative candidates operate in a different constituency in separately held elections most of the time, the expenses multiply. Similarly, the administrative expenditure for running a presidential system is similar to that within a parliamentary system.

In the US in 1840 the federal judiciary employed a total of about 150 persons including judges. Today the number is about 24,000. Congress has created its own group of specialists, which is very large in number. The number of employees per senator today exceeds the total membership of the entire US Congress. In 1840 a Congress of 223 Representatives and 52 Senators employed a total staff of 57. At present 425 representatives employ over 12,000 and 100 Senators more than 7,000 people. The sheer number of its employees makes the Congress larger than 99 per cent of all the business firms in the US. If this is the case in the US with its philosophy of limited government, one can safely project a much larger number in countries like India where the government plays and will continue to play a pivotal role.

In the American presidential system both nomination and election are a lengthy, time-consuming and expensive processes and if this system is followed the cost will multiply in poorer countries like India.

### PITFALLS

Second, the operation of pressure groups and lobbies assumes a formidable proportion in the presidential system as is evident from the campaign money, which comes from particular interests. While lobbies have grown in number and become diverse the strength of the institutions concerned has not correspondingly increased. The theory of the separation of powers does not provide for any constitutional process of resolving conflicts. Neustadt points out that the American system is not a system of separation of powers but one of separate authorities sharing power with no single governing authority really accountable. There is a propensity to avoid dealing with difficult issues resulting in parochialism and in incoherent and inefficient policies instead of clear policy preferences. This lacuna may have serious consequences in countries like India where there are major contradictions. A strict separation of powers could lead to a serious constitutional crisis.

The most important argument in support of the presidential system is that it provides for and indeed achieves executive stability. One major argument in favour of the presidential system is the fixed term of the chief executive. But in reality this has plenty of drawbacks. It breaks the continuity of the political process. In case of an unexpected happening like death or impeachment, succession is automatic and the successor may be tempera-

# TWO MODELS-II

## India Cannot Do Without Parliamentary System

By SUBRATA MUKHERJEE

PERHAPS the biggest drawback of the presidential system is that it reduces the political process to a zero sum game in which the winner takes all even when he may be polling a minority of votes. It is detrimental to the ideals of democracy, which lays emphasis on sharing power. A strong President representing only a few interests will divide and polarise modernising and developing societies where profound distinctions of class, gender and region exist. With growing ethnic, tribal and linguistic consciousness a charismatic leader or a strong symbolic presidential authority may become ruinous. In societies today which are inherently plural and where mass participation in politics is the norm, a successful political process has to be accommodative and participatory and in this crucial area the presidential system is grossly inadequate as it restricts politics instead of expanding it.

The proponents of the presidential system often forget that the only successful example of the model is the US. Its very uniqueness exhibits its serious limitation, as both in political evolution and societal formation the US is a nation without any parallel. But even there it is generally conceded that the political process is not integrative. As a result some even advocate a switch over to the parliamentary system.

### PARTY SYSTEM

Equally important is the fact that separate elections for the president and the legislature create minority presidents. A survey in the 1970s by G Bingham Powell Jr reveals that "a majority of the presidential systems faced a divided legislature /executive situation for over two years in the decade". This same survey points out the interesting fact that the majoritarian parliamentary systems "were the most effective at avoiding minority governments as well as providing for executive stability".

In the presidential systems the average durability was 36 months compared to 33 months in the majoritarian parliamentary systems and 22 months in the representational parliamentary systems. On balance the majoritarian parliamentary system emerges the strongest if the indicators of executive stability and avoidance of minority governments are taken into account. Added to these is the important fact that the presidential system witnesses considerable violence and in sharp contrast representational parliamentary systems reflect the least average violence followed by the majoritarian system.

The more ethnically divided countries are likely to have a majoritarian legislature, which makes the presidential system inappropriate for countries like India. The argument against the weaknesses of the party system in parliamentary democracies is also not vindicated as the party system has an independent dynamics of its own and is not linked closely with either of the systems. The

two classic examples of stable party systems, the American and the British, follow two different models and vindicate the fact that the weaknesses can be combated in either. Moreover it is generally conceded that in the more personalised politics of the presidential system the party system is likely to be weaker than the parliamentary model.

The modern state theoretically assumed that a large representational assembly performs government functions constitutionally. But in actual



practice the leadership and direction come from a small body like the cabinet, the presidium or the collective executive. The divisions in the US system with three clearly distinguished organs followed by further subdivisions are more like the division that existed in pre-modern medieval Europe. While the US constitutional set-up faces few challenges and strains as it deals with a society with minor contradictions, the Indian political scene reflects major conflicts and contradictions that further weaken the case for the presidential system here.

### ELITES

Another major argument in favour of the presidential system is that it would permit the induction of able persons whom the parliamentary system is unable or unwilling to accommodate. This leads to the triumph of mediocrity. However, this in itself is an elitist idea inappropriate for the democratic age and it may also be added that the parliamentary system with a much larger legislative and executive arena offers a better chance to accommodate the elite than the presidential one.

India with its diversity and plurality is a nation in the making. For its orderly, balanced and peaceful development and for creating trust amongst the people, there is no substitute for parliamentary democracy. The working of parliamentary democracy has proved JS Mill's contention, that representative democracy is possible only in a small homogeneous state, erroneous. It has also nullified predictions made by Harrison in the 1960s that India would break up. The parliamentary system has enabled India to have a peaceful transition to power by allowing

of view to be represented in the decision making process. In the larger context it is now generally admitted that India is just one of the few developing countries that have become both stable and viable. Moreover compared to other contemporary democracies under the parliamentary system India has fared well in the context of ensuring popular participation, stability and in containing violence.

Despite this consolidation of the parliamentary system there are some trends in recent years that have caused anxiety. First, the virtual collapse of the Congress system of one-party domination with inner party democracy. Second, is the emergence of coalition politics with no single party able to win a majority. In this context it is important to point out that the strength of a polity does not depend on the stability of the superstructure but on the efficient and impartial functioning of the basic institutions. On this front we have not fared well. This is because our political structure continues to remain oligarchic.

The Westminster model has permitted the exercise of power by political parties who could not muster more than 50 per cent of the votes. This model has led to a disproportionate share of power, because the "winner takes all" principle often gives the ruling party 70 per cent of the seats with only 40-50 per cent of the votes.

### ALTERNATION

This has to be corrected by giving representation to the poor and the underprivileged through a variety of political groupings. With more and more elite accommodation of these relatively deprived sections, Indian democracy is being strengthened. This in itself allows the possibility of power sharing which is imperative in a pluralist democracy like India.

In his famous analysis of the party system, Maurice Duverger thought that in the first past the post system, the Westminster model would allow for the emergence of a two-party system. The wide disparities and cleavages in our society have foreclosed such an evolution. However, if one applies the Duverger thesis broadly, then there are clear indications of larger competitive political formations at the national level in the form of two broad alliances and a two-party system in many states. Andhra Pradesh, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab and Rajasthan are representative examples of this. The crucial heartland of Indian politics, Uttar Pradesh, with its antagonistic politics also exemplifies this idea of alternating and sharing power. The one-party domination in West Bengal is at present being challenged and perhaps sooner or later one is likely to see a change there also. All this confirms the suitability of the parliamentary system for a complex country like ours.

(Concluded)

# States to be consulted on Governors

HT Correspondent  
New Delhi, September 1

IT WOULD now be obligatory for the Centre to consult State Governments on the Governor's appointment. Accepting in principle the Sarkaria Commission's recommendation in this regard, the Union Government has agreed to suitably amend the Constitution to bring the panel's long-pending proposal into force.

Briefing reporters on the deliberations of the Standing Committee of the Inter-State Council (ISC), which met here today, Home Minister L. K. Advani said a formal proposal in this connection would be submitted by the Committee for consideration of the ISC at its next meeting.

Mr Advani said there was broad agreement at the meeting on the adoption of the three-language formula despite a discordant note struck by Tamil Nadu. The implementation of this sensitive proposal has been left entirely to the States.

In view of serious differences between States on the Sarkaria Commission's recommendation that all residuary powers, barring taxation, be placed on the concurrent list, the Committee

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decided to take up the subject at the Council's next meeting. The Centre is willing to accept this recommendation, but further discussions have become necessary in the light of divergence of views among States, Mr Advani added.

Significantly, the Centre has also accepted the Committee's view that consultations be held with States while framing legislations on subjects in the concurrent list. The mechanism of

## Inter-State Panel Meet

the Inter-State Council would be suitably used by the Centre to collectively consult States, the Home Minister stated.

In another significant move towards devolution of powers, the Committee agreed to incorporate adequate safeguards in the Commission of Enquiry Act in cases where the inquiry commissions were instituted by the Centre against state ministers. Mr Advani said Parliament's approval would be sought to amend the Act.

The Home Minister further said that the Centre was not averse to discussing the States' demand for their own broadcasting networks. He felt the institution of Prasar Bharati has to a great extent met the demand for decentralisa-

tion of the day-to-day operations of All India Radio and Doordarshan.

Meanwhile, the Standing Committee has decided to refer the crucial issue of the Centre's emergency powers in respect of deployment of armed forces in the States, to a sub-committee under Defence Minister George Fernandes. This again was necessitated by differences among States.

Mr Advani said that out of the Sarkaria panel's 247 recommendations, 171 have been acted upon while 63 came up for consideration at today's meeting. The remaining 13 points relating to emergency provisions remained to be considered.

Meanwhile, Assam Chief Minister P. K. Mahanta strongly pleaded for grant of greater autonomy to the States. Supporting his J&K and Punjab counterparts, he said that except defence, external affairs, currency and communications, all other subjects should be transferred to the States.

He stressed the need for providing more Constitutional safeguards for promoting federalism rather than relying on conventions. The States should be empowered to levy taxes, including consignment tax, he demanded.

HINDUSTAN TIMES

# SC shackle on bandit's men

'Karnataka govt should quit if it can't nab Veerappan'; Krishna to appeal to CJI

## OUR LEGAL CORRESPONDENT STATESMAN NEWS SERVICE

NEW DELHI, Sept. 1. — The Supreme Court today stayed indefinitely the withdrawal of cases against and release of 51 Veerappan associates granted by a special Tada court.

Not impressed by arguments that the consequences would be grave if something untoward happened to actor Rajkumar, a three-judge Bench said the Karnataka government should quit — if it can't maintain law and order — and make way for one that can do so.

Karnataka had agreed to free Veerappan's associates to secure the release of Rajkumar, kidnapped by the brigand in end July.

The order came after a special leave petition was filed by Mr. Abdul Karim, the father of sub-inspector Shakeel Ahmed,

and there were no instructions by the state to do so.

The judges refused to admit any plea, observing: "For eight years you were not able to arrest this man (Veerappan). They asked 'whether abducting a popular person and demanding ransom is covered under any situation permissible to move an application for withdrawal of cases under section 321 CrPC'."

Mr. Harish Salve contended Rajkumar's popularity or getting his release was not the reason to seek the withdrawal of cases. It had been done to avert a possible "situation of disharmony". The public prosecutor can move the court under section 321 CrPC, he argued. But the court disagreed with his contentions.

**Karnataka:** Though the Supreme Court order and its caustic observation has come as a major setback to the Karnataka government, Mr. SM Krishna may appeal to the Chief Justice to get the cases against Veerappan's associates withdrawn, says a report from Bangalore.

Initially, Mr. Krishna refused to comment on today's developments. But later he said the government would pray to the CJI to dispose of the SLP on the stay of the Tada detainees' release. Today's order will not affect the release of the kidnapped actor, he said.

**Veerappan's message:** In another video-taped message to the Tamil Nadu government, Veerappan has demanded concrete action on his earlier demands, a press release issued by RK Gopal's *Nikkheeran* said today, adds PVI from Chennai. The cassette received yesterday from Gopal had a message from Rajkumar too.

more writ petitions: Adarsh Ganesh vs state of Karnataka and BL Wadhwa vs Union of India. The two petitions have been directed to be tagged with the main SLP by Mr. Karim.

The attorney-general, Mr. Soli J. Sorabjee, argued for the Union of India. The court allowed the special leave petitioner, represented through Mr. C. Badrinath Bahu, to file the additional grounds. Mr. Sorabjee said his submissions were only for the general interest, neither for the state of Tamil Nadu nor for Karnataka. Public interest was his only concern.

The Bench, however, gave liberty to the parties to appeal to the Chief Justice of India for the process, but refused to hear pleas on behalf of the accused seeking release on merits.

The solicitor-general said the withdrawal application was moved by the public prosecutor

and there were no instructions by the state to do so.

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# CRIMINAL JUSTICE-II

## Need To Classify Crimes Intelligently

By NR MADHAVA MENON

I WOULD argue that the entire substantive criminal law needs to be reorganised into three or four separate codes. We need to acknowledge that much of criminal law today is outside the Penal Code and many of them are even not known to the enforcement apparatus. Simple and heinous crimes are mixed up in the same statute tending to compromise the standards and efficiency of the enforcement system. As such, we need to classify crimes more intelligently for purposes of efficiency, productivity and deployment of scarce resources.

We should be prepared to treat minor crimes as comparable to civil offences to be dealt with either through de-criminalisation or through compensatory remedies with full involvement of victims in processing such cases. This means enlargement of compoundable offences, deployment of Lok Adalat type institutions at the local level for quick and cheap settlement of minor offences without having to depend much on regular police forces.

### NEW APPROACH

Americans invoke the plea bargaining process in a similar way avoiding expensive trials, releasing judicial time and diverting a lot of cases from clogging the criminal system. Let us call this group of offences civil offences and the Code which deals with them the Civil Offences Code. Such a Code may comprehend both substantive and procedural aspects of these relatively minor deviations which ought to be settled more as torts than crimes. The approach being more civil, all the protections given to an accused by the Constitution and the Criminal Procedure Code are unnecessary. Human rights violations are less likely to happen in these cases, given the involvement of the public, lesser role of police and compensatory nature of remedies proposed.

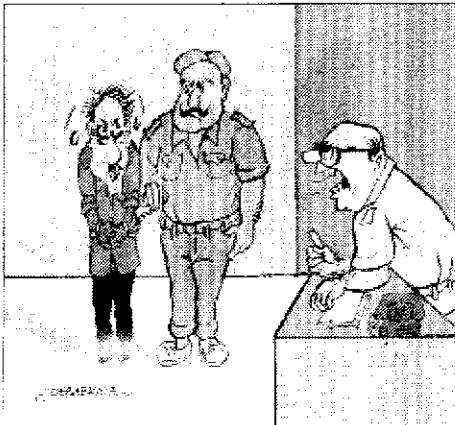
The second set of crimes which require a correctional approach (as distinguished from a compensatory approach) are again relatively minor offences which can be dealt with by either compensatory remedies or correctional sanctions which are reformatory and rehabilitative in nature. Death and imprisonment are not available for the disposition of these cases. This can be called correctional offences and the Code, Correctional Offences Code. The trial procedure in these cases can be that followed in summons cases.

What is important is ensuring a fair and quick trial with the minimum guarantees of natural justice. The adversary style of adjudication has to be avoided and a more active role for the victim in the resolution of the dispute is to be provided. A Victim Compensation Law has to be part of process of disposing a correctional offence.

The third and important Code is the Penal Code which should list all the Sessions Crimes punishable with death and imprisonment. Prison term should be longer and the life term should be for the rest of the life of the prisoner. All the existing protections to the accused be extended to Penal Code offences. However, in select offences (dowry death, child rape etc.) for determination of facts, juries may be associated with the trial. The trial is to be held on a day-to-day basis.

Finally, one can suggest a Federal Offences Code in which select crimes such as computer crimes of certain complexity, terrorist offences of grievous nature etc which require nation-wide investigation,

international cooperation, and multi-disciplinary efforts in management are included for specialised attention and treatment. In a globalised regime, economic offences which threaten national interests and security require state-of-the-art police and prosecution mechanisms which will command professional competence and infrastructural resources com-



parable to the best of its kind in the world. This can be organised only at the federal level and only to the gravest national crimes.

A reorganised system of criminal laws as proposed above will ensure that investigative resources are deployed where they are most needed, judicial time is utilised productively in appropriate cases only and coordination is achieved for more efficient results particularly in serious crimes. It tends to promote de-criminalisation and, in the process, reduces scope for corruption and high-handedness from police. Human rights have greater chances of protection in criminal judicial administration. Public participation and more importantly, victim interest, will prevent people's alienation from the justice system.

Each one of the institutions involved — the police, the prosecution, the courts, the defence, the prisons etc — requires to be reformed in terms of organisation, procedures, resources and accountability. We have had several committees and commissions recommending reforms in this regard. There is presently a committee on police reforms set up by the central government. Several law commission reports on procedural reforms are awaiting government's consideration.

### CHANGING LAWS

There are at least two reasons why criminal justice restructuring may happen early in the new millennium. Firstly, the terrorists and economic offenders are making life miserable for everybody including the politicians. Secondly, in the context of the speed with which liberalisation and globalisation are taking place, business and trade interests will compel government to provide security for their investments and personnel. In such a context, the government has to react and respond with changes in the laws and their administration. One option is to seek privatisation even in dispensation of justice. Already in civil disputes, alternative dispute resolution at private initiative is in place. In criminal matters private security and policing are fast growing in certain sectors without the government's notice. Mafia groups in cities and towns are organising a type of justice system about which the Vohra Committee report had adverted several years ago. Before the formal justice system gets further discredited, one can only hope that the authorities will intervene decisively to provide a system reasonably capable of protecting life and property. Or else, a national catastrophe may befall under which what is happening in parts of Bihar,

Kashmir and North-east may become the lot of even the rest of the country.

One possibility is to enact the French model of investigation under supervision of a judicial officer. Once such a system is in place, the accused can be asked to lead evidence failing which certain presumptions can come into play to weigh the system against the defence.

There is a lot to say on how to professionalise the personnel — policemen, lawyers, judges etc. — and keep them efficient instruments for administering the system. They have been discussed in many reports awaiting the attention of the respective authorities. The latest in the series is the three-volume report of the First National Judicial Pay Commission. The Dharam Veera Committee report on police recruitment and training is now being revised by another police reform committee appointed by the government of India. Regarding lawyers' training, there is lot to be done about which the Bar and the government have to pay greater attention.

### CHALLENGE

It is not merely a question of the right kind of recruitment, training and service conditions. It involves a whole system of management of vital information and interaction at government level. It is very true of criminal justice administration as well.

One cannot blame the government or the politicians alone for all the faults of the system. There are things which can be done by the public organisations, the legal profession and judiciary to put their houses in order within the existing framework and with existing resources. Judicial administration is as yet untouched by the management revolution of the 20th century and the information revolution of the present century. There is not much evidence to show that somebody in the profession or in the judiciary is disturbed by the situation.

It is necessary to decriminalise such of those wrongs which can justly be dealt with by compensatory remedies. Hard crimes cannot be dealt with by soft justice. Victim compensation should form an important element of criminal justice. Scientific evidence should be treated as substantive evidence of great probative value and not just by way of expert opinion evidence. Confession to police officers of certain rank should be admissible evidence of corroborative nature. There should be more liberal use of presumptions and shifting of the burden of proof in criminal proceedings. All crimes should be investigated and tried within one year for which, if necessary, the American plea bargaining system should be introduced. At least in half the number of total crimes full-fledged trial should be avoided. There must be a wider range of sentences including forfeiture of property, public censure, corrective labour, deprivation of rights etc. The quantum of fine should be enhanced and its incidence in individual cases may be related to one's income and status.

To be able to adopt all these structural and procedural changes to effectively and expeditiously deal with crimes, we need a re-classification of offences and possibly separate codes organised in terms of gravity and complexity. The challenge is to create public opinion adequate enough to generate political will to be able to approach the reform with the seriousness it deserves.

(Concluded)

# Centre's affidavit supports T.N., I

By S.K. Ramoo

**BANGALORE, SEPT. 26.** The Union Government has filed an affidavit in the Supreme Court extending support for the release of TADA detenus, which has been demanded by the forest brigand, Veerappan, for the freedom of film actor Rajkumar and three others.

Both the Karnataka and Tamil Nadu Governments decided to act promptly when Veerappan stipulated that the TADA detenus be released.

The Supreme Court stayed the release of the 51 detenus by the Karnataka Government in response to a writ petition filed by the retired Deputy Superintendent of Police (DSP), Mr. Karim, who said the two State Governments had not acted in the "bonafide discharge of their constitutional and statutory functions". They had acted not in conformity with the rule of law and in the public interest, but on the basis of "narrow, sectarian or political interests," the petition alleged.

Mr. Durga Das Gupta, Joint Secretary in the Union Department of Home Affairs, in the affidavit, pointed out that withdrawal from

prosecution could be permitted not merely on the ground of paucity of evidence but also on other relevant grounds as well in order to further the broad ends of "public justice, public order and peace".

The "ultimate test" to determine the validity of the grounds for withdrawal in a particular case was that the requirement of public justice outweighing legal justice. It was the function and responsib-

ility of the executive to assess the situation based on the information and material available to it.

The decision to withdraw the cases, after an application of mind to prevent "apprehended outburst of violence, could not be faulted". The affidavit assured the apex court that the Centre would make further relevant submission on the issue at the time of the hearing of the case.

The affidavit said the writ pet-

## Call off bandh, appeals Krishna

By Our Special Correspondent

**BANGALORE, SEPT. 26.** The Karnataka Chief Minister, Mr. S.M. Krishna, has appealed to the organisers of the September 28 Karnataka bandh to reconsider their decision.

In a message to the organisers, Mr. Krishna said Thursday was the day of Dasara, a State festival, and it should not be observed as a bandh day. "The people of Karnataka have exhibited extraordinary strength and patience in keeping the law and order situation under control. I request the organisers of the bandh and the artistes to withdraw the bandh call".

The Chief Minister said the Government had taken every possible step and was continuing its efforts through negotiations for the safe release of the film actor, Mr. Rajkumar.

Mr. Krishna said the Government had made elaborate arrangements to monitor the law and order situation.

THE HINDU

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# Governor's stand raises LF hackles

HT Correspondent  
Calcutta, July 31

**G**OVERNOR VIREN J Shah's public announcement that law and order in the State was worsening has raised the hackles of the Left Front.

The Governor's press release had said an all-party meeting ought to be held to bring peace to the State.

Front chairman Sailen Dasgupta today said he was surprised that

the Governor had issued such a release urging all parties to hold a meeting on finding ways of putting an end to the violence in the districts. "I don't know what prompted the Governor to take such a step. Besides, we have

neither received any information on the matter. I am told the Governor himself briefed the press," Dasgupta said.

Politburo member Biman Bose too was critical of the Governor's move. "Why should the Governor even make such a suggestion? He has no authority to call an all-party meeting, without consulting the State Government."

CPI(M) State secretary Anil Biswas said if Governor Shah called such a meeting, the Left Front would not participate. "It appears he had issued a press release, from which everybody has inferred that he wants an all-party

meeting. It is unlikely that he will call an all-party meeting."

Biswas said that the Raj Bhavan press release was unusual, but not the words written in it. "The Governor's move could make some political parties happy, after all, this issue cannot be separated from politics."

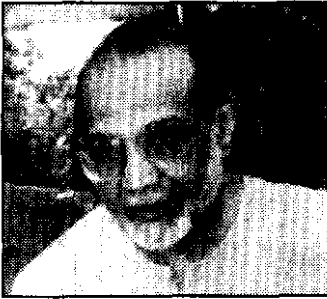
CPI State secretary Manju Kumar Majumdar said that the Governor should abstain from making such statements. He could have told the State Government

about his opinion without going public. "After all, law and order is a State subject. He should have discussed the matter with State Ministers. I see a political motive behind this. It appears that he is playing into the Trinamool's hands. He is only

reflecting their slogan that law and order is deteriorating."

Equally critical was Forward Bloc State secretary Ashok Ghosh. He said that since President's rule was not imposed in the State, the Governor was not the administrative head. So, he could not demand an all-party meeting.

"Viren Shah is taking extra-constitutional steps. As a constitutional head of the State, he could have discussed the matter with the Chief Minister and Deputy Chief Minister. Instead, he has gone public. We condemn the step he has taken," Ghosh said.



Governor Viren Shah

THE HINDUSTAN TIME

- 1 AUG 2 1977



Case of a loose-talking law minister

# Jethmalani vs judiciary

**S**URELY, we were not playing chess." This is what Ram Jethmalani wrote to Chief Justice of India A.S. Anand two days before he was asked to resign as law minister. The point at issue was the appointment of Justice Brij Mohanlal as chairman of MRIP Commission. Jethmalani had done so without consulting the chief justice. But Anand refused to swear him in.

As soon as the chief justice heard about the appointment, he complained to Prime Minister Atal Behari Vajpayee, who sent the letter to Jethmalani. The chief justice said that the well-established convention was violated by the law minister. The chief justice had also quoted two Supreme Court judgements, which said: "In the matter of appointment of chairman and vice-chairman and members of the tribunals, which exercise even quasi-judicial functions, it is necessary to make appointments in consultation with the chief justice of India or his nominee and such consultation must be effective and meaningful." The Prime Minister assured the Chief Justice in his reply that "the records of the last 15 years have been pursued. Prima facie, there does not seem to be any departure from the well-established procedures. However, I am requesting the (law) minister to appraise you of all the relevant facts on his return from abroad." Instead of mollifying the chief justice, Jethmalani acted like a schoolmaster and wrote to him: "The precedent cited by you is a somewhat curious case and I should much prefer that it is not cited in future. I happened to deal with this matter during my brief tenure as minister in this department." In the same letter, Jethmalani said that one of the cases cited was "irrelevant and, in any event, one sparrow does not make a summer."

Jethmalani did not stop at that. He wrote further, in an admonishing tone: "You have complained that in appointing

Shri Justice Brij Mohanlal a settled convention has been violated. I have examined the records for the last 20 years and I find not only there is no such settled convention but the convention is exactly to the contrary. No consultation has taken place with the chief justice of India when a retired judge of the high court has been appointed to the commission. You have doubtless mentioned the precedent of February 1995, when the minister of state, Shri Bharadwaj, sought the views of the chief justice of India regarding the name of the judge to be recommended for this appointment. Shri Bharadwaj wanted a sitting judge to be appointed." At least in three cases, i.e., of Justice G. R. Luthra, R. A. Jahgirdas and A. N. Verma



KULDEEP NAYYAR

**Significantly, while his first letter to the Chief Justice ended with the phrase "with warm personal regards", the last one omitted the word "personal"**

in 1986, 1990 and 1992, appointments were made without consultation and "without demur" by the chief justices of India, according to Jethmalani. "This is not to argue that no practice can grow without statutory basis but the growth must be voluntary, after due consultation with my colleagues and obtaining sanction of the Cabinet. A practice cannot be and should not be compelled by refusing to go through the ritual of a swearing ceremony," said Jethmalani.

He challenged both the assumptions of the chief justice. He said: "Your first assumption was that Supreme Court judgements quoted by you mandated consultation. You have kindly agreed that they do not apply. You are now relying on their

spirit." "Your second assumption," said Jethmalani, "is contained in the same letter. The settled convention so far has been that, whenever a new chairman of MRIP Commission is appointed, the views of the chief justice of India are sought regarding name of the appointee before any recommendation is made to the ACC or prime minister for appointment." Jethmalani conceded that "the intensive research that has gone into preparation of the two annexures to your (chief justice's) latest epistle has not disclosed a single case in which consultation with the chief justice of India took place for appointment of a retired judge as chairman, MRIP Commission."

Jethmalani himself ad-

nence tell the chief justice, "Surely, we were not playing chess," or, "one sparrow does not make a summer?" His flourish of language seems to have got the better of him. It is significant that the first letter by Jethmalani ended with "warm personal regards." In the last one, the word 'personal' had been dropped.

One feels sad when lawyers like Jethmalani make fun of the chief justice to stress the point. He may like or dislike Anand. But he cannot insult the office. There are ways to voice differences with the chief justice. But they have to be worded in such a way that they do not smack of superiority. Jethmalani would himself be horrified if the same slipshod phrases had been used against him. It is apparent that he wanted a pliant chief justice, the phrase Jethmalani used to attack Attorney-General Soli Sorabjee. Anand turned out to be a no-nonsense chief justice, to use Jethmalani's expression once again. "This is a court of justice," a lawyer once exclaimed while arguing a case in the Supreme Court of America. "You are in error," Justice Oliver Wendell Holmes, Jr., instantly replied. "This is a court of law." He meant that the court was primarily concerned with the meaning and constitutionality of law, rather than the fate of the individuals who encountered the law. Chief justice Anand had no ill-will towards Jethmalani. The chief justice, the custodian of law, had to tell him that he could not brush aside the office Anand had occupied. The Constitution only says: "The Supreme Court shall be a court of record and shall have all the powers of such a court." The important duty of defining "the judicial powers" has been left to the judges. The chief justice only did that when he pointed out to the law minister that the chief justice had the right to be consulted on judicial appointments. In the case of Jethmalani, there was also the charge of impropriety regarding M.S. Shoes.

INDIAN EXPRESS

1 AUG 2000



# Judicial moderation & majesty of justice

By V. R. Krishna Iyer

**M**ODERATION IS a fatal thing; nothing succeeds like excess — wrote Oscar Wilde, good for literary lampoon, not for forensic praxis. And yet, the elevation of the high bench seduces some robed brethren to imitate, in fashion, the Oscar dictum: and, in this 'excess' process, intemperately indulge in pejorative denunciation of brethren of the lesser judiciary and thereby caricature the Judicature. In our country, while other constitutional functionaries forfeit their credibility by ludicrous excesses and corrupt delinquency, the judicial fraternity, by and large, has preserved its dignity, decorum and sobriety, although exceptions, deviances and heady hubris abound, born of the illusion of occupying the commanding heights of Constitutional authority. British judges on the Bench have, in the past, been boisterous and buffooning but have vastly improved. The awe of the court hall and the moderation of judicial diction are a paradigm. In our country, judicial aberration, linguistic indiscretion, irritating observations and violent diction, slowly escalating, have produced a demand for canons of judicial conduct.

A robed umpire exercising authority with modesty, and refusing to be authoritarian by issuing ukases and admonishing lesser tribunals using unbecoming expressions of abuse, is the desideratum. A code of conduct for judges is very much being debated and Mr. Justice J.S. Varma, when occupying the Chief Justice's position, took the initiative and got a code drafted and approved by the higher judiciary unanimously. A demand for a judicial performance commission, comprehensively overseeing appointments, behaviour, transfers and censure when needed, by appropriate constitutional amendment, is now a public issue. Some aggressive judges, some corrupt tribunals, some immoderate, intemperate and uncivil judicial personnel mar and tar the otherwise excellent reputation of the robed class. They forget that the Bench is no immunity when vices

abound and criticism cannot be silenced if good behaviour, ethics and gentleness are jettisoned seeking refuge in judge power and contempt power.

Quite recently, a new judge of one of the many High Courts in the country wrote a long and learned judgment reversing a Session's Judge's order. The two, perhaps, were colleagues till some time back. However, the single judge from the High Court set aside the Session's Judge's order as not sustainable. Perhaps, he is right or his order may be set aside by a higher court. Such things

## *The judiciary must remember, like all other wielders of public power, that it is a fiduciary for the public.*

happen in a hierarchical system of judiciary. What perplexed me was the impropriety implicit in the rude remarks made by the Judge of the High Court about the performance of the Sessions Judge.

The observations are: "hence the Sessions Judge was not justified in interfering with the order of the learned magistrate....." This is perfectly within permissible parameters, even assuming that he has erred in his conclusion. To err is human and judges, however high, are human. Therefore, the Judge of the High Court holding that the Session Judge has erred is not a howler. But a higher court must maintain proprieties and self-restraint in criticisms. Maybe, the command of English of some judges may be culpably deficient — not surprising. But to admonish a subordinate judge and demolish the victim judge is to discredit the judiciary in the larger sense.

After all, the credibility of the court system depends not on one judge or a few but on the judicial establishment as a whole. In the case on hand, (to reveal his name is irrelevant) the High Court did not stop with finding fault with the learned Sessions Judge but, in a mood of

immoderation, observed "I am constrained to state here that it is rather pitiable and lamentable that a fairly senior judge (Sri Basant, Sessions Judge, Thrisur), who is expected to apply the fundamental principles of criminal jurisprudence correctly, is not aware of the law laid down by the Apex Court."

For the High Court to use expressions such as pitiable and lamentable is pitiable, lamentable and to add insult to injury, to mention specially, with what intent it is not difficult to guess, the name and place of the Sessions Judge, is

an unfortunate departure from the dignity of office. All judges belong to the Judicature and are members of the learned brotherhood.

In this context, it may be useful to remember that decorum desiderates restraint and absence of personal sting. Even when criticising a court whose judgment is under review or a tribunal whose performance is under scrutiny or a quasi-judicial functionary whose conclusion is under challenge, the auditing authority must show respect for the court under examination. That is the justice you owe to the Judiciary of which you are part. Decades ago, a great Chief Justice of the Supreme Court (AIR 1964 SC 707) — S.R. Das, who was a sage of wisdom, speaking for the Bench, stated: "If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this court. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

A profusion of precedents may be cited to support the proposition that judges should not be guilty of intemperate, irritable, arrogant or supercilious behaviour or observation that is unbecoming of the noble office. I may conclude with excerpts from a recent ruling (AIR 1997 SC 1157) where Mr. Justice Thomas has been at pains to drive home the profound virtue of judicial sobriety: "No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher Courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against the lower judiciary. It is well to remember that a Judicial Officer against whom aspersions are made in the judgment could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary."

"A quarter of a century ago Gajendragadkar, J. (as he then was) speaking for a Bench of three Judges of this Court, in the context of dealing with the strictures passed by High Court against one of its Subordinate Judicial Officers (suggesting that his decision was based on extraneous consideration) stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary more so because the Judge against whom the imputations are made has no remedy in law to vindicate his position."

A caveat. The judiciary must remember, like all other wielders of public power, that it is a fiduciary for the public. Therefore, the great words of Disraeli apply to all: "I repeat... that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist."

THE HINDU  
3 AUG 98

# BANNING PARTIES-I

## Kerala High Court's Order

By AG NOORANI

**T**HE Chief Election Commissioner, Mr MS Gill's pain at censures over his show-cause notice to the CPI-M on its deregistration as a political party is perfectly understandable. In a singularly ill-considered judgment on 1 June, the Kerala High Court has reversed public understanding of the law on the point that has prevailed over a decade. Worse still, it did so without even a mention of the fundamental right to "form associations or unions" guaranteed by Article 19(1)(c) of the Constitution or of the Supreme Court's landmark ruling on the subject delivered nearly 50 years ago. A High Court ruling which suffers from these infirmities cries aloud to be overruled by the Supreme Court.

The EC had very fairly submitted to the Court that it had "only a power ... register and there is no power to de-register". The Court said that this "has only to be stated to be rejected". The EC referred to its rejection of Arjun Singh's application for de-registration of the BJP and for the freezing of its election symbol on the ground that its conduct violated the principles of secularism. Without discussing the merits, the EC had rightly held that it could de-register a party only if it had obtained its registration by fraud, or had ceased to function, "or any like ground where no enquiry is called for on the part of the Commission." For, it had no power in law to embark on an enquiry to find out whether a political party was adhering to the conditions of registration.

### NOT EMPOWERED

To de-register a political party is, in effect, to ban it. The 42nd Constitution Amendment, enacted during the Emergency in 1976 inserted a new Article 31D in order to empower Parliament to make a law for banning an "anti-national association". The words "anti-national" were defined to include creation of "internal disturbance or the disruption of public services" besides fostering group hatred and the like. It was repealed by the 44th Amendment in 1978.

There had already existed on the statute book a law for banning associations (for advocating secession and for promoting communal discord); namely, the Unlawful Activities (Prevention) Act, 1967. Article 31D sought to widen the grounds and to do away with the safeguard of a judicial Tribunal headed by a High Court Judge which was provided in the Act, in compliance with the Supreme Court's rul-

ing in VG Row's case in 1952. Article 19(2) permits only "reasonable restrictions" on the fundamental right "to form associations" and then only "in the interests of the sovereignty and integrity of India or public order". The Supreme Court ruled that a law which restricted the right must provide for "allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry".

Since the EC is not a "judicial" body, it cannot be empow-

accepting bribes, only the bribe giver can be. The rule of law, precariously eroded by the "apex" Court, now lies at the mercy of judges there and below: men are earnest in intent but impatient with judicial discipline. They forget the wise words of Aristotle: For a judge to seek to be wiser than the law is to do the very thing which is, by wise laws, forbidden.

The facts are simple. On 28 July 1997, a Full Bench of the Kerala High Court, comprising Justices KG Balakrishnan, PK Balasubramanian and JB

Koshy, ruled, to the citizens' relief, that "bundhs" are violative of the citizens' fundamental right to freedom of movements and to carry on his association peacefully and are, therefore, unconstitutional. Bundhs are enforced only by recourse to violence. Citizens have suffered the oppression of bundhs sponsored by governments, in abdication of their responsibility to uphold and enforce the law.

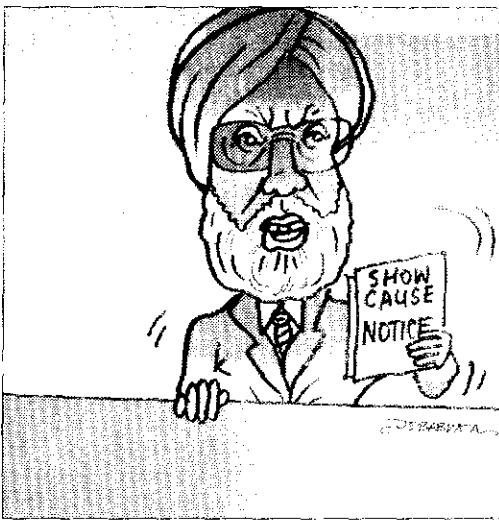
The Court noted, however, that "as understood in our country and certainly in our State, the calling of a bundh is clearly different from a call for a general strike or a hartal". On 12 November 1997, the Supreme Court upheld this ruling as well as the distinction: "The High Court has drawn a very appropriate distinction between a 'Bandh' on the one hand and a call for general strike or 'Hartal' on the other. We are in agreement with the view taken by the High Court."

### SHEEP'S CLOTHES

Once the distinction received the Supreme Court's endorsement it was not open to the High Court to wipe it out in a subsequent ruling. This is precisely what it did. On 1 June, a Division Bench of the Kerala High Court, comprising Justices PK Balasubramanian and KA Mohamed Shafi, accepted the petitioners' contention that "the hartal as it is now observed or compelled to be observed is lion in a sheep's clothing". Calcutta's purists in the English language need not get worked up. The issue is best left to wolves and lions to sort out between themselves. What concerns us is the Court's ruling that "those who call for hartal cannot take shelter behind the plea that hartal was only a legitimate weapon of mass protest and at the same time create an atmosphere of physical and psychological fear as to compel others to toe the line or to prevent them from exercising their rights."

Sarcily, this possibility could not have been absent from the minds of the High Court or the Supreme Court when it upheld the distinction.

(To be concluded)



ered to de-register political parties and the matter should have ended at that. But the Kerala High Court ruled that "the Election Commission can act as sentinel to ensure respect to (sic) the Constitution and democracy by the associations or parties registered under the Act". Since the Constitution imposes no such responsibility on the EC, nor can a court of law. But the High Court observed: "We feel that an active Election Commission can prevent indiscriminate calling for hartals enforced by threat and coercion and bundhs by parties or associations registered by it under the Act, if it assumes an active role and initiates action whenever it comes across instances where the average citizen is held to ransom by a few organised persons or members of a political party or organisation and the arm of the Government remains a mere spectator to such blatant violation of the rights of the citizens."

### JUDGES' MERCY

It is rulings like this, delivered with the best of intentions but with utter disregard for the Constitution and judicial precedents, which have brought judicial activism into disrepute. The example was set, as always, by the men at the top. HM Seervai's devoted labours have established how in the last two decades, to go no further, the Supreme Court committed precisely these sins with utter disdain for the consequences. It began with the "progressive judges"; picked up speed with the populist ones; and has brought the Court to a stage in which judicial subjectivism rules the roost. Witness its ruling in 1998 that an MP cannot be prosecuted for

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# CPI wants all-party meet on Article 370

Our Political Bureau

NEW DELHI 6 JULY

**T**HE CPI has demanded an all party meeting on Article 370, charging the Atal Behari Vajpayee government of deliberately aligning the Jammu and Kashmir autonomy issue with the "devolution of more financial and administrative powers and functions to the states."

By rejecting the autonomy demand under pressure from the hawks within the RSS and the BJP, the Cabinet has sent out a message that it is in no mood to discuss the issue, the CPI has said, rejecting the recent contention by the Prime Minister that notwithstanding this, there was still room for negotiation on autonomy between the Centre and National Conference and other "Kashmiri" voices.

Holding that the Centre's move was aimed at first equating the Kashmir question with that of its relations with other states, and then patting itself on the back on the latter, the CPI has contended that the real issue involved was that of Article 370 which is an implicit part of the Constitution and the "erosions" evident over



**NO DISSENT HERE : Bal Thackeray (left) with Union home minister L.K. Advani in Mumbai on Thursday. Thackeray had criticised the demand for autonomy by the J&K government**

AP

the last two decades in the course of its implementation. No national party endorsed the pre-1953 position spelt out in the autonomy report, but there continued to be an urgent need to discuss the form, extent and shape that the demand of the state Assembly should take within the parameters of Article 370 and the Constitution, the party leadership

has argued.

Spelling this out in an article scheduled to appear in the next issue of the party organ New Age, CPI general secretary A.B. Bardhan has held, "By getting through the July 4 resolution on Kashmir, the government has given a quiet burial to Article 370, pretending as if it does not exist."

Referring to the historical

circumstances under which J&K acceded to India and those which led to the adoption of Article 370 in the Constitution of India in relation to the state, Mr Bardhan has stressed: "True, these were introduced in the Constitution as a 'temporary, transitional and special provisions', but they continue to be part of the Constitution and although the BJP/RSS have been vigorously campaigning for long for the abolition of this Article, other political parties, including some from the NDA, have opposed it."

Putting the onus firmly on the quantum of autonomy to be granted to the state as a first step towards winning back the confidence of the people, the article points out: "The question is: what measure of autonomy has to be conceded, consistent with the Indian Constitution and national unity and integrity of the country. It goes without saying that these cannot be sacrificed at the altar of autonomy. But the quantum therefore needs to be discussed with utmost seriousness because it is with that the solution to the Kashmir tangle is linked."

The Economic Times.

7 JUL 2000

## Review panel to set deadline

STATESMAN NEWS SERVICE

NEW DELHI, July 8. — Streamlining its procedures, the National Commission to Review the Working of the Constitution today agreed on the need to set deadlines and mechanisms to monitor the working of the advisory panels set up on the 10 areas identified by the commission.

In the third full meeting of the commission, which will continue tomorrow, it agreed to constitute a committee. The committee, to which the advisory panels will submit their drafts, will ensure uniformity in the quality of papers and a holistic view of the issues dealt with in the papers.

The committee will also suggest allocation of funds for the preparation of the consultation papers and questionnaires that will be made public for debate, meetings of the advisory panels, payment of professional fees to institutes involved in preparing the material, seminars and other related purposes. The committee will also lay down broad expenditure guidelines on these.

A sum of Rs 40 lakh has been earmarked for fees and charges for institutions and persons working with the advisory panels, and on the expenditure to be incurred by members of the advisory panels. The chairperson has been authorised to decide on the members of the committee.

At a press conference here today, Mr Justice BP Jeevan Reddy said the commission had decided to lay down a time-frame for different stages of its work. He expressed hope that the commission would be able to complete its work in a year.

The commission has received initial drafts on three of the 10 areas from the advisory panels. After modifications and changes, these will be placed before the committee.

THE STATESMAN

# Chandrika, Opposition agree on new Lankan Constitution

P K Balachandran  
Colombo, July 8

⑪ 9 months HF14 9/7

**T**HE RULING Peoples' Alliance (PA) and the opposition United National Party (UNP) on Friday ended four months of parleys with an agreement on a new Constitution incorporating a radical devolution package for the provinces. But Tamil moderates and Sinhala radicals have decided to reject the pact that had failed to find favour with the rebel LTTE either.

Though the details of the new Constitution were not revealed, both President Chandrika Kumaratunga and the UNP chief Ranil Wickremesinghe described it as "historic".

According to sources, the new Constitution envisages Sri Lanka to be a parliamentary system of democracy and the election system a combination of proportional representation.

It also envisages the country to be a unitary state with a federal structure. This feature is incorporated apparently to satisfy the Sinhala majority for whom the term "federalism" is an anathema and please the minority Tamils who are clam-

ouring for devolution of power. The devolution of power to provinces would be done on the basis of the Government's October 1997 order as amended in the last four months during talks with the UNP and parties representing the minorities.

The sources said the Government was forced to agree to the UNP proposal that there should be independent election, police, judicial and public service commissions, and that disputes over land in the provinces should be settled by an independent land commission.

All constitutional disputes would be referred to a Constitutional Council in which there would be two vice presidents -- one each from the Tamil and Muslim communities. The Centre would have the power -- akin to Article 356 in India -- to sack a provincial government if it posed a threat to the unity and integrity of the country.

Under the new plans, the Northern and Eastern provinces would be merged for five years. During this period there would be a referendum in the multi-ethnic Eastern province to ascertain its wishes about staying within a Tamil majority

united North and East. There would also be special provisions for Muslims of the Northeast, though there would be no separate council for Muslims in the Southeast.

The opposition UNP wanted the constitution of an independent election commission ahead of the forthcoming parliamentary elections, but the Government rejected it. The Government wanted the Executive Presidency to continue for its full six-year term for the sake of continuity in governance at the "time of war".

Meanwhile, moderate TULF has decided to reject the new Constitution proposals when it is placed before Tamil and Muslim parties next week. "We want federalism and not the highly watered down version of the 1995 and 1997 proposals," said TULF senior vice-president V Anandasangaree.

The EPDP and PLOTE refused to comment on the issue before studying the proposals. But secretary of radical Sinhala party, Sinhala Urumaya, Thilak Karunaratne, said his party would reject a Constitution imbedded with federal structure.

THE HINDUSTAN TIMES

9 JUL 2000

# EMERGENCY CRIMES

## Time To Offer An Apology

INDIANS cannot forget 25 June for that fateful day in 1975 was the darkest in India's history when Prime Minister Indira Gandhi proclaimed an Emergency in her craze to cling to power at any cost. Mr Justice JML Sinha of Allahabad High Court had unseated her through a landmark judgment on 12 June 1975 holding her guilty of corrupt practices under Section 123(7) of the Representation of the People Act and for obtaining assistance of senior public servants to win the election to the Lok Sabha from Rae Bareilly constituency.

On that day the Prime Minister committed a fraud not only on the President and her cabinet colleagues but also on 640 million Indians. Police vans, packed with inconvenient political leaders, public men, journalists and critics, moved to various jails in the country to dump them behind iron bars. An Indian's memory is short-lived. He has to be reminded of the past frequently. The Emergency was an era in which the laws relating to fundamental or human rights stood abrogated. Blank Arrest Warrants (BAW) and Blank Firing Orders (BFO) were readily available with the law enforcing authorities. Two of the VVIPs who held remote control over BAW and BFO are cabinet colleagues of Atal Behari Vajpayee and LK Advani, who were arrested as MISA detenus from Bangalore and brought to Delhi in a special plane soon after declaration of the Emergency.

### BEHIND BARS

Almost all opposition leaders were put behind bars. Indira Gandhi and her caucus gagged the press. Sanjay Gandhi, the Rolls-Royce drop-out, turned out to be the "extra-constitutional Prime Minister". Within three days of declaration of the Emergency IK Gujral lost his portfolio as Information and Broadcasting Minister. The reason: Sanjay Gandhi was unhappy over the poor media coverage regarding declaration of the Emergency and speeches of his mother and felt that it was purely due to Gujral's inefficiency. The vacancy was filled by VC Shukla whose erratic instructions of 28 June 1975 to Chief Ministers through the Union Home Ministry resulted in the arrest and detention of 253 journalists, including newspapers editors.

The number of persons detained under the MISA alone during the Emergency was 36,039. Gross misuse of powers of arrest or detention, maltreatment of and atrocities on detenus and other prisoners arrested under DIR/MISA, use of force in the implementation of the family planning programme, indiscriminate and high-handed demolition of houses, flats, shops, buildings, huts, structures and destruc-

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By CN RADHAKRISHNAN

tion of property in the name of slum clearance or enforcement of town planning or land use schemes were rampant in cities and towns. Thousands were rendered homeless or had to move far away from their vocation.

Those who had to face the wrath of Indira Gandhi and her henchmen included Sarvodaya leader Jaya Prakash Narain. Opposition leaders Morarji Desai, Charan Singh, Raj Narain, Chandrasekhar, Madhu Dandavate, Atal Behari Vajpayee, LK Advani, Pilloo Modi, Sikander Bakht, Biju



Patnaik, Ram Dhan, Somar Guha, journalist Kuldip Nayyar, veteran freedom fighter Bhimsen Sachar, former Maharani of Jaipur Rajmata Gayatri Devi, former Maharani of Gwalior Rajmata Vijay Raje Scindia, 84-year-old author Vaid Guru Dutt and thousands of others including a 13 year-old boy who was detained under MISA!

Judges like Mr Justice Rangarajan (Delhi High Court), Mr Justice Vimadlal (Bombay High Court) and Mr Justice Seth (Gujarat High Court) were transferred to Gauhati High Court and Hyderabad High Court as punishment for having interfered in *habeas corpus* cases or cases involving violation of censorship rules. Justice RN Aggarwal of Delhi High Court was reverted to his post as District Judge while the appointment of Justice UR Lalit of Bombay High Court was not extended beyond January 1976. He was an additional Judge.

The death toll in the Turkman Gate firing during demolition operation from 13 April 1976 to 27 April 1976 could not be assessed by the government. Many lay dead and many were in hospital. Young women were molested and old women beaten with *lathis* and rifle butts.

### MOCK PROBE

Finally a mock investigation was carried out, perhaps to please the adamant and mighty Delhi Imam Syed Abdulla Bukhari who turned out to be the saviour of the Muslim community in Delhi during the Emergency, by an Assistant Sub-Inspector of Police. This ASI was supposed to interrogate even the DIG of Police and other senior officers present on the scene.

The revelations before the Justice Shah Commission, which enquired into the Emergency excesses have indicted

the following VVIPs and several other "public servants": Indira Gandhi (Prime Minister); Sanjay Gandhi (her son and the extra-constitutional authority); Maneka Gandhi (Sanjay Gandhi's wife); VC Shukla (I&B minister who replaced IK Gujral); HR Gokhale (Union Law Minister); Brahmananda Reddy (Union Home Minister); Om Mehta (Union Minister of state for Home Affairs); K Raghuramaiah (Union Minister of works and Housing); Pranab Kumar Mukherjee (Union Minister for Revenue and Banking); Bansi Lal (Haryana Chief Minister); Siddhartha Shankar Ray (West Bengal Chief Minister); Dev Raj Urs (Karnataka Chief Minister); Vengal Rao (Andhra Pradesh Chief Minister); PC Sethi (Madhya Pradesh Chief Minister); Zail Singh (Punjab Chief Minister); Kishan Chahd (Lt Governor of Delhi); Jag Mohan (vice-chairman of Delhi Development Authority); RK Dhawan (additional private secretary to Indira Gandhi); Nawin Chawla (secretary to Lt Governor of Delhi); Arjun Das (confidant of Sanjay Gandhi); Ruksana Sultana (social worker who bathed herself in perfumes before going to slum areas); Ambika Soni (Youth Congress president); Mohammed Yunus (special representative of Indira Gandhi); Swami Dharendra Brahmachari (Indira Gandhi's yoga teacher); BR Tamta (Delhi Municipal Commissioner); PS Binder (DIG of Delhi Police); DK Barooah (former president of Congress party who declared "Indira is India and India is Indira"); HY Sharada Prasad (information adviser to the Prime Minister) etc.

### ATROCITIES

This writer, who was a legal correspondent in the capital during the Emergency and later, would say that the atrocities at Turkman Gate were worse than the Jallianwalla Bagh massacre of 1919 and the British troops under General Dyer were more humane than the Delhi Police under the command of Delhi Administration Home Secretary SL Khurana, DDA vice-chairman Jagmohan, Delhi District Magistrate Sushil Kumar, Additional District Magistrates P Ghosh and Ashok Pradhan, DIG of Police PS Bhinder, Police Superintendent RK Ohri and people like RK Dhawan and Nawin Chawla.

It is time to express regret. Those who were responsible for the Emergency and its excesses, now living, should tender an apology to the nation. At least Jagmohan and Maneka Gandhi may have the magnanimity to do so and clean their robes which they wear during the pleasure of one of the kind-hearted Emergency victims — Atal Behari Vajpayee. When the tendency to protect the interests of offenders and criminals is growing as a part of Indian political culture, it is better for the Emergency victims to tender such an apology.

# Governors' meet to discuss new aspects of coalition politics

Our Political Bureau  
NEW DELHI 11 JULY

**T**HE ROLE of governor in a hung House, problems relating to insurgency and separatism as well as law and order issues will dominate the two-day meeting of governors convened by President K.R. Narayanan.

The meeting scheduled to begin here on Wednesday is the first such exercise organised by President Narayanan, though former presidents R. Venkataraman and S.D. Sharma had convened governor's conclaves to discuss powers of constitutional heads. These meetings were aimed at preparing constitutional heads for coalitions.

The presidential initiative is quite relevant as many of the states have also been showing preference for coalition arrangements. Fractionalisation of political space, rise of regional parties, end of ideology-based politics have

shown that voters now choose differently. Given this Mr Narayanan's could be seen as an attempt to find a new response to this new system.

But if the conclave decides to debate over the functioning of the Constitution review panel, it could kick off a controversy. For the



Narayanan

President was against the NDA government's proposal and he put on record his differences with the ruling regime in the matter. "We should not throw out the baby with the bath water and like the tragic character Othello in Shakespeare laments "like the base Indian, three a pearl away richer than all his tribe," the President had said while addressing parliamentarians.

Though there is broad agreement that the government should break off the old mindset while handling secessionism, various parties have been coming to help the government's initiatives.

*The Economic Times*

12 JUL 2000



## Governors for stronger security

STATESMAN NEWS SERVICE

NEW DELHI, July 12. — Arms smuggling, drug trafficking, infiltration by subversives into the country, cross-border terrorism, illegal immigrations and communal hatred were some of the issues raised by Governors at a conference at Rashtrapati Bhavan today.

The meeting was inaugurated by the President, Mr KR Narayanan. The press handout didn't mention which states faced the problems that pose a threat to the country's security and peace. The only point mentioned is the concern expressed by the Governors who wanted the government to "modernise" and "strengthen" the security forces to "combat these menaces".

Mr Narayanan said India had drawn the attention of the world for its remarkable technological and economic achievements and that's why the country needed safeguards against elements that had crept into the system.

Quoting Mahatma Gandhi, the President said: "The Governors should have all pervasive influence over their respective states."

THE STATESMAN

13 JUL 2000

BE WATCHDOGS OF TOLERANCE, GOVERNORS TOLD

## President's concern over rising cult of violence

By Harish Khare

*to Constitution*

NEW DELHI, JULY 12. The President, Mr. K. R. Narayanan, today called upon the Governors to become a source of "moral influence" and act as agents of harmony and tolerance in these troubled times of religious intolerance and sectarian violence.

Deploing the "lowering of the tolerance level in society and emerging cult of violence," the President reminded the Governors that they had an obligation to uphold "India's traditional heritage of a tolerant society".

Mr. Narayanan was inaugurating a two-day conference of the Governors at Rashtrapati Bhavan. The gathering, taking place after a gap of about four years, has provided the Constitutional heads an opportunity to exchange views with the President, the Prime Minister and senior Ministers.

However, most of the Governors are believed to have come armed with briefs from their Chief Ministers; and, judging by today's deliberations, the Governors chose, by and large, to stick to the State Governments' political predilections.

The conference took up various themes such as law and order, with special emphasis on border management, welfare of tribals, disaster management and spread of religious fundamentalism.

Instead of each of the 24 Governors (the Mizoram Governor being on leave) and the three I. Governors being invited to present their States' problems, the format called for taking up one theme at a time with the Governors feeling free to state the nature of the problem; though the Prime Minister and senior Central Ministers were present, most of

the time they were good listeners, with only the Home Minister, Mr. L. K. Advani, making brief explanatory remarks.

Contrary to the apprehension in certain quarters that the Rashtrapati Bhavan was trying to instigate the Governors against the Vajpayee Government, the tone and tenor of the discussion was positive and constructive. Given that the majority of the Governors are now appointees of the NDA Government, these dignitaries could not possibly take a contrary, leave-alone confrontationist, stance.

The President's exhortation to the Governors to be watchdogs of tolerance came in the context of the growing reports of attacks on places of worship belonging to various minority communities. He referred to "certain fissiparous and disharmonising forces that had crept into the system" and wanted concerted efforts mounted to arrest these disturbing trends. However, the President's invitation to the Governors to discover the moral dimension of their office went largely unheeded. For instance, Mr. S. S. Bhandari, Governor of Gujarat, which has been a host to violence against Christians, trotted out the figures of his Government that all was well in his State. Referring to incidents of "Christian-Hindu conflicts", Mr. Bhandari predictably insisted that "most of these are incidents of minor skirmishes which took place in the Dangs and Surat districts on disputes on the issues of conversions."

In his opening remarks the President, while lauding the achievements in economic and technological areas, "stressed that the fruits of development need to percolate down and reach the common man so as to promote the total good of society." Mr. Narayanan reminded the Governors of their "special responsibilities" to work for "the upliftment of the disinherited and the poor".

VHP's charge: page 13

THE HINDU

13 JUL 2000

SPOTLIGHT ON ROLE AS CHANCELLORS

# Governors' panel to monitor SC/ST schemes

By Our Special Correspondent

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**NEW DELHI, JULY 13.** The two-day Governors' conference ended today with the President, Mr. K. R. Narayanan, announcing that a Committee of Governors would be formed to look into the serious inadequacies in the implementation of programmes about the welfare of the Scheduled Castes and the Scheduled Tribes. The Committee of Governors would also examine underutilisation of funds allocated for these pro-poor programmes.

This seems to be the most "pro-active" outcome of the conference, where the Governors also talked about the scope and content of their constitutional role as heads of State, especially in times of political uncertainty. The Governors, whose role was lauded by the Prime Minister, Mr. Atal Behari Vajpayee, as "the crucial component of the constitutional mechanism to make India a vibrant democracy", discussed at length what they ought to do or not do in taking inherently controversial decisions related to formations of Governments. The constitutional heads shared with one another their understanding of their roles and various judicial decisions about the scope of Governors' powers and discretion.

In particular, the Governors were exercised about their role as Chancellors. A number of BJP-appointed Governors have had differences with their non-BJP Chief Ministers in the administration of universities. Dr. Murl Manohar Joshi, Minister for Human Resource Development, intervened to suggest that there ought to be a balance between "the chancellors, the State Governments and the university administration".

Later in the afternoon, the Governors heard presentations from four senior Ministers — Foreign, Home, Finance and Defence. Mr. Jaswant Singh sought to impress upon the Governors about the "upswing" in the country's foreign policy. Mr. Advani, who followed next, gave, according to one Gov-

ernor, a thoughtful overview of the complexities and difficulties in the internal security area. He told the Governors about the four expert groups — on border management, internal security, intelligence, and defence management — that had been formed after the Kargil conflict. More significantly, Mr. Advani also deplored recent attacks on Christians and Christian institutions and urged the States to investigate the cases thoroughly to determine who was behind the attacks.

Mr. Advani was followed by the Finance Minister, Mr. Yashwant Sinha, who, predictably, told the Governors that the economy was in sound shape, while the Defence Minister, Mr. George Fernandes, talked about what was being done to strengthen the country's defences.

After these senior ministers, it was the Prime Minister's turn to assure the Governors that they played an important role in the polity, and that they were a valued link between the Centre and States. Mr. Vajpayee thought that apart from discharging their normal constitutional responsibility, the Governors could provide leadership and guidance to the non-governmental organisations in their States. The Prime Minister believed that "strengthening of such non-governmental organisations" was worth the effort and the Governors' involvement could make these organisations tools for the "overall betterment of society". Mr. Vajpayee later hosted a lunch for the Governors and Lt. Governors.

In his valedictory remarks, the President stressed, like the Prime Minister, the Governors' role as "a strong link between the Centre and the States". Appreciating that many Governors had pointed out that the programmes meant for the welfare of the Scheduled Castes and the Scheduled Tribes were not being properly implemented, Mr. Narayanan decided to constitute a Committee of Governors, whose composition would be announced "in due course".

THE HINDU

14 JUL 2000

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SATURDAY, JULY 15, 2000

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## AN IMPORTANT INITIATIVE

THE MOVE TO set up a committee of Governors to look into the "serious inadequacies" of welfare programmes targeting the Scheduled Castes/Tribes, which apparently is the only tangible outcome of the deliberations at the two-day conference of Heads of State that concluded on Thursday, is in tune with the President, Mr. K. R. Narayanan's reminder of their "special responsibility" towards the uplift of the disinherited and the poor. Of late, the ambit of such periodic interactive sessions has tended to go beyond areas which have a direct and immediate bearing on the Constitution-ordained duties or obligations, with the focus being trained on wider issues that are of vital concern to the nation and its democratic polity. In 1995 (December), at such a conference, where the dominant concern was the pervasive sense of unease and insecurity among the minority communities in that context, it was decided, as now, to set up a Governors' panel and the initiative indeed reflected the concern of the Heads of State about the creeping canker of majoritarian communalism, the 'chosen' victim at that point of time being the Muslims. The scourge has, if anything, acquired a greater sweep and vigour since then — thanks largely to the coming to power of the BJP-led National Democratic Alliance — with the Christian community being the prime target in recent times. That five years later, Mr. Narayanan should have — at the recent meeting — felt compelled to deplore what he called "the lowering of the tolerance level in society" and to exhort the Governors to exert their "moral influence" (presumably on their respective State administrations) has its own message to convey. What came out of the committee's labours — and this is to assume that the body was indeed constituted — is not known. In any event, given the

functional constraints on the Heads of State inherent in the Constitutional framework, the role of a Governors' panel as a corrective mechanism cannot but be very limited.

As for Mr. Narayanan's latest initiative, the proposed committee is expected to concern itself with identifying the lapses and inadequacies in the execution of SCs/STs-related development programmes. How exactly its findings are to be used is however not clear; possibly, the President would take up the issue with the Centre for remedial action. But the point is that the individual Governors should have little difficulty in accessing the relevant information in these areas and impressing on the Governments of their respective States to initiate whatever correctives are warranted, if only they had the will to act. Basically, the question is one of sensitising the political executive, the bureaucracy and, more importantly, the law enforcement personnel to the fundamental democratic and human rights of the oppressed and socially disadvantaged sections of the people. The outrageous episode in Bihar a few days ago — wherein two truck workers, both Dalits, were meted out a barbaric treatment by a Minister and, on top of it, handcuffed by the police — is only the latest disturbing pointer to the sort of challenge the nation faces on this front; and close on its heels has come news of yet another such act of brutality by an Uttar Pradesh Minister. The Governors must be able to exercise their "moral influence" on the ruling class and in order to do that, they must primarily be sensitive to the rights of the deprived sections of the population — and this applies equally to the case of minority communities also. This takes one to the larger and more basic issue of selecting the right persons for appointment to the gubernatorial office.

THE HINDU

15 JUL 2000

# NO, MR PRESIDENT!

He need not wear his heart on his sleeve

THE annual conference of Governors of states serves a usual purpose and this year was no exception. We are told that their excellencies considered the general political uncertainties in the country and the undue interference of politicians in the affairs of universities in states where Governors are Chancellors, ex officio. Pressures to appoint unsuitable political characters are strong and frequent and few Governors are able to resist. Central universities are outside their purview so presumably the conference was not able to discuss how to prize Inder Gujral out of Visva Bharati. By convention the position of Acharya is held by the serving prime minister but Gujral refuses to acknowledge that he is no longer in that position, unless he thinks, mistakenly, that the position is a compliment to his intellectual pretensions and he can continue until these are exposed. The conference is presided over by the President and the Prime Minister, Home, Defence and Foreign ministers also address the meeting. The exercise is useful as an informal gathering and opinions are freely expressed.

The conference also discussed the manner in which Laloo Prasad Yadav showed less than respect, to indulge in the language of understatement, to the governor of Bihar, the highly regarded Vinod Pande. It is not known what their excellencies decided. One has to recognise the limitations of the exercise. It is not possible to legislate for good conduct or for that matter for integrity and character. Laloo may be beyond redemption, it is nevertheless useful to air the topic; Bihar is larger than the self-proclaimed raja. And politicians of his ilk are not that rare as to be ignored. *Q. from 5/8 167*

This newspaper was not one of those who exaggerated the implications of the speech made by the President and saw signs of a rift between President and Government. This is mischief-making of an obvious character. However, one development must be noticed. It is said that at the President's initiative, a committee of governors was appointed to examine complaints from some states about lacunae in the implementation of programmes for the welfare of scheduled castes and tribes and the non-utilisation of funds. There are two objections to this innovation. One, these are matters within the competence of elected governments and Governors ought not to interfere. Two, why only this subject? Why not intervene similarly in respect of programmes for women, for children, for minorities, which are currently under such attack, for education, which has been reduced to a farce — there are so many other subjects that can be suggested and which are no less important from a national perspective. This is not the first time our respected President has chosen to wear his heart on his sleeve. Some time ago, he allowed himself to air his view in public that there ought to be more judges on the Supreme Court bench from the scheduled castes and tribes. He was promptly reminded, by the Lord Chief Justice that for appointments to the Supreme Court, merit alone would be the criterion. It can be conceded that the President may well be under pressure from particular lobbies; however, the proper response to pressures is to resist them. On that previous occasion we had expressed the hope that this was an aberration and that it would not recur. Now that it has, we would respectfully repeat the hope.

THE STATESMAN

16 JUL 2000

## CEC for greater role for Governors

By Vinay Kumar

NEW DELHI, JULY 16. The Chief Election Commissioner, Dr. M.S. Gill visualises a greater role for the governors and favours their "neutral" rule two months before elections.

Addressing the press today, Dr. Gill said a "neutral" administration headed by the Governor for about two months before the general or assembly elections would go a long way in ensuring a free and fair poll. The proposal should be accepted by all political parties before the next round of Assembly polls scheduled for next year.

"The Governor is on a high

pedestal to exert moral force. Therefore, I feel that all political parties should look dispassionately for this change in the system. Personalities cannot give you a lasting solution, we have to strengthen the institutional framework," he said.

"This is a simple reform that can be achieved. Our neighbour Bangladesh has done it and we can also do it. When the Commission announces polls, elected Governments must drop, the Governor should take over administration automatically. Political parties themselves can appoint the Governors, Election

Commissioners, human rights commission and minorities commission chairpersons by mutually agreeable selection process which will inspire total faith and confidence," he said.

Dr. Gill referred to the just-concluded Governors' conference where they were described by the President as a strong link between the Centre and the States and their role was lauded by Mr. Vajpayee as "the crucial component of the Constitutional mechanism to make India a vibrant democracy."

For early court hearing: Page 15

THE HINDU

17 JUL 2000

## From Art 356 to 256: A new way out

**PRAFULLA MARPAKWAR**  
MUMBAI, JULY 22

AFTER hours of legal and political brainstorming at *Matoshree* over Friday and Saturday, the Shiv Sena has come up with two formulas to avert Thackeray's arrest.

While one formula involves the Centre using its influence with the State, the other involves the Centre invoking its powers to restrain the latter.

In back-to-back meetings, Bal Thackeray, Pramod Mahajan and other senior leaders of both the Sena and the state BJP picked on the legal brains of Ram Jethmalani

and Supreme Court attorney V R Manohar, specially flown in by Thackeray.

As part of the first formula, the Sena is telling the Centre to convince the State to apply the Ayodhya case parallel. Following the Babri masjid demolition, charge-sheets were filed against 42 top political leaders including L K Advani and Thackeray. Though the charge-sheets were filed well within the legal deadline -- unlike in the present case involving Thackeray -- nobody was arrested. In this case, too, the Sena thinks there is no need for an arrest. The State could file charges in the court and

let the Sena leader defend himself. Not arresting Thackeray, takes nothing away from the case. This, of course, depends on whether the State is willing to buy the argument. If the State does not agree, then, the Sena will insist that the Centre use its powers -- not under Article 356 to dismiss as earlier demanded -- but under Article 256 which empowers the Centre to ensure States comply with laws made by Parliament or Central laws.

Says Article 256: The executive power of any state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in

that state. Executive power of the Union shall extend to giving of such directions to a State as may appear to Government of India to be necessary for the purpose."

The argument here is that the though the case has been barred by limitation under the Section 468 of CrPC, a central law, it was being reopened to settle personal political battles at a grave risk to public good.

Under the circumstances, the Sena feels, the Centre can make a case of misuse of the Indian Penal Code and the Criminal Procedure Code and send directions to the State under Article 256.

The Economic Times



# Governor advises State to avoid confrontation

**HARISH GUPTA & PRAFULLA MARPAKWAR**  
NEW DELHI/MUMBAI, JULY 24

**MAHARASHTRA** Governor P C Alexander is understood to have cautioned the Congress-led Democratic Front government not to take any step which can cause a serious law and order problem.

In his special report on the situation in the State following the government's decision to prosecute Sena chief Bal Thackeray, the Governor has emphasised that the State should explore and exhaust all other options before arresting him.

Shorn of the diplomatese, it simply

means that the State should avoid arresting the Sena Chief and leave the matter to the courts. Many political leaders have also expressed this view over the last few days but Maharashtra Deputy Chief Minister Chhagan Bhujbal has refused all face-saving formulas put forward by the Sena. Alexander sent this report to President K R Narayanan (with a copy to Union Home Minister L K Advani) on July 21 from his Pune Raj Bhavan where he spends the monsoon months.

Though it is not clear how Alexander conveyed his views to the ruling Congress and NCP leaders on the subject, his report makes it amply clear that he has advised caution. Alexander has apparently cited the

very sensitive situation in Mumbai as the reason why the state government should exercise extreme caution. The frequent transfers of policemen in the state, he is believed to have said, have put a question mark over the efficacy of the force to deal with large-scale disturbances and prevent damage to public and private property. That, he has observed, would dent the image of Mumbai and the Maharashtra government at the national and international level.

Importantly, the Governor has also suggested that in the whole question of Thackeray's prosecution, it was the minority partner, the NCP, that has taken the lead and that the Congress has played a secondary

role. The Congress, he has pointed out, was committed to implementing the Srikrishna report and has taken the view that the two cases (under which Thackeray is being prosecuted now) were not the subject matter before the commission.

He has also said that things had reached such a stage because of personal differences between leaders on either side, the understaking perhaps being that it was not worth staking peace and loss of innocent lives for such petty political battles.

Alexander, who is known to have a good relationship with leaders of all political parties, has also conveyed to the Centre that he was watching the situation.



**P C Alexander...the peace-maker**

INDIAN EXPRESS

25 JUL 2000

# SOCIAL CHANGE

## Role Of The Constitution

SR-6  
29/7

SIR Ernest Barker, the eminent British political scientist, eulogised the Preamble to the Indian Constitution in his book in the mid-fifties as the finest possible constitutional edict for the people. But the very large number of amendments, 90 in all, the controversy over parliamentary versus presidential system, the two review proposals, one during the Emergency regime of Indira Gandhi and the present on-going one reveal that the intent of the framers of the Constitution and its practice over the last five decades is at variance.

A constitution can be described as a power map which formalises the distribution of authority in a given political entity. The basic understanding is that unless the constitution reflects the dominant values of a society, the possibilities of its success are dim. A good example of this failure is Canada. In spite of its abundant resources and minor ideological contradictions, it is in a process of continuous constitutional development trying to grapple even with its political identity, whether it is a union of partnership of two peoples, English speaking and French speaking, or a federation.

One problem of Canada is that though geographically it is big it has very little history. As a result it lacks consensus on major issues like relationship between the provinces and the centre, language and culture. Its continued united existence is less due to its inherent strength but more due to its being part of NAFTA and G8.

### CLASH

Another example of sub-cultural hostility is Northern Ireland. Its major religious and social divisions seriously impede the development of a consensual political culture among the elite. The elite instead of attempting cohesion promotes inter-communal hostility. In the background of a long sense of historical identity, pluralistic politics is very hard to actualise. It is because of this hostility that the present peace process is taking a long time and the final agreement still remains uncertain.

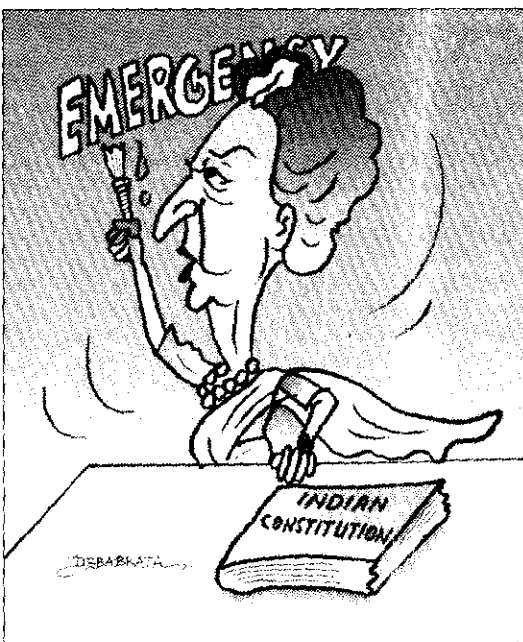
In the context of the new nations the key social divisions emerge out of the process of a national or industrial revolution. In the process of consolidation of these forces, there emerges a more or less cohesive central elite, which with its political authority tries to impose standardised norms that inevitably clash with existing religious and social forces. The clash of these two

By SUBRATA MUKHERJEE

different identities lead to a series of conflicts in which, most importantly, the marginal and peripheral groups resist the centralising tendencies of the political elite. The economic manifestation of this conflict is reflected in the forces of industrialisation and pre-industrial-

bound to be a superficial one as machine politics in the US does not affect even one percent of the people whereas the patron-client relationship in the developing world is all-pervasive with the majority of the population being part of it. In such an actual situation of inequality of a distinction between a giver and a taker, constitutional norms, niceties and conventions become mostly irrelevant making the formal constitution non-functional.

As such the success of a constitution depends on a number of inter-related issues. First, the clear implementation of constitutional or provisions implies strict adherence to the rule of law, fair and quick judicial redressal machinery and an open electoral mechanism. Second, relative autonomy of the institutional infrastructure like the media and credibility of the repressive apparatus of the state mainly the police. Third, there is a need for the flowering of a vibrant civil



sation, regarding the modes of production, between agriculture and industry. The conflict has also other manifestations like distinct interests, identities and value systems.

These conflicts are reduced during the period of democratisation where these conflicts are somewhat resolved with the emergence of new political parties. The earlier failure to have a national coalition is resolved with the emergence of distinctive multiple identities in the form of new political parties incorporating the leaders of the under-represented segments. This happens where capitalism is weak and access to state power is a key variable for welfare of the people. Because of this immense power and prestige of the state, power is inherently a tendency to be controlled by a few groups of the elite. They assume the forces of political patrons and stoutly oppose and hinder democratisation of society. This is the neo-patrimonial state in most of the post-colonial societies, which subverts the constitution for perpetuating its own vested interests.

### RELATIONSHIP

In fact ironically one unintentional effect of the IMF grants to the developing world is the enhancement of opportunities to strengthen the patron-client relationship with more powers to distribute favours to a large number of people. Authority in such a situation is identified with a person and not a holder of an official position.

The patron-client relationship continues because of three interlinked factors of money, employment and security. Some commentators compare the patron-client relationship in the developing world with American machine politics. However, such a comparison is

society in order to inculcate democratic values. The essential precondition, as John Stuart Mill correctly understood of a liberal state, was a liberal society. Fourth, there has to be a resolve and commitment to end endemic poverty, which is the basic cause of servitude and the main reason for the perpetuation of a patron-client politics. Fifth, every citizen ought to have an easy and affordable access to justice, public organisation and its resources and education on that normally reduces the crisis of belief and sense of alienation. Sixth, there is a need to develop a Weberian type of capitalistic spirit, which will reduce the crisis of accumulation and make the capture of state power for personal aggrandisement less attractive and tempting.

### STANDARD

Unless and until the decision-makers are seriously convinced about implementing these schemes in a planned and concerted manner, no constitutional review will yield the desired result. A constitution ultimately reflects the dominant values of a society and these values should be in tune with what Andrei Sakharov says: "a universal responsibility to use a single standard in judging human misfortunes and injustice wherever they occur".

These values should be such that the majority willingly obeys. Such allegiance is possible if the decision making process is transparent, impartial and not only just, but also appear to be just. Till we achieve such a stage, any effort to review or amend the Constitution will remain only a formal and ineffective mechanism with little meaning for the average citizen.

The author is the Professor of Political Science, University of Delhi, South Campus.

# HC brands forced hartal illegal

**Kochi, June 1 (PTI):** In a landmark judgment, the Kerala High Court today declared that enforcing hartal was an unconstitutional act and no political party or organisation had the right to force people to observe it.

The verdict was passed by a division bench of Justice P.K. Balasubramaniyan and Justice K.A. Mohamad Shafi. The state government, the CPM, the Congress and the Election Commission (EC) were among the respondents in the case.

One of the petitioners — the Institute of Social Welfare, Kochi — had filed a petition before the court to bring hartal and other calls for closure of shops and establishments under the definition of "bandh". The court had earlier declared bandhs illegal.

Though there is no legal definition of either hartal or bandh, the essential difference between the

two is that in a hartal, which is a protest, everyone has to cease work. But bandh, a call to stop work, may not mean that a person supporting it closes his business or abstains from work.

However, in both the cases, the court appeared to have come to the conclusion that forcing anyone to abstain from work was "illegal".

In their verdict, the judges directed the EC to entertain complaints of violations of Section 29a(5) of the Representation of People Act, 1951 by any registered political parties or association. They also told the commission that if the case so warranted they could also de-recognise a party or cancel its registration.

The bench also directed the state government or corporations owned or controlled by the state, to take immediate steps for recovery

of damages if their property had been damaged during a hartal.

Though the commission's counsel argued that the EC had no power to de-recognise a political party even if it defied the ruling, the judges said an "active" commission could prevent indiscriminate calling of hartals enforced by threat.

The CPM, in its counter-argument, said that it had only called for a hartal, and not a bandh, on September 25, 1986 and that political parties had the right to urge people to express their protest against subversion of democratic principles and constitutional norms.

The Congress said that hartal was part of the freedom of expression, protected under Article 19(1) of the Constitution.

Disagreeing with the respondents that hartal was the legacy of

the nation's freedom struggle, the judges said destroying public and private property in the name of hartal could not be considered a constitutional act.

The expenditure incurred by the state to mobilise sufficient police force to meet every hartal, which also could not be ignored, they said.

They said the authorities should realise that their duty lay to the state and not to any political party or association. In the interest of the state, they were bound to protect the right of the citizens.

The district collectors and the police and all administrative officers should ensure that leaders were given necessary protection to open their shops on the day of a hartal, the bench said, adding that citizens should also not be prevented from going out to their cars.

constituent body (consisting of members of both Houses of Parliament) had in fact amended the Constitution over the years on nearly 80 different occasions. The Constitution (Amendment) Act, 1951, published by the Lok Sabha Secretariat (titled *Constitution Amendment in India*). In the Preface to the Sixth Edition of this work the Editor (then Secretary-General of the Lok Sabha), had written (as of the year 1955): "The amending process of the Constitution has been working like a 'safety-valve' to remove the requisites for progress with the vibrancy of our life. It is ample testimony of the vibrancy of our safety. It is ample testimony of the vibrancy of our Constitution that in a span of 44 years of its adoption as many as 76 amendments have been carried out to bring it in tune with the changing needs and aspirations of society." No one inside or outside the government has ever contradicted the correctness of this factual assessment.

Our existing Constitution of India makes provision for unity amidst diversity -- do not disturb it. We must first try to understand the background to our Constitution before we ask ourselves the question whether we need to revise it.

We cannot comprehend or even attempt to comprehend this Constitution of ours until we realise the vastness of India and its diversity. The entire subcontinent -- which today includes Pakistan, Bangladesh, Bhutan, Sri Lanka and of course, India -- is a separate geographical entity bounded by high mountains in the South and great oceans to the West, South and East. Land about 70 years ago the subcontinent could be traversed only by sea or through narrow passes in the North which were protected by natural barriers, it formed a unity only a century ago; successive invasions of invaders were hatched and intermingled with the indigenous folk

traits became hard to identify. Language and religion, rather than ethnic origin, became the primary feature of the myriad peoples of India.

Writing in the quiet seclusion of a British prison in 1944 (during his night term of imprisonment for revolting against the British), Jawaharlal Nehru contemplated "the variety and unity" of India: "The diversity of India is tremendous; it is obvious: it lies on the surface and anybody can see it. It concerns itself with physical appearances as well as with certain mental habits and traits. There is little in common, to outward seeming, between the Pathan of the Northwest and the Tamil in the far South. Their racial stocks are not the same, though there may be common strands running through them: they differ in face and figure, food and clothing, and, of course, language... the Pathan and Tamil are two extreme examples; the others lie somewhere in between. All of them have still more the distinguishing mark of India. It is fascinating to find how the Bengalis, the Marathas, the Gujaratis, the Tamils, the Andhras, the Oriyas, the Assamese, the Canarese, the Malayalis, the Sindhis, the Punjabis, the Pathans, the Kashmiris, the Rajputs, and the great central block comprising the Hindustani-speaking people, have retained their peculiar characteristics for hundreds of years, have still more or less the same virtues and failings of which old tradition or record tells us, and yet have been throughout these ages distinctively Indian, with the same national heritage and the same set of moral and mental qualities. There was something living and dynamic about this heritage which showed itself in ways of living and a philosophical attitude to life and its problems. Ancient India, like ancient China, was a world in itself, a culture and a civilisation, which gave shape to all things. Foreign

rise immediately by an attempt to find a synthesis. Some kind of a dream of unity has occupied the mind of India since the dawn of civilisation. That unity was not conceived as something imposed from outside, a standardisation of externals or even of beliefs. It was something deeper and, within its fold, the widest tolerance of beliefs and customs was practised and every variety acknowledged and even encouraged...

"In ancient and medieval times, the idea of the modern nation was non-existent, and feudal, religious, racial, and cultural bonds had more importance. Yet I think that at almost any time in recorded history an Indian would have felt more or less at home in any part of India, and would have felt as a stranger and alien in any other country. He would certainly have felt less of a stranger in countries, which had partly adopted his culture or religion. Those, such as Christians, Jews, Parsees, or Moslems, who professed a religion of non-Indian origin, coming to India, settled down there, became distinctively Indian in the course of a few generations. Indian converts to some of these religions never ceased to be Indians on account of a change of their faith. They were looked upon in other countries as Indians and foreigners, even though there might have been a community of faith between them."

I like to believe that it is this eloquent passage (written in 1946) that inspired the drafting of India's Constitution.

The Constitution of India, 1950 as enacted, contained 395 Articles (with a Bill of Rights) and an Appendix of eight Schedules, occupying in the Official Edition, 251 pages. Its length was due, not merely to the size of the country, but to the problems of

rights of sections of society based on religion or language).

■ The Right to Equality is guaranteed, and the State is prohibited from discriminating against any citizen on grounds only of race, religion, caste, or place of birth, and yet discrimination in favour of socially and educationally backward classes is recognised and encouraged. The textual juxtaposition of guarantees of equality and the authorisation of compensatory discrimination reflects the deep conflict between divergent views on Equality, and varied notions as to the scope of protective discrimination.

■ Whilst adopting adult suffrage as the basis for periodic elections to Parliament and to State Assemblies, and abolishing special electoral rolls based on race, religion, caste, or sex, the Constitution has provided for reservations of seats in the House of the People and in the Legislative Assembly of every State for the Scheduled Castes and Scheduled Tribes (for centuries, the outcasts of Hindu society -- reckoned as the world's largest minority).

These seemingly disparate and contradictory provisions were necessitated not only by social, historical and political considerations, but to help preserve that "dream of unity" about which Panditji wrote (in his *Discovery of India*) a dream that "has occupied the mind of India since the dawn of civilisation." It is unity amidst diversity that is the touchstone of our Constitution's philosophy: the provision for a federal structure, with a strong central bias gives added emphasis to this philosophy.

■ **Tanogroup:** *Whenever the Constitution has not worked properly it has been because the Constitutional functionaries have failed to perform the functions entrusted to them*

# A PERFECT FIT FOR INDIA

## Our Constitution is not lagging behind the times. It is just right

The government's resolution of February 22, 2000 gives the wrong impression — that our Constitution is lagging behind the times and requires to respond to changing needs.

On the occasion of the celebration of 50 years of our Constitution the President of India said (on January 27, 2000, in the Central Hall of Parliament): "Today when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

Simple words. Most effective. Most quoted. Yet they do not express any definitive view — they were words of caution expressed not by a lawyer or by a judge but by a statesman with rich political experience. Surely they deserved consideration! But only a few weeks later, without even attempting to examine whether the Constitution had failed us or whether it was constitutional functionaries who had failed to work the Constitution in the manner in which it was conceived and written, the government of the day resolved "to set up a National Commission to review the working of the Constitution"; mark the words "National Commission". None of the political parties in Opposition were consulted. Neither of the Houses of Parliament (whose members together have the sole power to amend the Constitution) were taken into confidence nor had its members expressed the need to "review" the Constitution. Both Houses had been summoned to meet on February 23, 2000. But just a day before, a government resolution dated 22 February 2000, announced the constitution of a Commission to examine "how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of parliamentary democracy and to recommend changes that are required to the provisions of the Constitution without interfering with its basic structure or features."

Obviously the impression given was that our Constitution was lagging behind the times and had to respond to "changing needs". No consideration was given to the fact that to meet "changing needs" the



Jawaharlal Nehru signs the Constitution

## THE CONSTITUTION OF A REVIEW

FALI S. NARIMAN

In a land of conflicting ideas and ideals, the basic document of governance has been forged in a spirit of tolerance accommodating diverse interests and values

...to such an extent that radically distinct racial influences poured in and often influenced that cul-  
... absorbed. Disruptive tendencies gave

accommodating, in a Parliamentary-cum Cabinet-style Constitution, divergent points of views of representatives of peoples speaking different languages and observing varied faiths, striving at the same time to transform a rigid hierarchical social order into an egalitarian society.

The Constitution enshrines a social, economic and is neutral to what economic model is chosen except that it should approximate to a socialist ideal. The Chapter on the Directive Principles of State Policy makes this clear. The Constitution accommodates all religions but does not give recognition to any single one. Religion in India means not only the profession of faith; as you know it encompasses, places of worship, (temples, mosques, gurudwaras, churches, synagogues); it includes idols, deities and offerings to them; bathing places, graves, tombs, properties attached to and owned by religious institutions.

All this — faith, worship, ritual and the secular activities of religious groups — had to be and are provided for by the Constitution — in the Chapter on Fundamental Rights. Their essentials are put beyond the reach of interference by the executive or by fleeting majorities in Parliament and in State Assemblies. Pluralism and an indigenous federalism thus became the delicate balance in the framework of India's Constitution. Pluralism has been India's great strength. It is also India's great weakness — and this incongruity is nowhere more apparent than in our Basic Law.

In a land of conflicting ideas and ideals, the basic document of governance has been forged in a spirit of tolerance accommodating diverse interests and values:

■ With more than 30 principal indigenous languages and dialects from which to choose, the Constitution has recognised English as one of the two official languages of the Union — at the same time it has affirmed the fundamental right of sections of citizens having a distinct language and script, to converse the same.

■ In a professedly secular republic, the Chapter on Fundamental Rights has recognised and protected India's six main religions (and more than 200 "religious persuasions"); and by a compact with India's minorities it has also insulated from legislative and executive incursions the cultural and educational

...of citizens and minorities (whether

MAY 2000

MAY 2000

# Changing the Constitution

## Hazards of Competitive Populism

By ANDRE BETELLE

THE government's proposal to review and possibly recast the Constitution of India has run into bad weather. This was to be expected in the present fractious political environment. The Congress party, now in opposition, could be counted on to find some reason to oppose what the BJP government wishes to do. The BJP's own allies have misgivings about how far the revision should go; and there are very strong differences of opinion within the sangh parivar itself about the basic structure of the Constitution and what should be changed in it.

### Weak Consensus

There are understandable, though perhaps exaggerated, fears about what may be done to the secular character of the Indian Constitution on the pretext of bringing it in line with Indian tradition. The opponents of secularism are artful: they will not attack it in the name of Hinduism or religion, but in that of tradition and morality. For all its limitations and shortcomings, the Indian Constitution is forward-looking. The values on which it rests — equality, liberty, rule of law, individual rights — are all modern and not traditional values. If those values have not been realised fully or even substantially in the last 50 years, this is not because of our present Constitution, but in spite of it.

Even the best of constitutions is not perfect; no man-made object can be. For those who agonise over secularism it is well to remember that there was not even the pretence of divinity in the making of the Indian Constitution. What has been created by human beings can, of course, be amended and improved by other human beings. Indeed, it is the nature of a modern constitution that it has built-in provisions for its own amendment. These provisions have been used somewhat freely in the 50 years since the Constitution was adopted. Increasing numbers of people have begun to feel that the time has come to go beyond these piecemeal changes and attempt something more comprehensive. But others feel that we have a good Constitution and that the pro-changers should be restrained from making the best the enemy of the good.

The writing of a constitution or

even its rewriting is a major event in the life of a nation. Certain conditions have to be met if the event is to be fruitful and effective. The first and most important of these is that there should be a consensus in the country about the desirable legal and political order and the desirable way for its creation and sustenance.

It will be hard to deny that the kind of consensus that existed between August 15, 1947 and January 26, 1950 does not exist today. It will not do to forget that a consensus did not exist when the Constituent Assembly had its first meetings in December, 1946. The Muslim League boycotted the assembly and the princely states went unrepresented. The consensus began to emerge only after partition and independence. Its creation, which is recorded in the official report of the debates conducted over three years in the Constituent Assembly, was a very impressive achievement. Should a constitution that was written when the consensus was strong be rewritten when it is weak?

No human creation, whatever the conditions of its creation, can be fully free from defect. If I were asked to point to one single defect in the Constitution of India, I would point to its excessive length. It is easily the lengthiest document of its kind. Its length is four times the combined lengths of the US and the French constitutions. It has too many provisions; and they are too specific, too detailed and too concrete. This has made the Constitution of India an unwieldy document. Paradoxically, it is its excessive length and detail that has forced so many amendments on it.

### Historical Tendency

The historical tendency of Indian civilisation has been one of accretion, leading to the accumulation of new elements without the elimination of old ones. It is very unlikely that a revision of the Constitution will lead to a reduction of its length. If the committee set up for its review follows the general tendency, its length will almost certainly increase. The momentum of social and political change through legal and constitutional interventions has been towards the enlargement of constitutional provisions, and it is difficult to see a

reversal of this momentum in the immediate future.

Some feel that the Indian Constitution, unlike other republican constitutions, has been used a little too freely with the object of changing the structure of society. In retrospect, the Constituent Assembly itself appears to have been a little too optimistic about what a brand new constitution could do to sweep away the age-old traditions, customs, prejudices, hierarchies, animosities and apathies rooted in the Indian soil. It is not clear whether the review committee will confine itself to recommendations relating to the structure of governance or feel encouraged to go deeper and propose changes, for instance, in the balance between Fundamental Rights and Directive Principles of State Policy.

### More harm than Good

There are many sympathetic people in our country who feel that the conditions of the deprived and the disadvantaged can be speedily improved by granting them more extensive rights. The Constitution already has a battery of rights, but they feel that new ones, such as the right to education and the right to work, should be added. The problem with the Constitution of India is not that it has too few rights but that it has too many, and partly for that reason, those rights are not always taken very seriously.

It would be wrong to pass judgment in advance on the work of any committee. At the same time, one cannot escape the thought that not all its members are likely to be free from the virus of competitive populism. That virtue is no longer confined to legislators and party leaders but has made inroads into even the loftiest of public institutions. If the deliberations of the review committee lead to simplification and rationalisation of the structure of governance, that will be all to the good. But attempts to go beyond that in the name of social justice are not likely to bear fruit and may be counterproductive. Politicians may promise all things to all persons with impunity, but a constitution that carries a plethora of provisions that cannot be enforced does more harm than good to society.



THE TIMES OF INDIA

MAY 1998

# Politicians sceptical of Shah's visit

HT Correspondent  
Midnapore, May 5

*of constitution*  
*of law*

THE EXPECTATIONS and the excitement notwithstanding, the Trinamool Congress, BJP and Congress leaders here feel that Governor Viren J Shah's visit to Midnapore will not improve the law and order situation in the district.

Even Governor Shah said that he had his limitations. "I cannot forget that as a constitutional head of the State, I can only suggest and advice the Council of Ministers led by Chief Minister Jyoti Basu. However, I am concerned and I will certainly do my bit," Shah said. "But it is unfair to ask the Governor to interfere on Government matters. He is above politics, so don't read too much into my visit to Midnapore," he told reporters.

This message was not entirely lost on politicians. Though all the major political outfits including the Trinamool, BJP and the Congress

dutifully presented memorandums to the Governor, they all felt that the whole exercise could be futile.

"The common people might think that the visit of the Governor to Midnapore would solve all their problems, that normalcy will return to violence-torn Keshpur, Garbeta, Pingla, Danton and other areas, but these are all wishful thinking," said district Congress president Raj Kumar Misra. "How can we forget that Viren Shah is Jyoti Basu's friend. And he will not do anything that would harm him. His visit is a political gimmick. He doesn't have any real powers," he added.

Trinamool district chief Dinen Roy equally pessimistic about the outcome of Shah's visit. "In the past too, Governors had come to Midnapore. Nothing changed. Neither will it this time," he remarked.

Two years back, villagers of Chandrakona and Garbeta were attacked by political cadres. A central team came to see the spot.

Result: zero. But now since the BJP is in power, Governor Shah might submit a report. But there will be no action. Moreover, things are out of control here. People have taken the law in their hands and a Governor cannot solve this problem," said BJP State Secretariat member from Midnapore, Dr Manoranjan Datta.

The Governor did not make any wild claims either. He made it clear that the law and order situation was only one of the topics of discussion he had with district officials. "Health, education, irrigation, floriculture, self-help programmes for women and electricity generation have all figured in my talks with officials," Shah said.

During his stay in Midnapore, Viren Shah visited Midnapore Sadar Hospital and Collegiate School. A move which upset the political leaders because they expected the Governor to visit trouble-spots like Keshpur to get a first-hand account of the deteriorating law and order situation there.

THE HINDUSTAN TIMES

6 MAY 2000



# West Bengal Governor, CPM on collision course

SUBRATA NAGCHOU DHUFY  
MIDNAPORE, MAY 5

A confrontation is brewing between the ruling CPI(M) in West Bengal and Governor Viren J Shah. Apparently at the behest of party bosses in Calcutta, the entire Midnapore district unit of the CPI(M) has decided not to meet Shah when he arrives here tomorrow, ostensibly to hold a review

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and Garbeta.

There have been at least 60 casualties on both sides and thousands of houses have been burnt. Just a week ago, two people were killed in a fierce exchange of fire.

The ruling CPI(M) reacted strongly to Shah's "unusual" decision to go to Midnapore. In the state's political circles it was thought to be an outcome of the pressure exerted by Mamata Banerjee on

undertake a review.

District Magistrate M V Rao confirmed that until this afternoon, neither the CPI(M) nor any other Left Front constituents had enlisted their names for meeting the Governor.

However, the Congress, Trinamool, BJP and several other voluntary organizations have submitted letters demanding an audience with the state governor.

When asked how could the CPM stay away given that it was in charge of all posts related to development, Rao declined to comment.

A senior leader of the district unit said that the party will not meet the Governor unless "told to do so."

When Shah took charge early this year, he was viewed as an industrialist friend of the state chief minister Jyoti Basu.

But at the same time the TMC-BJP camp was happy as Shah had been a BJP MP and a former member of the BJP's national executive.

INDIAN EXPRESS

6 MAY 2003

# Not such minor failings

There are many ways in which the review panel may reassess the Constitution to achieve a more egalitarian society for minorities, writes Syed Taraq Quadri

The nation owes a debt to the framers of the Constitution, whose foresight and sagacity have provided the Indian republic with a Constitution that has stood the test of time. It is a proof of its quality and endurance to have been amended 79 times to suit changing requirements without losing its basic structure and character.

The last half century has been a mixture of achievements and tribulations for the nation. Still half the populace groans under disease, poverty, ignorance and illiteracy. Is it because the Indian constitutional framework has failed the people in living up to their aspirations, or did the administrators fail the Constitution?

The review of the Constitution, which the present government has embarked upon, is therefore a welcome step. This is because the interests and needs of a developing country keep changing with time.

Indira Gandhi had written a letter to the then chairman of the law commission of India asking for a review of the Constitution. The chairman held that such a review should be treated cautiously. Consequently, a committee under the chairmanship of Swaran Singh was constituted. So a review was a long felt need.

A review critically views past experiences for future guidance, or evaluates strengths in the light of future needs. Both are essential. Conditions of Muslim minorities in the country are an area of concern, despite the "equality" enjoined on the people. If the Constitution considers reservations for scheduled castes and scheduled tribes, and is embarking on the same for other backward classes, should one not look into the plights of the minority communities as well?

If Dalits can be protected against harassment or indignities through legislations advocating stern action against those who offend their dignity, minorities should also enjoy the benefits of laws of a similar nature. Viewing these groups of people with suspicion or subjecting them to unnecessary harassment may thus be avoided.

The Constitution might do well to empower SCs, STs, other backward classes and minorities through guaranteed employment, without discrimination, in all services, and with no "sensitive" clause attached anywhere, and to treat all as equals and compatriots. The Constitution has failed to ensure true equity and equality. Issues of human rights have been treated with negligence, and the Constitution has done nothing to change situations for the better.

For example, Centre-state relations remain contentious on many fronts. The use and abuse of Article 356, in sacking a state government by the sole authority of the Centre, has provoked much debate in recent times. There are similar areas which need looking into.

There is a general suspicion that the Bharatiya Janata party led National Democratic Alliance would tamper with the



To secure this happiness

basic structure of the Constitution, under the pretext of "reviewing" it, only to fulfil the BJP's "hidden agenda". This apprehension has been met with the declaration that the basic structure will not be touched. The same critics are suspicious of the review committee, and demand that it should first be undertaken by Parliament which represents the people.

Parliament is undoubtedly the final authority. Without its approval no changes can be made in the Constitution. It is important that people should also be involved in the debate. And the will of the people is only reflected through Parliament. While Parliament is entitled to act on behalf of the people, the latter cannot be isolated or taken for granted on matters concerning their lives and the polity.

The Constitution should provide adequate representation for Muslims in Parliament, state legislatures, local bodies, corporations, and committees constituted by the government. SCs and STs were provided reservation in all spheres. This provision took into consideration

**It is reassuring that the review panel does not intend changing the parliamentary form of government or the secular nature of the Constitution**

point. In *Frank Anthony Public School, Employees' Association versus Union of India 1986(4)*, SCC 707, the judge said that "minorities have a right to administer but not a right to maladminister".

B.S.A. Swamy of Andhra Pradesh high court detailed in 1999 various defects noticed by the duty counsellors appointed by the court in the management of various colleges, and consequently set aside the selections and permitted the convenor to allot seats as per ranking. In the light of the court judgments, changes in Articles 29 and 30 became necessary, along with the incorporation of other provisions regarding the establishment and funding of additional minority professional colleges. The Constitution must also help in the establishment and funding of the additional minority professional colleges from Central waqf funds to speed up the providing of education to millions.

Stringent punishment is provided for alleged illegal activities, adequate safeguards against its misuse should also be considered simultaneously. Under laws such as the former Terrorist and Disruptive Activities (Prevention) Act, and similar anti-extremist acts, more than 4,000 people are languishing in custody without having undergone trial. A special provision must be made for the completion of the trial of the accused within a definite time frame.

If the people entrusted with the task of implementing the Constitution have failed, how did they become so powerful in the first place? Is it not on account of the ambiguous provisions of the laws? Do not the electoral laws need radical changes in order to have legislators who would be able to implement the provisions of the Constitution?

Also, the Central minorities commissions reports must be made mandatory and tabled in Parliament. The archaic Haj Act needs suitable changes. Provisions of the existing Wakf Act 1985 do not have enough power to protect properties, or to remove encroachments without prolonged litigation.

The utilization of the waqf's income for the benefit of the minority community, according to the donor's intention, is not enforceable under the present act. Under section 10, a *mutawalli* is not to spend any money belonging to waqf for self-defence under section 62, which is a restriction on *mutawalli*'s power to grant lease of waqf property under section 56 of the act. All these require reconsideration in the interest of waqf administration. The formation of waqf commissions in tune with Hindu endowment trusts with a suitable paraphernalia will revolutionize the financial status of the minority community.

It is reassuring that the review committee does not intend to change either the parliamentary form of government, or the secular character of the Constitution. All intended changes in the Constitution must contribute to the formation of an egalitarian society.

## BRAVO EXCELLENCY!

The Governor sets the cat among the pigeons

HIS Excellency, Viren Shah, has not put a foot wrong since he became the Governor of West Bengal and he is not about to do so. He has been active, proper, and popular because he is seen to be well-meaning and sincere in his dealings. His visit to Midnapore, however, will not be so easily forgotten either by the nervous local officials or by Writers' Buildings. His avowed aim was to see things for himself and no one suggests he ought not to do that. He is nobody's pet poodle. But simple requests to be allowed to see a local school, and a nearby hospital created quite a stir because his predecessors were content to see what they were shown and it was not convenient to local officials to let His Excellency see how bad things really were. A photograph in this newspaper shows patients lying on the floor of the hospital. What purpose is served in trying to prevent the Governor from seeing how bad things really are? Viren Shah was accused of prying into the law and order situation. Whether he was interested in this is of less moment than the fact that he has a perfect right to see and hear what he chooses. The fact that so many people came to see him and petitioned him to do various things for them should not have caused such panic among the officials. The Deputy Chief Minister should have known better than to offer unsolicited advice as to how the Governor should conduct himself. Buddhadev Bhattacharya needlessly insisted that he would wait and see what the Governor would do as the head of state does not have to wait for the Deputy Chief Minister to set the agenda and certainly does not need lessons on proper behaviour. The Deputy Chief Minister's behaviour would only have caused the Deputy Chief Minister to be regarded as a boorish fellow.

The question is not of Buddhadev's intelligence or lack of understanding. The nub of the thing is that things are at sixes and sevens all over West Bengal and a Governor concerned for his remit cannot be blamed for wanting to see things for himself. He is a friend of West Bengal, he has said that he would like to be useful to the people and the Government of the state and there is no reason to doubt his bona fides. One can assure a nervous and edgy Deputy Chief Minister that the Governor is not about to recommend President's Rule in the state, or is it Buddhadev's view that there is a case for it?

Viren Shah has a sense of humour, he will not take such boorish behaviour amiss. Besides he is interested in the state and really wants to see what he can do to improve things, in as much as they lie in his power. He can aid and advise the Government, if the politicians have any sense and this is a large assumption, they would listen to a man who unlike themselves, has many achievements to his credit. He is an experienced and successful businessman, what he has to say about improving things in the state should be of interest and value to those in charge of the Government. As for the officials it was a new experience for them to deal with a man who knows his mind. A shake-up was long overdue and it was mild and courteous.

Get on with your concerns, Your Excellency, the people of the state are with you.

THE STATESMAN

9 MAY 2008

Are the constitutional review commission's motives frivolous or sinister?

# Agenda radical and hidden

**I**s it buffoonery, or something more invidious that is at work? The Union law minister was the picture of innocence: what, pray, is wrong with a constitutional review committee? He is prepared to give a prior undertaking — the changes the committee might propose will not affect more than five per cent of the Constitution.

The law minister could not have been serious. In case he was, woe betide the country, for how do you satisfy the conditionality of redrafting only five per cent of the Constitution? Amending five per cent of the total number of articles in the Constitution? Altering the contents of five per cent of the total number of pages covered by the Constitution? Or are the proposals to aim at affecting five per cent of the aggregate fiscal and monetary resources flowing from the consolidated fund of India? Or could it be that the changes are intended to influence five per cent of the items in the Union list of the sixth schedule? Or five per cent of the items covered by the state or concurrent list?

The underlying issues are much weightier than what the law minister's frivolity hints at. Should the orbit of five per cent he has in mind cover the relevant articles touching the directive principles of state policy and fundamental rights, all of us will be in very deep trouble indeed.

The law minister cannot therefore avoid further interpellations. What sort of general guidance has the government given to the committee that has been set up to review the Constitution? The committee obviously cannot operate in a vacuum. The focus therefore has to be on the contents of its terms of reference. In all official documents, these terms of reference are usually drafted with elliptical wording; each of them can be interpreted in 20 different ways. It is relevant against this background to enquire whether the authorities have indeed a hidden agenda. The eminent judicial personality named as the chairman of the committee may not even be aware of the processes of the official mind. There could well be attempts to take him for a ride, with the prime minister not being in the know, and not even the law minister, for there is a tide in the affairs of men which makes it supposedly unstoppable.

## THE TELEGRAPH

**A**t this juncture, further questions are posed though. The hide and seek the government plays with the purported purpose of the committee raises a whole series of questions. Do the authorities nurture a surreptitious hope that while Kesavanand Bharati will formally remain sacrosanct, certain amending passages could yet be smuggled into the relevant articles and the exercise would be as good as sabotaging the basic structure of the Constitution from within? Or is the appointment of

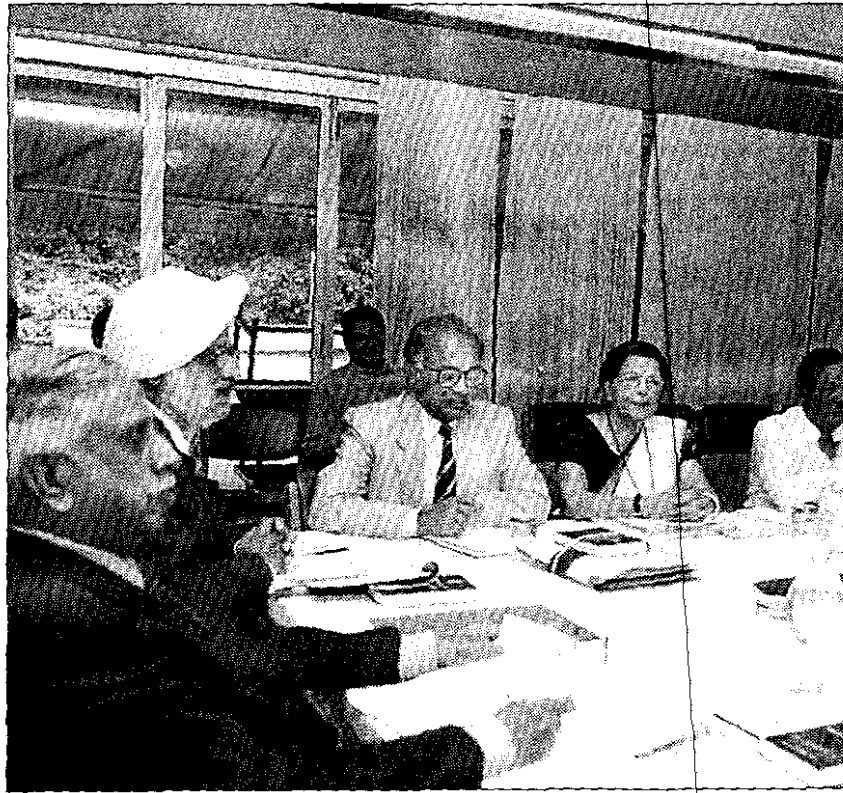
## CUTTING CORNERS

ASHOK MITRA

the committee merely a ploy to postpone implementing decisions the authorities do not like? For it is atrocious that the Sarkaria commission's recommendations, submitted a full decade ago on a number of crucial issues, are yet to be implemented.

Successive governments at the Cen-

tion. Twenty years ago, enthusiasts, for instance, concentrated on the demand for scrapping Article 356 and thereby ensure the demise of the authoritarianism latent in the Constitution, summarily approving the removal from office democratically elected state governments. The invoking of the provisions of Arti-



Many misgivings could have been dispelled if a couple of individuals on the committee were from the radical side of the political divide

cle 356 to remove the Bharatiya Janata Party regime in Uttar Pradesh in the wake of the Babri Masjid demolition has induced second thoughts in some minds on the usefulness of the article. It is however the principle of the issue which should matter. Even with Article 356 not being around, it should still be possible, for instance, by availing of Article 256, to cope with a state government which has travelled beyond the pale of reason.

There are other hardy annals the debate on constitutional reforms is likely

to provide a renewed impetus to. For example, those chewing their heads off on the issue of deficit budgeting may appear on the scene and suggest a constitutional amendment which sets a limit to the size of the fiscal deficit, such as in terms of a maximum percentage of gross domestic product. They will however turn out to be no fiscal wizards. Where the government enjoys a comfortable majority in Parliament, a constitutional amendment indicating an upper limit to fiscal deficit is unlikely to be little more than an irritant.

**S**hould the authorities feel the need to breach the constitutional barrier, they could simply walk into Parliament, propose to raise the ceiling of the deficit and hawk the necessary amendment with the state legislatures. Should the background provide a conflict-like ambience with this or that neighbouring country marked out as the number one enemy, the amendment is bound to be approved with lightning speed by both Parliament and the state legislatures.

And if the claim proffered is to introduce radical changes while encouraging the process of reviewing the Constitution, what about a couple of suggestions from, so to say, the floor? Let the focus be on the defence budget. For a poor country the most effective defence policy, it has been strongly maintained, is to implement a wise and thoughtful foreign policy which will mitigate the need for additional defence outlay every year, including outlay for expanding nuclear capability.

Pokhran and Kargil, in the view of the peace-mongers, have set the nation on a wrong track. The milieu is comprehensively hostile. Even so, this cheeky, idealistic crowd would perhaps not restrain itself from mentioning what it considers to be changes essential in the Constitution.

At least some of this crowd would love to see the insertion of a new article which prohibits defence expenditure each year from exceeding four per cent of the GDP. Some others would like the instrumentality of the Constitution to put a seal of approval on a fiscal arrangement whereby the public outlay on education is not allowed to fall below six per cent of the GDP. Will the committee set up to review the Constitution have the catholicity of attitude to consider incorporating such limits, positive as well as negative, on individual items of public expenditure?

**W**ho knows, once the committee's work gets going, it will develop an impulse of its own, spawning a built-in uncertainty where it will all end. Satisfactory, as Nero Wolfe might say. But then, even the law minister perhaps does not know of the Hidden Agenda.

# Second marriage of convert to Islam is bigamy, says SC

The Times of India News Service

NEW DELHI: In a bid to interpret the Muslim marriage law, the supreme court has ruled that plurality of marriages is not "unconditionally" conferred upon the husband and that he is bound by the condition to do justice with both the wives. Therefore, the court said, it would be doing injustice to Islamic law to urge that a Hindu convert is entitled to practice "bigamy", even as his first marriage under the Hindu Marriage Act or any other community law continues.

A bench comprising Justice S. Saghir Ahmad and Justice R.P. Sethi held that such violators cannot plead that their second marriage should not be made subject of prosecution under section 494 of the Indian penal code.

Holding that the second marriage by a convert Hindu even as his first marriage was subsisting would be invalid, the court said: "Islam, which is pious, progressive and respected religion with rational outlook, cannot be given a narrow concept as has been tried to be done by the violators of law".

Therefore, the second marriage would be void and the apostate husband would be guilty of the offence of bigamy, the court said while dismissing a review petition and writ petition filed by various persons and the Jamiat-i-Ulema-Hind.

The petition had raised several issues following the Sarla Mudgal case verdict five years ago when the court had desired that the Union government should consider enacting a common civil code. It also contended that the judgment was contrary to the fundamental

rights guaranteed under Articles 20, 21, 25 and 26.

The court said its 1995 judgment did not amount to violation of the freedom of conscience and free profession, practice and propagation of religion. "No person has been denied the freedom of conscience and propagation of religion", the court added.

On Jamiat-Ulema Hind's apprehension that the government would enact a "Common Civil Code", the court said, "we deem it proper to reiterate that this court had not issued any direction for codification of the code and the judges constituting the different benches had only expressed their views on the facts and circumstances of those cases." The centre had informed the court that it did not intend to take any action in this regard on the basis of the judgment alone.

The judges rejected the argument that the law cited in the verdict could not be applied to persons who had solemnised marriages — against the law — before the judgment came. The court explained that it had not laid down any new law but only interpreted the existing law which was in force. The interpretation of the provisions relates back to the date of the law itself and cannot be prospective from the date of the judgment.

In his separate but concurring verdict, Justice Ahmad said, "a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited."

THE TIMES OF INDIA

MAY 2 2000

# United House knocks off job quota cap

FROM OUR SPECIAL CORRESPONDENT

**New Delhi, May 10:** The Lok Sabha today witnessed near unanimity in passing a Constitution amendment Bill, which sought to end the 50-per-cent ceiling on reservation in government jobs in backlog vacancies provided under an official memorandum of 1987.

The government promised to sustain the validity of the increased quota though it is being challenged in court.

The Constitution (90th amendment) Bill, 2000, was passed with

418 members voting in its favour and a lone MP against it.

Responding to the debate on reservation for Scheduled Castes, Scheduled Tribes and other backward classes, law minister Ram Jethmalani said the government would try its best to ensure that the validity of over 50-per-cent reservation, which has been challenged in the Supreme Court, is sustained.

The government decided to amend the Constitution so that unfilled vacancies of one year would be considered a separate class to be filled in succeeding

years. Such vacancies, the Bill said, would not be clubbed with the vacancies of the year in which they were being filled for determining the ceiling of 50-per-cent reservation.

The official memorandum of August 29, 1987, issued following a Supreme Court judgment in the Indra Sawhney Vs Union of India case to provide that the 50-per-cent limit shall apply to current as well as backlog vacancies and for discontinuation of the special recruitment drive, now stands negated.

Welcoming the amendment, the Congress and other parties

urged the government to bring amendments to overrule three other memoranda, which had an adverse effect on promotion and recruitment of Scheduled Castes and Scheduled Tribes in government jobs.

The House rejected by voice vote the contention of Muslim League MP G.M. Banatwala that the Bill was a "great national betrayal". Banatwala was the lone MP who opposed the Bill.

During clarification, Jethmalani said the word "backlog" was not being added to the main Bill and was part of the statement

of objects and reasons appended to it. Otherwise, the statute could become ambiguous because the law has to apply to SCs, STs as well as OBCs.

Jethmalani said that even if the Supreme Court ruled that the reservation limit should not exceed 50 per cent, the government would take measures to provide a higher percentage of reservation.

Minister of state for personnel Vasundhara Raje said the government was also taking steps to undo the adverse effects of four other office memoranda

relating to reservation issued in 1997.

During the passage of the Bill, the House witnessed a brief but bitter exchange between Jethmalani and Mani Shankar Aiyar of the Congress. Interrupting Jethmalani, Aiyar wanted the credit for the 69-per-cent reservation policy of the Tamil Nadu government to go to the previous Jayalalitha regime. The minister conceded

after ADMK leader P.H. Pandian sought to clarify the issue, saying that the credit should go to the government which brought forward the policy.

THE TELEGRAPH

11 MAY 2000

# Sushma denies RSS chief's hint on Constitution

STATESMAN NEWS SERVICE

BHOPAL, April 14. — The former Union minister and BJP leader, Mrs Sushma Swaraj, denied here today that the new RSS chief, Mr K S Sudarshan, had suggested scrapping the Constitution.

"I have spoken to him (the RSS chief) on this. He did not say the Constitution should be scrapped," Mrs Swaraj told reporters at the state BJP

headquarters here. Mrs Swaraj said: "The RSS chief might have his own views on the Constitution. But the Union government will stick to a separate view on this." She added that the Centre's stand on the issue is reflected by the terms of reference stipulated for the Constitution Review Commission.

Blasting the Congress for attacking the Vajpayee government's move to review the Constitution and turning it into a "sentimental issue", Mrs Swaraj said the Congress is misleading the people for "political gains". She described

Congress' opposition to setting up the Review Commission as "meaningless, unreasonable and unfortunate."

Mrs Swaraj said the Congress has been spreading false propaganda that the Union government's motive is to "change" the Constitution drafted by Dr B R Ambedkar and push forward the BJP's "hidden agenda."

This criticism is "baseless", she said. The Commission will ultimately have to refer its report to Parliament for approval. The Union government and the Commission's terms of reference have made it

clear that the mandate of the Commission is to review the functioning of the Constitution without meddling in its "basic structure".

Asked whether the BJP had not exploited the people's sentiments by raking up the Ayodhya issue, Mrs Swaraj said Ayodhya is a "political issue linked with pseudo-secularism, not sentiment."

Drawing a parallel between Ayodhya and Kashmir, she said: "Kashmir is a political issue because of our efforts to ensure that Kashmir remains an integral part of India."

Asked whether the Union gov-

ernment had not bypassed Parliament in its bid to review the Constitution, Mrs Swaraj said: "Parliament was taken into confidence because the issue was mentioned in the President's address to Parliament at the outset of the Budget session."

She also refuted the charge that the government had not spelled out what it meant by "the Constitution's basic structure", which the Commission is not supposed to alter. "The Commission's terms of reference make it clear which areas are to remain untouched. There should be no ambiguity on that."



Sushma Swaraj

THE STATESMAN

15 MAY 2000



# Review Commission imbroglio — II

By V. R. Krishna Iyer

10-12 12/12  
NOW WE know blackguardly blockheads and blockheadly blackguards do gain access to power. Reviewing the Constitution is sensible only if the National Charter has failed, not when the cabal of operators, under constitutional counterfeit as Cabinet Ministers, play false. There is no alibi for diluting, distorting or making it proprietariat-friendly. So this gives room for grave misgivings about why this motley body is set up ad hoc with no express terms of reference to focus on. The 'hindutva' bogey, in the background of the Babri demolition, is heightened by the RSS aggressiveness a la Gujarat. Secondly, the BJP election manifesto has disquieting items about Constitutional changes which people suspect to be anti-secular. And suspicion is the *upas* tree under whose shade reason fails and justice dies. There is yet another challenge to the credibility and standing of the Commission.

No doubt there are leading lights in the review galaxy; but the subject-matter of the review is of the highest import and portent. Then why was Parliament not taken into confidence and the Commission sanctioned by a resolution of the Houses? Why now and without at least consulting the Opposition? This is 'a riddle, wrapped in a mystery inside an enigma'. Much misunderstanding has been caused, not totally without justification.

The fact remains that a large number of people do begin with a bias against the bona fides of the Government in creating this Commission. The composition of the Commission has plus and minus points. The sole value of a public body evading consultation with the Opposition in the selection of the members suffers from a political angle. The composition is debunked by the Dalits in the absence of a single Dalit crusader in the Commission; and the backward Classes have a similar grudge. Lot all are carried away by a former Chief Justice as Chairman.

Why should a coalition or clique, with no sufficient majority but with hardcore hindutva ideology, try now this adventurist stratagem? Political hostiles have a sinister hunch that some deeper plot must be at the bottom. A Yankee-MNC economic subversion project against India's socialist

constitutional mandates and a strategy to rob global markets disguised as Reaganomics are grim threats. What is the hidden agenda, ask the minorities. What is the need to do away with some vital directives of socialist ethos save to convince the market-hungry foreign powers?

Is this a covert, canny move to use an innocent, eminent eleven to annihilate the Nehruvian crimson provisions and facilitate massive foreign entry of capital? When the country is in the grip of grave

Dalit Supreme Court judge (retired) and some crimson judges (retired) from the Supreme Court to head committees, do not justify the charge. Who the independent scholars are he has in mind I cannot guess. He, surely, would have been an asset.

The Commission spokesman has clarified, so also the Law Minister, Mr. Ram Jethmalani, that the basic structure would be inviolable and no rewriting by the Commission would be attempted. Moreover,

***Our human rights jurisprudence must not depend on the precarious province of the judicial process but must be written into the Constitution by the Commission. The text must protect.***

crises — Kashmir, inflation, unemployment, agricultural decay sans subsidy, adivasi issue, 'reservation' flare-up, bonded labour, debt trap, starvation trap, plus, plus — is an advisory review commission a priority?

Two voices, weighty and commanding my respect — those of Mr. F. S. Nariman, principled pinnacle of juristic statesmanship, and Prof. Upendra Baxi, explosively frank and creative intellectual — have opposed the 'review' ploy. I respect their views. And yet, under persuasion, even friendly pressure from Sri Soli Sorabji and Justice Venkatchaliah, I have agreed to chair the Fundamental Rights Committee, and brother Chinnappa Reddy has become chair of the Directive Principles Committee. Why did I agree? Another point of view is tenable. Indict the delinquent political Ministers and bureaucrats guilty of dereliction of duty, not retreat from your obligation to speak to the nation through reports, what they ought to know — that is the answer. Patriotism is not pusillanimity, even in the face of humiliation. I must speak to the Indian people on human rights through this report, given a chance, and not scoff at the Commission.

With characteristic novelty of phraseology, Dr. Baxi titles his critical article: "Kar Seva of the Indian Constitution". The names of the members of the Commission, especially when considered along with a

the Commission has itself asserted that it will not re-write but only examine how best to make the Founding Fathers' vision more effective, more enlarged and more potent. The Fundamental Rights and socialistic Directive Principles may thus gain (not lose) their flavour and power. On federalism, judicial appointments and disapprovements, constitutional management of corruption in high places, human rights and reservation, I can broadly agree with the Baxi barbs and bullets as expressed in his EPW article (March 11 '77) and have raised many of these criticisms on public platforms. And if I am to chair the Fundamental Rights Committee I will essay with verve and clear these other changes in the Constitution on a people-oriented basis.

Mr. F. S. Nariman's concern (so is mine) is that minority faith, rights, practices and institutions should not suffer. I have another critical worry and wonder how many will share my alarm. The Atlantic wave and corporate cannibalism, with Bretten Woods offspring (IMF, World Bank and GATT and now the global economic supreme the WTO) will force India a soft State to suffer economic dependencia syndrome and sign away our hard-won *swaraj* through international treaties sans Parliamentary ratification and debate.

This has become possible because we do not have a provision very necessary in the case of international treaties — that no

such treaty shall become binding unless ratified by Parliament. Such a vital democratic provision will prohibit Ministers dressed in a brief little authority from bartering away people's rights. Whether there is a Review Commission or not we must make a militant demand, as a people, for the insertion of such a mandate in the Constitution itself, the absence of which has led to unscrupulous agreements leading to the decay of this great nation and the dacoity of its villages. International treaties with disastrous impact on the welfare of the people shall never be entered into without Parliament and affected States examining and approving the texts. Alas, without such scrutiny Indian Ministers have, in Uruguay and Marrakesh and other places, signed away the people's right to a happy life, won against Britain by a 'do or die' struggle.

One last point. The judicial contribution to the effective actualisation of Fundamental Rights is substantial in India; but there are judges and judges and I know that while several of them are progressive, many brethren are insensitive. Therefore, let us not be carried away by what has been accomplished through courts. Our fundamental rights must be more fully articulated in Part III itself. The Directive Principles must be integrated with Fundamental Rights more fruitfully so that they may not remain impotent stars in an ineffectual sky.

I want this Commission to consider with serious pragmatism, the right to work and shelter, the right to food and other basic necessities. The social philosophy of elitist brethren wrapped in black robes may fluctuate and human rights cannot hang on the moods of particular judges. Our fundamental law must enlarge and strengthen human rights, incorporate international instruments dealing with gender justice, juvenile justice, social justice, prison justice, torture-free justice, refugee justice and other compassionate instruments.

Our human rights jurisprudence must not depend on the precarious province of the judicial process but must be written into the Constitution by the Commission. The text must protect.

(Concluded)

THE HINDU

12 APR 2000

## New Governors for Haryana, Tripura

By Vinay Kumar

NEW DELHI, JUNE 13. The Vajpayee Government has cleared the names of Mr. Parmanand and Lt-General (Retd.) V.R. Raghavan for appointment as Governors of Haryana and Tripura. The present incumbent in Meghalaya, Mr. M.M. Jacob, has been retained for a second term, it is learnt.

The three names have been sent to Rashtrapati Bhavan. The present incumbents — Mr. Mahavir Prasad in Haryana, Prof. Siddheshwar Prasad in Tripura and Mr. Jacob — are completing their terms between June 13 and 18.

The Union Home Ministry initiated the selection process a month ago. While Mr. Parmanand, Speaker of the Jammu and Kashmir Assembly during Syed Mir Qasim's regime, is a senior BJP leader, Lt-General Raghavan, a former Director-General of Military Operations, is a defence analyst and expert on security affairs. Highly-placed sources said his name was cleared keeping in mind the situation in Tripura where there is a sudden spurt in ethnic strife, militancy, abductions and killings. Two other Governors in the Northeast — Lt-Gen. (Retd.) S.K. Sinha in Assam and Mr. Ved Marwah, a former IPS officer in Manipur — also have similar backgrounds.

The handling of a politically delicate and unstable situation in Meghalaya by Mr. Jacob appears to have weighed in his favour.

THE HINDU

14 JUN 2000

## Congress won't allow review of constitution, says Sonia

By Prakash Joshi and Ramu Bhagwat

The Times of India News Service

NAGPUR: Congress president Sonia Gandhi on Friday declared total non-cooperation by her party in the proposed constitution review by the BJP-led government at the Centre. "The Congress has nothing to do with the review and in no circumstances will it allow the NDA government to tamper with a sacred constitution," she said.

Addressing a mammoth 'Save the constitution' rally here on the 109th birthday anniversary of B.R. Ambedkar, Ms Gandhi said the move to review the constitution was nothing but a dangerous conspiracy by the BJP-led NDA to do away with a democratic and secular structure.

Paying glowing tributes to Dr Ambedkar, she said, "India has a unique constitution drafted by very eminent persons, which has not failed any of our requirements. But the BJP-led government, which has no mandate to take such vital decisions, is attempting the review to fulfil the RSS's fundamentalist agenda."

Ms Gandhi announced a nationwide agitation to expose "the ulterior designs" of the RSS. "We will go to every nook and corner of the country to tell people about the BJP's motive behind the review move," she said.

Launching a scathing attack on the RSS, which has its headquarters here, she asked, "How could an outfit which has refused to unfurl the tricolour at its offices on Independence day, claim to be patriotic?"

"The BJP is a puppet in the hands of the RSS. That explains why neither Prime Minister Atal Behari Vajpayee nor any of his colleagues has even whispered a protest when the RSS chief gave the call for scrapping the constitution," she remarked.

"India has been able to safeguard its secular spirit and social equality thanks to the constitution and its inherent strengths," she said. Quoting Dr Ambedkar, Ms Gandhi said, "A weak constitution can serve the purpose if it falls into the hands of good people. But the best of constitutions will prove disastrous if implemented badly."

Ms Gandhi, who visited Deekshabhoomi before reaching the rally venue, concluded her speech, perhaps one of her longest, in Hindi.

THE TIMES OF INDIA

15 APR 2006

# Ambedkar day: BJP, Cong slug it out over Constitution

HT Correspondents  
New Delhi, April 14

HTF 1579  
**T**HE CONGRESS and the Bharatiya Janata Party today used the 109th Birth Anniversary of B.R. Ambedkar for a bare-knuckled slugfest over the Constitution being reviewed.

"It is a conspiracy by them to deprive the poor, the Dalits and other backward classes of all then benefits given to them by the Constitution," thundered Congress president Sonia Gandhi at a public meeting organised by the SC/ST Backward Classes Cell of the party at Talkatora Stadium here this morning. "We will not allow them to succeed," she added, sparking off a thunderous applause.

Barely four hours later and a scant 3-km away as the crow flies, BJP general secretary M. Venkaiah Naidu released a "Fact Sheet" at the party headquarters on Ashoka Road. "The daughter-in-law should read the speeches of her mother-in-law before taking false propaganda to absurd lengths," Mr Naidu announced in his trademark acerbic style.

The document, "Let Facts Speak for Themselves", says the Constitution was amended 69 times when the Congress was in power, of which 58 were when a member of the Nehru-Gandhi family was Prime Minister. Indira Gandhi alone amended the Constitution 32 times.

Clearly, the BJP is taking the Congress's attempt to project the Constitution review as



Prime Minister Vajpayee welcoming Sonia Gandhi at an Ambedkar anniversary function in Parliament on Friday. Photo: Ajay Aggarwal

"disrespect to Dr Ambedkar, as a part of the BJP's hidden agenda to alter its basic features and replace the system of parliamentary democracy with a presidential system of government."

The tone and content of Mrs Sonia Gandhi speech at Talkatora Stadium was set in her

opening lines. "We are not here," she said, "just to pay homage to Babasahib, but also to ensure that the Constitution that he, along with other leaders, gave us is not tampered with". It was a sentiment she was to echo at her "Save the Constitution Day" speech in Nagpur later in the day.

But in an attempt to take the wind out of the Congress's claim to being the true custodians of the Dalit icon's legacy, the BJP is to get hundreds of its party workers to fan out to Dalit bastis throughout the country with the "fact sheet" as a weapon.

The thrust of the BJP document is:

- The Congress had altered the basic structure of the Constitution when the Lok Sabha adopted the 40th amendment in three hours to invalidate retroactively the ruling of Allahabad High Court that disqualified Indira Gandhi. The Rajya Sabha did it in one hour. This was ratified by Congress-led legislatures the next day.

- The Congress effected the first amendment within 17 months of the Constitution coming into force in 1950. Jawaharlal Nehru headed a sub-committee of the Congress Working Committee in April 1954 to "study the question of changes" in the Constitution.

- The Congress set up a panel under Swaran Singh to "thoroughly re-examine" the Constitution. H.R. Gokhale, the Law Minister during the Emergency, held that a few amendments would not do, and that the whole Constitution needed to be looked afresh.

THE HINDUSTAN TIMES

15 APR 2011

# Statute panel takes review to people

FROM R. VENKATARAMAN

New Delhi, June 14: Kicking off the campaign to gauge popular mood, the Constitution review commission will distribute questionnaires to the people from Friday.

The questions will cover areas ranging from the fundamental duties to rights for minorities.

Official sources said that since its inception on February 22, the commission has met only twice, on March 23 and April 22. Its meeting scheduled for May 16 was called off "abruptly".

Though the reason being cited is that the members were "in a holiday mood", insiders said that following the "division of work", individual members preferred working "independently", rendering a joint meeting meaningless. The commission has to submit its report by February 2001.

Official sources said the June 16 meet-

ing will be used to release the questionnaire formally.

The areas listed by the commission for review are:

- Strengthening of the institution of parliamentary democracy and accountability, exploring the possibility of stability within the discipline of parliamentary democracy
- Electoral reforms
- Pace of socio-economic changes
- Development and removal of poverty
- Centre-state relations
- Decentralisation, development, empowerment and strengthening of panchayati raj institutions
- Fundamental rights and their enlargement to improve the rights and privileges of weaker sections and minorities
- Fundamental duties
- Enforcement of directive principles of state policy
- Legal control of fiscal and monetary

The people will be asked for their views on these subjects to inject a "sense of participation" in the making of the Republic and its review, the sources said.

The commission has announced it will not prepare a White Paper on the contentious issue of debarring people of foreign origin from occupying high offices. Justice B.P. Jeevan Reddy, the spokesman for the commission, said the subject was not on the agenda, but added that it would be considered if any member raised it.

Nationalist Congress leader P.A. Sangma, the only "political" member, has said he would take up the issue but has so far not raised it in the panel's meetings.

## Judiciary revamp

The law secretaries of all states and Union Territories are meeting in Delhi on June 16

to review the infrastructure for the judiciary throughout the country.

In a massive plan, the Centre has announced that all courts of the country will slowly be linked through computers. Other infrastructural facilities like proper court rooms and housing for staff will be provided. Manpower will also be increased.

Under the scheme, 50 per cent of the expenses will be met by the Centre and the remainder by respective state governments. In case of Union Territories, the Centre will bear the entire expense.

An official spokesman told **The Telegraph** that a recommendation to increase the Centre's contribution to 75 per cent is being considered.

The current scheme of 50-50 sharing will wind up by next month, he said, adding that the scheme with 75 per cent contribution from the Centre will start after the review.

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## NDA, BJP slam Congress on statute review

By Our Special Correspondent

**NEW DELHI, APRIL 16.** On the eve of the second half of the budget session, the National Democratic Alliance (NDA) and the BJP slammed the Congress(I) for what they termed "malicious and reckless propaganda" against the Government on the Constitution Review Commission.

While the political resolution adopted by the BJP devoted some space to counter the Congress(I) arguments against the Constitution Review Commission, a meeting of the NDA leaders at the residence of the Prime Minister, Mr. A.B. Vajpayee, denounced the Congress(I) for misleading the country on the facts of the case.

The NDA convener and Defence Minister, Mr. George Fernandes, who briefed correspondents on the outcome of the leaders' meeting, categorically ruled out reconsidering the Government decision on the Review Commission.

The four-page political resolution adopted by the national executive of the BJP at the end of its two-day session contained a no-holds-barred attack on the Congress(I) leadership and a warning to the Vajpayee Government not to be complacent about the possibility of another conspiracy by the Congress(I) and Communists to topple the Government.

"Every attempt by our adversaries to put us down has only resulted in the BJP growing from strength to strength. Those who sought to isolate us in Indian politics have themselves been isolated. The BJP, on the other hand, has broken the shackles of isolation

to win new allies representing practically every region of the country and every section of our diverse society," the resolution noted.

Referring to the recent Assembly elections, the resolution said the example of Bihar has clearly shown that dissensions within the NDA has cost the alliance dearly. "Let the Bihar experience remind us of the cardinal importance of a harmonious relationship between the NDA partners."

### Economic policies endorsed

The economic resolution fully endorsed the policies and programmes of the Vajpayee Government in the economic sphere and staunchly defended the recent price hikes and subsidy cuts. The national executive called upon other parties and people to appreciate the compulsions which have forced the Government to resort to price hikes.

The executive also set the deadline of June for the election of new party president as the term of the present incumbent, Mr. Kushabhau Thakre, is to end in the last week of May. It was clarified at the executive that the changes brought about in the party constitution stipulating a term of three years for the president from the lowest to the highest level would be applicable with prospective effect.

It would mean there would no bar on the present party president in running for a fresh term. Indications are Mr. Thakre is not inclined to continue for another term in view of his fragile health. A clear picture on the BJP president is expected to emerge only next month.

THE HINDU

17 APR 2000

## Review panel invites public suggestions

NEW DELHI, June 16. — The National Commission on Review of the Working of the Constitution has invited people to send suggestions by 31 July.

The suggestions may be addressed to the Secretary, National Commission to Review the Working of the Constitution, Vigyan Bhavan Annexe, Maulana Azad Road, New Delhi — 110001, or can be sent by e-mail to [ncrwc@nic.in](mailto:ncrwc@nic.in). The commission's website is: <http://ncrwc.nic.in>.

While seeking suggestions from the public, NGOs and institutions, the commission said these must be within the parameters of its reference. The parameters of the reference say the review will be in accordance with the Supreme Court's ruling that the Constitution's basic structure should remain untouched.

— SNS

THE STATESMAN

17 JUN 2000

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## Sonia warns of Govt. moves on Constitution review

By Our Special Correspondent

**NEW DELHI, MAY 17.** The Congress(I) president, Ms. Sonia Gandhi, today accused the Government of being indifferent to the plight of the suffering millions, even as she called on party MPs to remain vigilant about the Government's communal leanings and moves to undermine the Constitution.

At a general body meeting of the Congress(I) Parliamentary Party on the final day of this session, Ms. Gandhi warned MPs not to be under any illusion. "This government is led by those who spent a lifetime as members of the RSS and who continue to remain hard-core members of the RSS while discharging their duties of office." The latest manifestation of their covert support to communalism was their casual dismissal of the deliberate targeting of the minorities, she said.

The controversial remarks of Mr. Jairam Ramesh and Mr. Vasant Sathe's editorial in *Congress Sandesh* were also raised at the meeting by Mr. Santosh Mohan Deb, MP. He said leaders should desist from such comments which created confusion in the party. That the party has decided to sweep the Sathe issue under the carpet was indicated as much by Mr. Pranab Mukherjee when he asked reporters to "read the editorial in the spirit in which it was written".

At the CPP meeting, an MP from Punjab raised the question of Uddhamsingh Nagar being included in the proposed Uttaranchal State and wanted the party to clarify its position. Since the party has nine MPs from Punjab, the issue would have to be sorted out.

Ms. Gandhi spoke out for the first time on the BJP's defence of the Constitution review — that

the Congress(I) had itself amended the Constitution on numerous occasions and that it had appointed the Swaran Singh committee to review the Constitution.

The Congress(I) had indeed amended the Constitution on several occasions; but it was always done only when thought necessary and the procedure adopted had been strictly in accordance with that prescribed by the Constitution. This Government, too, was welcome to table amendments for the consideration of Parliament. But appointing a committee of non-MPs to review the Constitution in its entirety was a clear indication that the Government's objectives were suspect. Further, the Swaran Singh committee had been a panel only to advise the party and not the Government or Parliament. It was not a committee appointed by an executive order, she said.

300 HINDU

18 MAY 2000



Emergency repeating itself

## MISA by another name

It is an irony that the men who suffered during the Emergency should come to adopt the same method to govern. And that too in the month when Indra Gandhi imposed the authoritarian rule 25 years ago. She used the Maintenance of Internal Security Act (MISA), a preventive detention measure, to throttle the voice of her opponents. She detained more than one lakh people without trial. The BJP-led government has on the arvil a stricter version of MISA, the Prevention of Terrorism Bill, 2000, for silencing the critics. Her defence was that the anti-social elements had raised their ugly head. The Vajpayee government's plea is that it needs a law to curb terrorism.

The argument, then and now, has something common: the ordinary law is not adequate; nor are normal courts up to it. Principles of liberal jurisprudence and natural justice have to be suppressed because the state perceives danger. Mrs Gandhi did not find fault with the government machinery for the failure. Neither does the ruling National Democratic Alliance (NDA). But she had an ulterior motive because of her penchant for personal rule. Why is the Vajpayee government arming itself with excessive power if it has no such ambitions? For whatever reasons, it has come to believe it is not the authorities who are failing to enforce the law but it is the law that is failing them.

The nation witnessed during the Emergency how MISA was misused to generate fear and smother dissent. The general run of public servants acted as willing tools of tyranny. Blank warrants were issued by magistrates for political masters to fill in the names. Tyrants sprouted at all levels — tyrants whose claim to authority was largely based on the proximity to Sanjay Gandhi, Mrs Gandhi's son, who ran the government.

Many central ministers and chief ministers of today have themselves experienced how MISA became a Frankenstein. In the name of state's ene-

mies, the police and such other forces took over. The same thing will happen once the new anti-terrorist law comes into force. The authorities do not have to be told what to do. They have the lists of those who are not liked by the rulers ready. They will act on their own to please the bosses.

The Vajpayee government may take all the precautions against victimisation. But it is inherent in the system. The government may not even come to know what happens on the ground. Reports reaching the top will be doctored and facts mutilated to justify the grounds for detention.

The record of the Terrorists and Disruptive Activities (Prevention) Act,

time: "...from 1985 ever since this statute was passed, terrorism has not decreased; terrorism has increased in volume and in the extent of its operations... This shows that the crime you are dealing with is not susceptible of being dealt with by these methods. I wish there were some educated people to advise the Home Minister — some people who had knowledge of the theory of legislation and the theory of penal legislation at that.

They would have realised that terrorism is one of those rare and peculiar offences which do not lend itself to treatment by law, to treatment by more law and to treatment by more and more strict law... You have created a law on which any decent person should be ashamed."



KULDIP NAYAR

**It is sad that the government should take a leaf out of Mrs Gandhi's book even when it knows that she was routed at the polls after the Emergency**

which continued for 10 years, shows how the police excesses increased over the period and the judicial attention lessened. Take the Home Ministry's own report of June 30, 1994. It says: "Total number of persons arrested under TADA crossed 76,000. Of these 25 per cent were dropped by the police themselves without any charges being framed. Trials were completed in about 35 per cent of the cases that were actually brought to trial. Ninety-five per cent of these trials ended in acquittals. So that shows finally only about 1 per cent of the arrested ended up being convicted."

Were the BJP to recall the resistance it put in the Rajya Sabha five years ago on the extension of TADA, it would not have thought of reviving the measure. Ram Jethmalani, who as Law Minister, may have to pilot the new Bill, said at that

The Vajpayee government should not be under any illusion. High-handed and arbitrary actions would be carried out with impunity as much in the name of new anti-terrorist act as was done under MISA. The police would behave as if they were not accountable to any public authority. And the definition of 'terrorist' would be stretched to detain protestors, political opponents, trade union leaders, artists and journalists who have to disclose the source of their information, an unethical act by any standard.

Home Minister L.K. Advani knows how but for his intervention, the four office-bearers of Sahayog would have been arrested under the National Security Act (NSA), a preventive detention measure. He had to speak to Uttar Pradesh Chief Minister to stall it.

Then what is called terrorism is not

always a matter of mindless violence against people. Socio-economic reasons are often behind it. Some problems have ideological roots. They are political questions which have to be dealt with politically. Take the situation in Kashmir and the Northeast. They need a political solution, not the military one which is sought to be imposed.

That the Law Commission has cleared the Bill does not lessen its rigours. The three most objectionable features of the Bill are: one, a confession before police officials can be used as evidence; two, there is no right to appeal against the detention in the High Court; and three, the provision for the right to bail is very restricted. The ruling NDA should know how confessions are extracted. Again, why should there be no appeal? Judicial review under the cover of secrecy by politically appointed judges are no review. Preventive detention is only intended to impose minimum restraint on the individual. It is not punitive detention.

The Vajpayee government can mark my words that the measure will be used to stifle all forms of dissent and political opposition. It is sad that the BJP-led government should take a leaf out of Mrs Gandhi's book, even when it knows that she was routed at the polls after the Emergency. Once the law is on the statute book, the provisions governing detention, confirmation of detention and review of detention orders would be honoured in their breach.

The Shah Commission, inquiring into the excesses of the Emergency, said in its report: "Without the awareness of what is right and a desire to act according to what is right, there may be no realisation of what is wrong. During the Emergency, for many a public functionary the dividing line between right and wrong, moral and immoral, ceased to exist." The officialdom is used to extra-judicial methods. It is only waiting for the green light.

INDIAN EXPRESS

20 JUN 2000

## 40-17 'Constitution review, an exercise to suit NDA' 2A/4

**MUMBAI, APRIL 23.** Five Opposition parties that came together under one umbrella today launched a severe attack on the Sangh Parishad, saying the review of the Constitution was a political exercise to suit the needs of the National Democratic Alliance Government at the Centre.

Addressing the Sanvidhan Gaurav Sammelan, the former Prime Minister, Mr. V. P. Singh, described the Constitution Review Commission as an unconstitutional body, which had been appointed by boycotting political

parties and the Parliament.

The former Defence Minister and Nationalist Congress Party president, Mr. Sharad Pawar, feared that the Constitution review was an exercise aimed at removing Dr. Ambedkar's name. Reviewing the Constitution would affect the social fabric of the secular nation and the NCP was with secular parties to prevent review.

The CPI general secretary, Mr. A. B. Bardhan, said that the Constitution was still relevant and there was no question of review. There had been several ups and

downs in the past but democracy and the secularism had emerged stronger. The RPI (Athawale) leader, Mr. Athawale, said that the Dalit community would not allow the Constitution to be changed as it was sacred.

Senior Janata Dal (Secular) leader, Prof. Gopal Dukhunde, said his party would oppose the review. Others who were present and spoke on the occasion included the Maharashtra Deputy Chief Minister, Mr. Chhagan Bhubal, Samajwadi Party leader, Mr. Nagnath Anna, the Minister

of State for Transport, Mr. Gan-gadhar Gade, State NCP chief, Mr. Babanrao Pachpute, and RPI leader, Mr. Avinash Mahatekar.

The Law Minister, Mr. Ram Jethmalani, denied that the Government wanted to push through a secret agenda by appointing a Constitution Review Commission, saying the body only aimed at reviewing and not rewriting the Constitution. At a seminar on "Another look at the Constitution" in Calcutta, he described the Commission as an "exercise in self-education." UNI, PT

THE HINDU

24 APR 2000

25 YEARS AFTER THE EMERGENCY

15: A lay by urt vaca- R. Krish- d high 12 that Indira t to the areli for es and elective

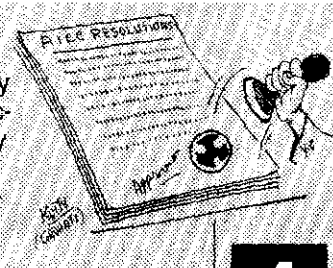
**2** June 25-26: A Presidential proclamation in the middle of the night decreeing a national Emergency "to meet the threat to the security and stability of India by internal disturbances" followed by a pre-dawn swoop rounding up Jayaprakash Narayan, Morarji Desai and many other Opposition leaders as well as rank and file members under the Mainte-

nance of Internal Security Act (MISA) accompanied by imposition of press censorship and the banning of 26 organisations including the RSS

**3** June 27: An ordinance suspending the right to equality before

the law, the right to life and liberty and protection against arbitrary arrest and detention

**4** June 30: Amendment of MISA "to make it unnecessary to communicate to a person detained under the Act the grounds for his detention"



ROUGH: Looking out from within the Presidency jail

ite their imprisonment, their business thrived as deals were made from the offices of the jail. Life in prison took a dramatic turn in 1977 when Indira Gandhi declared elections. Mrs Gandhi was the most hated and despised person, to us she epitomised autocracy and the death democracy. There was laughter once again in my father's house when he whispered to me about the movement for the release of political prisoners as a gathering momentum. "Believe me, it won't be long." The excitement was palpable. One of us managed to smuggle a pocket transistor into our cell. As we took turns to be guarded, others listened to news under cover of blank

kets to hush the sound. But on the night of the election results, we threw caution to the winds as we sat crowded around the radio. With every defeat of Mrs Gandhi's men, we could hear shouting and screaming in the neighbourhood. Past midnight, when the news of her defeat and that of Sanjay poured in, the thick walls of Presidency jail trembled with the roar of approval. We danced and sang and were intoxicated with the dream of victory over cups of diluted tea. After a few months, we were released under general amnesty. But that fateful night in Presidency jail what mattered most was the defeat of Mrs Gandhi. It signalled hope for democracy.

# A village remembers

For wrinkle-faced Sardare, memory is a rusty, green box stored away in a dark corner of his small home. Rummaging through half-faded photographs and election pamphlets that have turned yellow with time, he produces a carefully folded piece of official paper. It says, on 30th November, 1976, he was sterilised at a government clinic in accordance with his own wishes. But the former shoemaker, now 67 years of age and too feeble to work, disagrees. In a voice shaking, more with age than rage, he says, "It was not voluntary. The Block Development Officer (BDO) wanted me to get sterilised. I told him that my only five-year-old son is sick and I would like to wait till he was cured. But I was forcibly packed off to be operated upon."

The following day when the BDO and his men returned for more such "cases," they faced violent resistance. The government officials were beaten up. In the subsequent police firing, two villagers — including a mother of four — were killed. The affair snowballed into a crisis as thousands of nearby villagers marched to the scene in solidarity and protest. An inquiry commission followed. And Pipil, a busy village in Haryana's Sonapat district, became the most glaring illustration of coercion in the country's notorious *nasbandi* drive during the Emergency.

Even nearly 24 years later, the incident remains Pipil's badge of identity. At a *dhaba* on the highway about 25 kilometres away, a grey-haired villager instantly recalls, "Pipil? The village where the police firing had taken place during the Emergency." The villagers themselves have hardly forgotten anything of the days when statecraft was at its authoritarian worst. People — age, caste, creed, no bar — were picked off the roads or caught working in the fields and put under the scalpel. Those applying for bank loans were told, getting sterilised is part of the package. "They didn't care, if one was young, old or widowed. The government officials were under tremendous pressure to meet targets. Those fulfilling them were rewarded, those who couldn't were punished. Naturally there was a lot of coercion," says Yashpal, 49, who works as an agriculture development officer in the same village. Little surprise, for most villagers, the Emergency is still synonymous with *nasbandi*. And they cheerfully recall the blunt slogans which filled the air after it was lifted. "Nasbandi ke teen dalal: Indira, Sanjay, Bansi Lal."



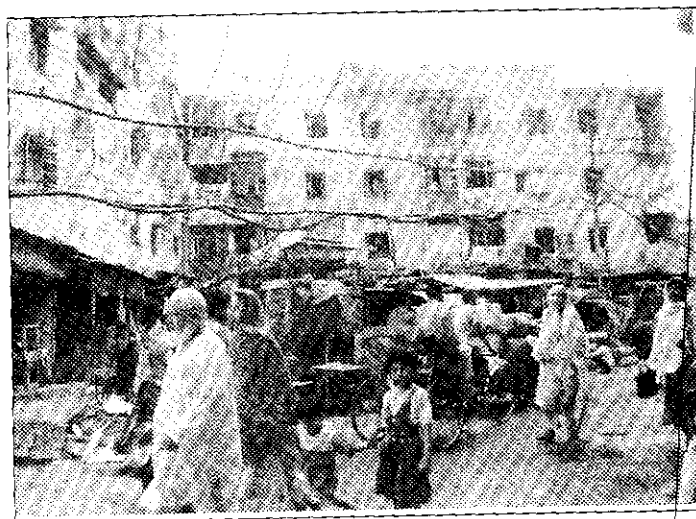
SCARRIED: Sardare holds out his sterilisation certificate in his Pipil home. Photograph: Jagdish Yadav

The victims got their revenge in the 1977 Lok Sabha elections. Almost everyone voted for the newly-formed Janata Party. "Those who had abused power had to pay for it," says Kundan, who was forcibly sterilised at the advanced age of 36. The Congress lost some steadfast voters. "After the Emergency, I never voted for the Congress. Except once after Indira Gandhi was killed," says Sardare. Apart from the *nasbandi* excesses, Pipil has few other memories of the Emergency. Neither of the muzzled press nor the thousands who were incarcerated for being "threats to the national security." Now, the village even looks back at the hated *nasbandi* drive with a sense of equanimity. "There was nothing wrong with the family planning policy. But using force to attain goals was wrong. The government should have prepared the people mentally first. Then few would have opposed it," says Yashpal. The elders surrounding him nod gently in affirmation.

Avijit Ghosh

# there was rubble

ly perched on the roof of another well-rehearsed edifice broke my Turkman chroniclers of a maze in the



REMAINS OF THE DAY: Inside the Walled City today. Photograph: Jagdish Yadav

their apparent and the Emergency — plotted the plan. At a meeting in the city, somebody in the apparently teased Sanjay's sultan. "Sanjay had it he would personally the area was flattened resident. In 1976, the first lot was sent to the residents Gate, asking them to clear land that came in the city's master plan. Residents moved out and transported to settlements 30 kilometres away from home. "They were a place where there were snakes," says a 19-year-old Turkman Gate came part in a demonstration of forcible eviction. When they arrived, and some

people in the crowd started to pelt them with stones. The police lobbed tear-gas shells at us, and then started firing," says Dehli. Two people were killed. Clearly, had Operation Demolition not met with local resistance, the felling of houses and shops would have continued in the Jama Masjid area. "Sanjay Gandhi had wanted to bring down all the old houses and turn the area into a tourists' paradise," says another resident, Hamid Khan. "He never realised that this is the place where

our India really lives. This is the real repository of our food, our language, our culture." Khan knows what he is talking about. As we walk down a *galli* off Jama Masjid, we can truly smell and spot a slice of India. There is a tandoor barbecuing *kababs*. Girls in *salwar-kameezes* walk back from school. Women in *purdah* haggle with vegetable sellers. Young boys swerve aimlessly around on bicycles. The lanes are wide just enough for a cycle-rickshaw and a goat to

squeeze by. And the streets are lined with decrepit *havelis* that are a testimony to time.

"We used to live in ancient *kothis* — houses built hundreds of years ago," says Dehli. "The bathroom in my old house was as big as the rooms in the two-roomed flats they have put us in," he says.

The flats — like rickety matchboxes — had been promised by the new government that was sworn in a year after the Turkman Gate houses were brought down. All promises were lofty; the flats a no.

Today, electric wires, jumbled up like spaghetti, adorn doorways. The flats are dingy, the plaster the walls has long peeled off and drains are overflowing with mud.

This is the new Turkman Gate — the dregs of a forgotten dream cannot be denied, the fire of Indira Gandhi has long been done. Ask Kameel, a 14-year-old, who thinks of the demolitions, a replies with a blank stare. "I heard of the firing, the raz building, the protests of the man man, the imposition of gency? Kameel is still Frankly, his befuddled eyes, he doesn't give a damn why, one of them mumbled 19 — the day the police fired people of Turkman Gate served as a Martyrs' I year. "We want our child member," he says.

saw ning. Festival is a , and ncy in id: lm. s dis- posed am not . So, I e instances ver your n, the se- my hand he ques- I not say

ted was was left a largish n canvas. al with a ticed.

**MES**

MES. GARRISON ENGINEER (NORTH) CALCUTTA 46 BT ROAD, CALCUTTA-50 invites applications in appropriate categories of MES, CPW, PWED and Railway contractors for issue of tender forms for the following works:-

Srl. No.	Name of work	Estimated value (in lakhs)	Earnest money	Last date of receipt of application
1	(a) Certain B/R & EM repair at Salt Lake	9.37 lakhs	Rs. 18740.00	Jul 2000
	(b) TC for artificers work at Bagbaha	3.00 lakhs	Rs. 6000.00	Jul 2000
	(c) TC for artificers work at 2 CBPO Dum Dhar	3.00 lakhs	Rs. 6000.00	Jul 2000
	(d) TC for artificers work at Salt Lake	3.00 lakhs	Rs. 6000.00	Jul 2000
	(e) TC for artificers work at 25 IWP/ EUSD/ 46 BT Road	3.00 lakhs	Rs. 6000.00	Jul 2000

avp 4000888/2000

**DIRECTOR GENERAL ASSAM, RIFLES, SHILLONG TENDER NOTICE**

XXVI/11011/19/2000-Sigs Dated, Shillong 14 Jun 2000

1. Applications are hereby invited from dealers for issue of Tender papers for supply of Spares for RS AN PRC 25 required to be delivered by Road Transport at Assam Rifles Signal Unit, Shillong (Meghalaya).

2. Tender fee is fixed at Rs. 100/- . Tender fee as fixed to be deposited by intending tenderers in the State Bank of India under head 2051 - Police (Central) Assam Rifles, tender fee Miscellaneous to be attested by this Directorate on the body of challan and two copies of challan should accompany the letter asking for tender form. Payment in the form of Demand Draft/ Postal Order in the name of Establishment Officer, Directorate General Assam Rifles, shall be accepted. The application should be addressed to Signal Branch, Directorate General Assam Rifles, Shillong-793011. Details of terms and conditions will be issued alongwith tender paper.

3. The tender papers will be accepted till 1400 hrs on 25 Aug 2000 and opened on the same day at 1430 hrs. If the date of opening of tender happens to be a holiday, the tender will be opened on the next working day.

4. The tender should be accompanied by prescribed Earnest money to be submitted duly pledged in favour of Directorate General Assam Rifles, Shillong.

5. The Deptt. is not bound to accept the lowest tender and reserve all right to accept all or part of item without assigning any reason thereof. The Deptt also takes no responsibility for delay, loss or non receipt of documents.

for Director General Assam Rifles

**SOUTH CENTRAL RAILWAY Tender No. DEE/C/OHE/KZJ/2000-2001**

**Erection & Commissioning of OHE at Electric Loco shed, Kazipet**

The undersigned on behalf of President of India invites sealed tenders from experienced contractors for the work of Design, manufacture, supply, erection, testing and commissioning of 25 KV AC 50 Hz, single phase traction overhead equipment including foundations, structures and all auxiliary equipments for the electrification of inspection Shed (LH) of 3rd BG Electric Loco Shed - Kazipet of S. C. Railway (Secunderabad Division).

1. Approximate value of the work: Rs. 25,86,55/- 2. Earnest Money Deposit: Rs. 25,86,55/- . The earnest money should be deposited either in cash or deposit receipt or pay order or demand draft. 3. Cost of tender document: (i) in person: Rs. 1,500/- plus APGST @ 8% is Rs. 1,620/- . (ii) By Post: Rs. 1,500/- plus APGST @ 8% is Rs. 1,620/- plus Rs. 100/- towards postal charges = Rs. 1,720/- . 4. Last date & time for receipt of tender document: (i) in person: 28th July 2000 5. Last date & time for opening of tender: 31st July 2000 at 15:30 Hrs. 6. Date and time of completion: Three months. 7. Validity of tender: Three months. NOTE: (i) The tender document can be obtained on any working day between 10.00 hours and 16.00 hours (Monday to Friday) from the office of the Divisional Electrical Engineer/Construction, O/E/S, S. C. Railway/Kazipet - 506 003 from 3rd, July 2000 on payment of Rs. 1,620/- and Rs. 100/- extra if required by registered post with acknowledgment due. (ii) The cost of tender paper/document shall have to be deposited in cash with the Chief Cashier, S. C. Railway, Secunderabad or Divisional Cashier/Pay/S. C. Railway, Secunderabad or Vijayanagara or Gunfakal or Hupli or Hyderabad Divisions and the cash receipt issued should be submitted along with the request for issue of tender document. (iii) Contractors who want tender documents by post shall submit their request together with prescribed charges in the form of Demand Draft in favour of FA & CAO/C/S. C. Railway, Secunderabad well in advance so as to reach the office atleast 15 days before the last date for issue of tenders. (iv) While remitting the cash to Chief Cashier or Divisional Cashier, Pay as the case may be the cost of tender document and sales tax element to be separately indicated as under: 1. Cost of tender document: Rs. 1,500/- . 2. Sales tax element (APGST @ 8%): Rs. 120/- . Total: Rs. 1,620/- . This organisation will not be responsible for delayed or non receipt of tender document, if any sent by post. (v) Standard Earnest Money Deposit is not valid.

Divisional Electrical Engineer (Construction) OHE/Kazipet

**OFFICE OF THE INSPECTOR GENERAL BSF HQ SOUTH BENGAL FRONTIER, 2B, LORD SINHA ROAD, CALCUTTA-71**

Sealed tenders are invited for the supply of standard size of Bicycles from the Manufacturers/Authorised dealers/Firms alongwith following accessories:-

S.No.	Name of Accessories	Type
1.	Seat	Scissor type/Round type
2.	Hall chain cover	
3.	Lock and Key	
4.	Stand	Double
5.	Bell	Steel coated
6.	Carrier	Steel coated
7.	Pedal cover	Rubber

The tender forms alongwith terms and conditions can be obtained from this Office on payment of Rs. 50/- (Non refundable) only either by cash or DD drawn on SBI, Chowringhee, Code No. 1054 in favour of Inspector General BSF, Calcutta on any working day between 1000 hrs & 1700 hrs on production of latest ST/PT clearance certificate. An amount of Rs. 25,000/- (Rupees twenty five thousand) only is required to be deposited as earnest money with submitting tender papers. Sale of tender will be available from 2nd June 2000 at 1000 hrs and will be closed at 1600 hrs on 20th July 2000. The tender documents will be opened on same day i.e. 20th July 2000 at 1530 hrs. The tenderers should also send their sample of the B-cycle alongwith accessories as shown above through their authorised representatives at the time of opening tender papers.

davp 3105(248)/2000

**EASTERN RAILWAY**

**Introduction of a new bi-weekly Rajdhani Express train between Sealdah and New Delhi**

Eastern Railway is introducing a new bi-weekly Rajdhani Express train between Sealdah and New Delhi. The train shall leave Sealdah on every Tuesday and Saturday and from New Delhi on every Wednesday and Sunday. The stoppages and timings of the newly introduced train are as follows:-

2313		2314
16.45	d ↓	a 10.45
19.01	a	d 07.59
19.03	d	a 07.57
19.25	a	d 07.37
19.29	d	a 07.29
20.05	a	d 06.45
20.10	d	a 06.40
01.05	a	d 02.05
01.20	d	a 01.50
05.25	a	d 21.42
05.30	d	a 21.37
10.45	a ↑	d 16.45

Classes available on this train are one AC-1st, three AC-2 Tier and five AC-3 Tier. Catering charges are included in the fare. Reservation for this train is available from all the computerised reservation offices.

Eve's Chief Commercial Manager

18

**10 LEGAL STEPS TO ABSOLUTE POWER**

**1** June 24, 1978 conditional election judge V. Narayan on the Allahabad court judgment of June nullified Prime Minister Gandhi's victory in 1977 Lok Sabha from Rae B corrupt electoral practices barred her from holding offices for six years

**Freed song**

As the '77 election results trickled in prisoners at Presidency jail were deliriously happy, remembers Rajashri Dasgupta

**W**e had shrugged off the news when we first heard Emergency had been imposed. What difference did the withdrawal of rights make to prisoners like us? Even prior to the Emergency, we were tortured brutally by the police for our political beliefs. For years, we had been imprisoned without trial.

The conditions in the jail could not be more dismal, the food worse with the mish mash of pumpkin, cockroaches and lizards for flesh. We were soon to realise the difference. The raids by the jail warders increased. Books were confiscated, even Steinbeck's *Grapes of Wrath* was perceived to be subversive. Anything red (the colour of revolution), from book jacket to sari to a picture we had painted was seized. Letters from home were even more heavily censored, paragraphs blacked out. Warders kept a stricter vigil on us during the fortnightly meeting with our family or when we were taken to court in the police van.

Bribes to the jail staff had to be almost doubled whether it was to smuggle in food or to post a letter. Worse, we saw the hope die in the eyes of our parents. Their voices no longer carried the assurance of our release, their smiles barely veiled the panic in their heart. Letters from home read of inane things like the weather unlike earlier exhortations of courage and faith. Our parents realised long before us that efforts to expedite our release was useless as long as the Emergency lasted. If the courts earlier were indifferent to the plight of prisoners, it was definitely not going to stick out its neck now.

But there were prisoners who lived like kings and hit the jackpot during this period. They strutted around the jail premises in freshly starched kurts with their jackets rummaging after them with huge tiffin carriers of food from home. They were known popularly as the COFE-POSA prisoners, for violating the foreign exchange laws. De-

**And then**

The seven old men sit there, precarious a wooden plank, like notes on a scal speak, exchanging well-oiled though age, the words come rolling out like a w symphony. And every now and then, a wizen his dentures and upsets the tempo. "The poi teeth," he says. The men sit in the shadow Gate. They are the wise old men of the area, history. We have followed their trail through

**They have a Martyrs' Day to remind the children of the time bulldozers came to Turkman Gate, writes Bishakha De Sarkar**

Walled City, cutting through by lanes lined with glass bangles, mounds of chilli powder, hanging carcasses of slaughtered lambs and billowing georgette dupattas.

This is the beginning of what used to be Shahjahanabad. Twenty-five years ago, this was a meandering block of old houses. Every house had its own cottage industry, and every household was a self-employed unit. "Some families did zari work, some were into silverware," says Shafi Dehvi, an old resident. "My own family was in the business of buying and selling old saris," he says.

Things moved on an even keel, weathering the ups and downs of a life lived bang in the middle, yet on the edges of a metropolis. Then, one spring morning 24 years ago, bulldozers steamrolled their way into the gallis, and brought the old houses down.

Legend has it that Sanjay Gandhi - Indira's Prince of Er fall of Turki in the Walle crowd had e Jay's co-con Rukhsana i then said th see to it that out," says a i in the Af of notices w of Turkman vacate the pi the way of t Some of the and were t ments 25 to from their o dumped into was nothing Dehvi. On A who'd left ' back to take tion against t "The poli



# Apse of reason

and a coalition of opposition wait for the result of Mrs Supreme Court. Neither matters be in the general months. On June 25, JP nationwide campaign of June 29 to remove Mrs stership. She responded by

declaring a state of Internal Emergency under Article 352 of the Constitution on the morning of June 25. This was to last for a period of 19 months signalling a rupture in the democratic fabric of India which is yet to be forgotten.

Many bore the brunt of the Emergency years (1975-1977). Twenty-five years later, a few recount the run-up to the Emergency, its darkest hours and its ultimate rejection by the people of India.



for television

## Chandrashekhar

I WENT to sleep. I was woken up at 3.30 am by a phone call. It was Radhakrishna from the Gandhi Peace Foundation telling me that the police had come to arrest JP. I asked Sahay to see whether there were policemen outside my house. There weren't any.

ncy: Sanjay advises Indira at a meeting



## dictatorship coming'

taking a decision. Legally her decisions may be right but they are without compassion. As for her party less said the better?

In these circumstances if the crisis deepens it will have grave repercussions. The PM will not hesitate to take any decision to be in power. Our democracy might be in danger. Individuals' freedom might be at stake. It's difficult to say how the crisis will deepen. I only wish a bridge is built between the government and opposition. This might lead to some improvement. This is my desire but with there is little hope. New Year is coming with lots of dangerous signals.

January 7, 1975

HAS GOVERNMENT taken any steps to curtail violence? Last year, in February-March, I analysed the entire situation and sent several notes to the PM. But nothing happened....

What is the reality? Faith in government's commitment and honesty is coming to an end. Nothing is being done to remove the doubt. Declaring institutions illegal, stopping their workers will not help. Government should appoint a Lokpal and think of electoral reforms. Speeches alone will not help in checking corruption. I know the home minister and secretary agree with the analysis but will not put it before the PM. Prof Dhar (PN Dhar, Principal Secretary) cannot speak with authority. If I speak to her, she will just deviate from the topic. This is her style.

I went over to JP's and trailed him till the Parliament Street police station where they had taken him. Then the Superintendent of Police (Intelligence) came, took me aside and told me that a car had come to take JP away and that he didn't have the guts to tell JP. He also told me that he had a warrant for me. JP was taken away and I was brought to my home. The officer told me to make as many calls as I wanted and kept saying that Mrs Gandhi "had gone mad."

June 27

## Kuldip Nayar

THAT DAY I decided that journalists should meet at the Press Club. The news was spread by word of mouth. By afternoon, 112 journalists had congregated. We passed a resolution criticising the Emergency and demanded that all those arrested should be released immediately. A copy of the resolution signed by 97 journalists was sent to the President, the Prime Minister and I&B Minister V.C. Shukla.

In the evening I got a call from Shukla. "You are not happy that I have become I&B minister? Where is that love letter (the resolution)?" he asked. "I have sent it to you," I replied. "I want to know who have signed it," he continued. "That list is in the safe deposit," I replied and hung up.

## THE HEART OF DARKNESS

K.R. Malkani, BJP leader and former editor of Jana Sangh publication *Motherland*

IN THE January 26, 1975 issue of *Motherland* I had carried a piece based on Vasant Pandit's astrological prediction. It stated that an artificial emergency would be soon imposed and that Mrs Gandhi would die an unnatural death. Later when I was arrested, the police kept interrogating me on this point. They thought that I and some others had hatched a conspiracy to assassinate Mrs Gandhi.

## Prabhas Joshi

THERE WAS no visible resistance. Everyone wanted to get bail to avoid arrest. But to say that no resistance was planned is also an exaggeration. There was a lot of underground activity. We were using our journalistic skills to carry on this movement. Later it became more a people's movement rather than an organised protest. But the upper class — entire south Delhi, in fact — was always with Mrs Gandhi.

Even the sight of leaders of different hues flocking to him looked unrealistic. I remember asking JP, "Do you think these politicians will be with you till the end?" He understood what I meant and said, "I know they will come only half-way with me."

## Khushwant Singh

### SOMETHING VERY interesting happened during the earlier months.

President Fakhruddin Ali Ahmed was in Bombay. At his reception he asked me, "Tum kya likhte rehte ho?" To which I asked, "Kya likha hai?" Actually, the article he meant was published in *Femina*. By the time I returned to office, pre-censorship orders had reached. I immediately called up Mrs Gandhi. H.Y. Sharada Prasad picked up the phone. I told him what had happened and in no time pre-censorship was removed. The only other editor who had a good time vis-a-vis censorship in Bombay was Vinod Mehta, then editing *Debonair*.

Then Mrs Gandhi sent for me. I explained to her why she was wrong about the *Indian Express*. Her stock reply was "There can be no Emergency without gagging the press."

## Kuldip Nayar

ONE DAY in July, at five in the morning, there was a knock on my door. I was arrested and sent to Tihar. The place was

full of RSS workers. I was in jail for three months. Justice R.N. Aggarwal and Justice S Rangarajan, the two high court judges who had passed my release orders, were later punished. Aggarwal was made sessions court judge and Rangarajan sent to Assam.

## Prabhas Joshi

IT'S TRUE that in the middle of Emergency we lost hope. JP was released from Post-Graduate Institute of Medical Sciences, Chandigarh, and put in AIIMS — but neither had a dialysis facility. Finally, he was sent to Jaslok Hospital in Bombay. Meanwhile, Mrs Gandhi sent a cheque of Rs 97,000 for JP's dialysis. I carried the cheque to Bombay. JP was undecided but Dada Dharmadhikari requested him to accept it. Later, however, JP declined the cheque.

The response of the RSS leaders also disappointed us. One by one many middle-rung leaders of the outfit apologised to Mrs Gandhi and were freed. Even Balasaheb Deoras, the sarsangchalak, wrote to her promising support.

## Khushwant Singh

AS MONTHS passed, I realised people had started misusing the provisions of the Emergency. Sanjay (Gandhi), otherwise courteous to me, had become very arrogant. He would ignore red lights and ride roughshod over others. Another person was Md Yunus. Once at the PM's Secretariat he saw P.N. Haksar and started shouting, "Is haramjade ko kaun aane diya yahan?"

## RK Dhawan, then additional private secretary to Mrs Gandhi



CHIEF MINISTERS of various states were running after Sanjay Gandhi making him a big leader. Mrs Gandhi didn't like it and I had to intervene many times at her behest telling them not to behave in this manner. One of the reasons for Mrs Gandhi lifting the Emergency was because of the atmosphere created by these CMs.

## Kuldip Nayar

IT WAS in a party that I chanced upon the news that Mrs Gandhi was announcing elections. A senior police officer came and whispered that the police had been asked to make a constituency-wise report. To confirm this, I went to Kamal Nath's house at six in the morning and started talking to his wife. Kamal was still sleeping. When he got up I asked, "Which constituency are you fighting from?" That made him angry. His instant reaction was: "How do you know?" That clinched it for me.

## POST-MORTEM

### Prabhas Joshi

THE DELHI between 1975-77 witnessed many horrors unleashed by Jagmohan, then vice-chairman of Delhi Development Authority, Sanjay Gandhi, Maneka Gandhi, Rukhsana Sultan and others. Be it the demolition and killing near Turkman Gate or the forced sterilisation programme, the city will never forgive them.

Sanjay behaved like a crown prince. He would drive his Matador at great speed with Rukhsana in tow. His favourite song was, "Rukhsana yun na ghabrana, tere mere pyar ko kya karega jamana..." I don't want those days to visit India again.

### Rajinder Puri, cartoonist

AFTER GOING through the Emergency and seeing its image and its reality, I wonder whether the freedom struggle too was a sham. Nothing was being done and if Mrs Gandhi had not lifted the Emergency it would have continued for five more years.

After the Emergency was lifted, we wanted the country to know that Mrs Gandhi had committed treason. But everything continued as if nothing had happened. It is the marvel of the Hindu mind that we cheerfully coexist with two opposites.

### TVR Shenoy

IN RETROSPECT I feel that it was the fear of Jagjivan Ram — not of JP — which prompted Mrs Gandhi to impose the Emergency. The presence of President Fakhruddin Ali Ahmed and Supreme Court Chief Justice M.H. Baig gave her added strength. Both put the seal of approval on the Prime Minister's recommendation. In fact, it was the PM and not the Cabinet which recommended the declaration of the Emergency to the President in virtual secrecy.

Mrs Gandhi based this recommendation on an Intelligence Bureau report which was never substantiated nor sourced — that there was a grave threat to the nation. What it was, and from where, is yet to be explained.

# A momentary I

## BEGINNINGS

June 25, 1975, morning

Kuldip Nayar, Journalist

IN THE morning, Lewis Simons of the *New York Times* visited me in the *Indian Express* office. A journalist with a good understanding of Indian politics, Lewis threw up a question to me: "What will happen if Indira Gandhi takes over the entire country by force, arrests opposition leaders and gags the press?" Despite knowing Mrs Gandhi's displeasure at the Allahabad High Court judgment and Jayaprakash Narayan's movement in Gujarat and Bihar, I didn't foresee the situation Lewis had in mind. I told him Emergency is not possible in India.

Chandrashekhar, former Prime Minister

SINCE MORNING there was a continuous flow of Congress leaders to my house. All of them wanted me to issue a statement supporting Indira Gandhi, asking her to continue as Prime Minister. I said I cannot be a party to this move since I believed that once a person is disqualified she had to step down. She could always come back after a favourable verdict from the Supreme Court. In the afternoon, a friend and a senior Congress leader asked me to meet Indira Gandhi. I told him that if I meet her I would advise her to resign.

Khushwant Singh, Journalist and author

IT WAS a judgment delivered on June 12, 1975, by Justice Jag Mohan Lal Sinha of the Allahabad High Court that set the ball rolling. Responding to a petition by Raj Narain, Justice Sinha convicted Indira Gandhi for having indulged in corrupt campaign practices and declared her election invalid. This meant that Mrs Gandhi could not seek election to Parliament or hold office for six years. In other words, it meant that she could not continue as

Prime Minister.

Jayaprakash Narayan and leaders did not want to support Gandhi's appeal to the Supreme Court. They were willing to let the elections slated after she announced a week-long civil disobedience from Gandhi from Prime Min



Indira Gandhi addresses the public, in a session shot

from my office. The caller informed that the electricity to all newspaper offices in Bahadur Shah Zafar Marg had been snapped. This was followed by another call from Irfan Khan of *Everyman's Weekly*, a magazine started by JP, who informed me of arrest

about the Emergency. At the Ahmedabad airport Madhavsinh Solanki told me about the PM's decision. I took over the I&B ministry within three days. Censorship was done under a provision normally used for

. There are 100,000 people in the jails, but people do

# UNsung HEROES

## Let Us Salute Emergency Victims

By JAGDISH SHETTIGAR

I HAD just returned from the summer training camp of the RSS held at Bangalore. Some of us met on June 25, 1975 night at the RSS office in Mangalore to discuss what events would possibly take place and how to face them. We also discussed the mode of contacting each other in the eventuality of harsh measures. Things were still not clear. Then we decided to go to bed at the RSS office.

I was still a bachelor at that time teaching in Canara College at Mangalore. Suddenly we got a message that the RSS had been banned and the office would be seized by police. We were told by the Mangalore pracharak, Ravi, who is currently the Karnataka prant pracharak, to disperse immediately. The whole situation was a bit confusing as it was a totally new confrontation and there were no certainties about the Emergency period. But somehow I was feeling happy — within my heart there was a ray of hope. In fact, I told my friends in the organisation that everything would turn out to be all right. Besides, I was always feeling that I missed an opportunity of participating in the freedom struggle — as I was born after independence. I thought a golden opportunity had come my way to work for the national cause. From that day onwards I involved myself actively in the struggle against the Emergency.

### TRAVEL

Five or six lecturers with an RSS background started meeting regularly to strengthen the underground movement. I started as an enthusiastic participant. But within six months I graduated to lead the group. Later I was given responsibility of organising students and teachers in the entire district. In fact, it gave me an opportunity to see many places — especially remote areas. Often when I was taken to the underground meetings, they happened to be held at the residences of my own students. They silently used to express a sense of pride as they saw me entering the place. Of course, there was no question of their meeting directly as we used to limit our exchanges to the persons concerned only as a matter of discipline.

The author is member, Prime Minister's Economic Advisory Council and Co-ordinator, BJP Economic Cell. His article commemorates the twenty-fifth anniversary of the proclamation of Emergency.

I could carry on my activities without much problems for the simple reason that the Mangalore police were not aware of my presence as an activist.

One morning I went, as usual, to hold the first year degree class and started the roll call. I just could not get myself to read out the name of one student — Udaya Kumar. I became emotional and just could not control myself. Because in the early morning I was informed that Uday Kumar had been arrested by the police while writing slogans against

from a rich business family, but she had the fire within her to fight for national cause. Because she belonged to a family which was in the forefront of RSS activity. She herself was an active worker of the Rashtrya Sevika Samiti. Soon the police entered the college and the girls were arrested. Though the other girls were released within a couple of hours Pushpa remained behind bars till the end of Emergency rule was liberalised with the announcement of the parliamentary elections.

Another student of mine Sudhir Ghate was actively involved in organising students against the Emergency. Throughout his career he was a brilliant student, winning many medals. His father was already a Misa detenu and his mother was also active in the underground movement. When the college principal failed to contain increasing activities against the dark rule, he thought he would succeed by punishing their leaders. He called a staff council meeting and mooted the idea of rusticiating Sudhir. Though I and some of my colleagues vehemently opposed the principal, we failed in our task. Sudhir was rusticated from the college and was readmitted only after a change of government at the Centre. When the Shah commission started probing Emergency excesses my principal was also called before the commission. At that time I did not hesitate to give evidence against my principal.

### HARDSHIP

These are just a few individual examples. There were thousand of Uday Kumars Pushpas and Sudhirs who came forward to fight for the national cause. Many families suffered hardship during these dark days as their earning members were behind bars. But many of them preferred not to encash their sacrifice for personal recognition, let alone benefit — through a career in politics. Today, Uday Kumar works for a daily in Karnataka. Pushpa is happy as a housewife looking after her family but still continuing her work for women's causes. Only Sudhir is an active BJP worker. They all belonged to the RSS. Still, Chandrashekhar, the former Prime Minister, had the audacity to dismiss the role of the RSS during the Emergency. Chandrashekhar might have been behind bar. Was he tortured in jail like thousands of small creatures like Uday and Pushpa. Let us learn to salute them.



the Emergency on the road the previous night. He was not among one of my bright students as he was average in his studies.

But he came from very poor family in a remote village. He used to stay in the RSS office and used to depend on seven different homes on seven days of the week for his food. The boy was physically very weak and had no footwear. Still, he had the fire within to work for the national cause.

He was severely tortured in the police station. The police even tried to hang him. But their effort to extract the name of the person behind the underground activities did not succeed. Police wanted to implicate me with some solid proof. But they did not succeed. This was a sample of RSS training and discipline. The boy happily remained in the jail for over one year.

### FIGHT

As "satyagraha" picked up, students from many colleges came forward to fight against the Emergency. I was really impressed when I saw a batch of girls with garlands around their necks shouting slogans against the Emergency as they walked into my college. Our principal was terribly shaken seeing his own students defying his orders. These girls were led by one of my students by name Pushpa Karnath Panchamal. She was one of the brilliant students and came

# 15% of statute to be reviewed

STATESMAN NEWS SERVICE

NEW DELHI, April 25. — Only about five per cent of the Constitution will come within the purview of the National Commission to Review the Working of the Constitution, the Rajya Sabha was informed at a question hour today by the law minister.

The basic features of the Constitution and the system of parliamentary democracy are not being touched, and they account for nearly 95 per cent of its contents, Mr. Ram Jethmalani explained.

The rights of the minorities and the deprived sections of society are sacrosanct, they will only be strengthened not diluted. "I believe the Constitution is almost sacred scripture," the minister said.

According to Mr. Jethmalani,

examination of the five per cent of the Constitution is like "tightening loose nuts and bolts" in those matters where the Constitution has not lived up to the dreams and expectations of its framers.

No "secret guidelines" have been issued by the Centre, though it does have a view on certain matters.

The terms of reference are all that the Centre has laid down. It was the commission that had selected specific areas for examination, Mr. Jethmalani said.

He was confident that the commission members and the experts who will be involved in its functioning will ensure that interests of every section of society will be given due consideration.

The Centre has no plans to issue a White Paper on the

Constitution. The working of the Commission will be the best white paper.

Asked by Mr. Pran Mukherjee (Congress) how could offer an assurance about the preservation of the basic features since they had been "exhaustively codified," Mr. Jethmalani said the features have virtually been enumerated through a series of judicial pronouncements do the year, but the Commission might identify new ones.

The minister said he did wish to forestall the commission's working and advise members to send in their suggestions and views. All that could state was that the rigidity of the minorities and weaker sections would not be tampered with.

It was because the government felt that Centre-State

relations required to be upgraded that Justice Sarkaria had been invited to the panel. Not all the recommendations on the subject by the Sarkaria Commission had been implemented, he said.

Mr. Jethmalani said it was not possible to satisfy those who suspected sinister designs behind every move of the government.

While little purpose would be served by delving into the past, it was worth noting that the group headed by Mr. Swaran Singh had been tasked with reviewing the basic features of the Constitution during the Emergency.

That had been excluded from the terms of reference of the present commission.

The Centre would consider the commission's recommendations carefully, the minister

said. If the government felt that suggested changes in the statute were desirable it would seek to evolve a political consensus before coming to Parliament. The government doesn't have the requisite strength in either House to effect a Constitution amendment on its own.

Should Parliament reject any particular proposal, the matter would obviously figure in an election campaign, Mr. Jethmalani said.

He declined to respond to Mrs. Sarla Maheshwari's demand that he spell out the hurdles that the Constitution posed to implementation of BJP/NDAs election promises.

Mr. Jethmalani told the CPI-M member: "If you are determined to suspect and misunderstand you will never get to the right conclusions."



The great gain of the Emergency was the electoral verdict against it

# Scars and lessons

MAHESH RANGARAJAN

June 25 this year marked a quarter century since Indira Gandhi's government imposed the Emergency. It is natural that the interlude of authoritarian rule in a parliamentary democracy should have left deep scars; but the experience did have a salutary effect, though a very different one from what its architects had intended. No ruler since then has dared to even consider attempting the kind of repression that was then let loose on a nationwide scale. Equally significantly, at least some of the key safeguards that were incorporated into the Constitution by the first non-Congress regime, such as the strengthening of the cabinet's role, have had a restraining effect on successive governments.

If introspection about the Emergency is limited, then the reasons are clear enough. A whole generation of citizens of today has only dim memories of the era when news bulletins on the All India Radio invariably mentioned what the "youth leader" Sanjay Gandhi had said the previous day. Abu Ibrahim's famous cartoon struck off the pages by the censor and only reproduced after March 1977 used a memorable phrase. Two Congressmen told each other how they would "carry unanimity to the masses".

On a more sombre note, the twists and turns of politics have brought together in alliance key figures that were then on opposite sides of the fence. George Fernandes, the symbol of opposition to the Congress, even served briefly in the Charan Singh government, which was formed only after Indira Gandhi's party extended its support. Maneka Gandhi and Jagmohan — both the targets of strong criticism by the Bharatiya Jana Sangh, especially for their role in urban affairs in Delhi — now serve under Atal Behari Vajpayee.

The great gain of the Emergency was undoubtedly the verdict against it in March 1977. A loose gaggle of groups, led by the hastily formed Janata Party, ousted the Congress from power for the first time. The unthinkable happened, and it happened peacefully through the ballot box, without any blood being spilled. For the rural poor in north India, it also ensured that no ruler in the future would ever dare to attempt forcible family planning. For urban India, the backlash against the clearances of the slum-clusters in Delhi sent a warning that forcible eviction was simply not on. The once all powerful Congress had to bite the dust.

The inability of the Janata Party to forge a credible and lasting non-Congress alternative was probably in-

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evitable, but it had one salutary effect. It was the first coalition to govern India, bringing in a regional party, the Shiromani Akali Dal to New Delhi as a partner in office for the very first time. If the experiment fell apart, it was because the strains between the two great currents of non-Congress politics in north India, the socialist and the saffron, were not re-

stood by his mother in her years out of power. At the time of his untimely death in mid-1980, he had just assumed a key organizational post in the party office. It was this very centralized structure that would be inherited and defended by Rajiv Gandhi and all successors to the leadership of the Congress. The wider consequences of the emasculation of



The only safeguard for both stability and liberty is to never trade the one for the other

solvable. Each pushed for dominance and neither won. The Congress rode back to power by stitching together its old support bases. What this experience did for the opposition parties is notable: never again would there be an attempt to tie together so many political strands in one brittle party structure. The V.P. Singh government of 1989-90 would be the first beneficiary of a different approach to power-sharing that allowed constituent units to retain their own identity.

For the Congress, the lessons drawn from the Emergency and the brief spell after it when it was out of power was exactly the reverse. The closest the party came to any serious rethinking about the episode was when Indira Gandhi admitted there had been "some mistakes" especially with regard to forcible sterilization campaigns. But she split her party rather than share power.

By 1980, when it returned to power, she had groomed her son Sanjay for succession. Though more muted than in their heyday in 1975-77, it was his hand-picked men that headed ministries in key states. All were figures that had

the largest vote-getter in the country are too well known to bear repetition. But they continue to plague it to this day.

Looking back, there is no doubt at all that the Emergency marked only the culmination of a serious systemic crisis of the Indian polity that had been developing for a considerable length of time. The stunning electoral sweeps both at the national and state levels by the Congress in 1971-72 and the Bangladesh war masked the deeper strains and tensions in the country.

Though unable to make a mark in these polls, the opposition banded together under the leadership of Jayaprakash Narayan, making corruption a major campaign theme. Marxists, votaries of *Hindutva*, the anti-Indira Congressmen and socialists made for a

strange and very mixed crew. But by 1973, their message seemed to strike home in states like Gujarat and Bihar. In a prescient book published on the eve of the Emergency, the scholar and writer, Ajit Roy, warned that success in the war abroad might well be followed by a harshly repressive period at home. Within weeks of his prophecy came the Allahabad high court judgment and the clamp down.

In a recent book, one of Indira Gandhi's former advisers, P.N. Dhar, has made out the case that the coming anarchy left the government with no other option. In particular, he refers to JP's ill-advised public speech in which he called upon the officers and men of the defence services to ask how long they would follow the orders of a government that had lost its legitimacy.

There is no doubt at all that the ageing leader was not in control of the forces that he had unleashed. No one in his camp had a clear road map to the future. With its two-thirds majority in both houses of Parliament, and with all but two states in its grasp, the Congress could do just about what it liked even with respect to the Constitution. But the Emergency was a cure that had little relation to the complaint: namely, political leaders must adhere to the norms and the spirit of democracy.

Far from making things better, it only gave the police a kind of power they had never before enjoyed on such a scale. What is more, it allowed for certain precedents to be set that have been playing on the minds of those who had opposed Indira Gandhi all their lives. In the absence of press censorship and a captive media, the cult of Sanjay could never have assumed the proportions it did. Today, it is the aspiration of over a dozen major political dynasties across the country to groom a sibling for high office even at the cost of other eminently capable leaders.

In a negative sense, the Emergency also catered to the idea that there is a quick fix solution to deep-rooted political problems. The present regime's obsession with tinkering with the Constitution displays the same mindset. A ministry with a fixed five-year term is precisely what this country had under the Congress, in fact if not in form. Steamroller majorities proved no check on an executive hellbent on having its way.

There is no reason to believe that any other political party or combination would be inherently more democratic, unless the checks on the abuse of power stay in place. The only safeguard for both stability and liberty is to never trade the one for the other. This, perhaps, is the insight given to us by the Emergency experience that will stand us in good stead over the next quarter century and beyond.

THE TELEGRAPH

26 JUN 2000

# Is the bomb ticking away again? — I

By Pran Chopra

NEW oners have gathered in recent weeks to indicate that a 50-year-old question which has been relatively quiet of late is stirring again: Who should have more say in shaping the constitutional disposition of our democratic dispensation? The Constitution, as backed by the text? The Supreme Court, as backed by its own reading of that text? Parliament, seeing the supremacy enjoyed by its namesake in Britain? The "people", the supposed repository of the supremacy claimed by all these institutions?

A head-on collision between any two of these claimants can rock our constitutional structure and imperil the democratic dispensation as well. But no way has been found yet of reconciling the claim to supremacy made by all four, while the clash between the claims is like a bomb ticking away. The ticking appears to have become louder than at any time since the stormy days of the 42nd to 44th amendments and the Godaknath and Keswani cases.

Consider a recent statement by none other than the Law Minister, Mr. Ram Jethmalani. The issue was the glowing conflict between the positions taken by Parliament and the Supreme Court on filling the quotas of jobs reserved in government services for the underprivileged classes/castes. Recruiting agencies say they cannot find enough candidates even after lowering the prescribed qualifications, as allowed under the rules. As a result a practice has grown to let the unfilled quotas lapse at the end of the concerned year.

This practice was reinforced by some Supreme Court rulings in recent years that since reserving more than 50 per cent jobs for some would be discrimination against the other 50 per cent candidates, reservation in any one year should not exceed that level, and the backlog from earlier years must also be filled only within the 50 per cent ceiling. But this practice collides with the reality that the quotas have remained under-filled for years, particularly at higher levels of employment, the backlog keeps rising and so does the under-representation of the named categories, thus undermining not only a major social objective prescribed by the Constitution but also the reservation laws.

Therefore, acting with virtual unanimity,

the Lok Sabha adopted on May 10 this year the Constitution (Ninety-ninth) Amendment Bill, which provides that any recruitment made in any year for filling any part of the backlog must be made in addition to the 50 per cent ceiling for that year. In advocating the amendment, Mr. Jethmalani, not the one to miss a chance for speaking forcefully, said the Union Government was fully behind the Tamil Nadu practice of letting the quota go up to nearly 70 per cent. This practice has now

half a century old but has now developed new intricacies. Article 262 empowers Parliament to provide by law for adjudication of any dispute over the use, distribution or control of the waters of any river, and further allows it to bar the jurisdiction of the Supreme Court and all other courts. Parliament did just that in the Inter-State River Disputes Act of 1956; it provided for tribunals and barred judicial intervention. At the same time Article 131 gives the Supreme Court exclusive jurisdiction in a

ent claimants, and who but the court, which has been given original jurisdiction under Article 131, can claim the right to judge which claimant's share is or is not "fair" in the circumstances of a dispute?

The third recent omen, which indicates that the once effervescent bomb might be ticking away again, concerns the Election Commission. It relates to the question whether the Commission has any disciplinary authority over any erring government employee out of those found to it for conducting an election. The question has been lying with the government since 1983, when it was raised, characteristically quite forcefully, by Mr. T. N. Seshan, who was then the Chief Election Commissioner. It has been agitated more recently too though — and again — characteristically more courteously by the present CEC, Dr. M. S. Gill.

When Mr. Seshan raised the question he was told by the Cabinet Secretary that "it is not legally permissible under the provisions of the Constitution and other applicable laws to unilaterally change the service conditions of an officer and place him under the service discipline of an authority other than that specified in the service rules governing such officer... The Election Commission has no jurisdiction to take disciplinary action." Mr. Seshan hit back, quoting certain sections inserted in 1989 in the Representation of the People Acts of 1950 and 1951 which said all such officers would be deemed to be on deputation to the Commission from the date of notification of the election to the date of declaration of results, and during this period would be subject to its "control, superintendence and discipline".

In May this year Dr. Gill requested the Prime Minister to look into this matter himself and to lend the government's support for the sections inserted by Parliament in 1989. According to Mr. Arunam Gupta, a noted commentator on legal affairs (to which this part of the present writing owes a great debt), Dr. Gill said to him "Constitutions do not work by high organs of the state maintaining mutual hostilities." And so Dr. Gill wrote to the Prime Minister that "a legal fight in the Supreme Court, between the Government and the Election Commission of India is not the most appropriate method of carrying forward the Constitution."

## The question who should have more say in shaping the constitutional disposition of our democratic dispensation is stirring again. A collision between any two of the claimants — the Constitution, the Supreme Court, Parliament and the "people" — can rock our constitutional structure.

Union-State or inter-State dispute if any question arises, "whether of law or fact", on which any claim on the use of the waters of a river may rest.

But what may also rest thereon is potential for a triple-headed dispute, and any head may speak up at any time. First, the enhanced, undefined — and therefore unlimited — power which the Supreme Court has assumed to strike down anything which in its opinion violates any part of the Constitution as interpreted by the court, or may go against what it at any time may see to be the "basic structure" of the Constitution. Shutting our courts

from a whole category of disputes can certainly be presented as just such a violation, considering the place judicial review occupies both in our Constitution and in various pronouncements by the Supreme Court. Second the entry given to judicial intervention by Article 131 is temptingly wide, and so amenable to different interpretations in different circumstances that it may be difficult to confine them to Article 262, which itself is of course amenable to interpretations of "use", "distribution" and particularly "control". And more so of the term "fair". In a precedent setting interpretation, the Krishna Water Disputes Tribunal said an award must apportion a "fair share" of the disputed waters to all.

"Fair" can mean different things to different

been challenged in the Supreme Court, but the Minister said even if the verdict went against Tamil Nadu, the government would take "the necessary constitutional measures" to get round it.

The drama is headed for a robust round between those who, on the strength of the British precedent, swear by the supremacy of Parliament and those who believe that in spite of having the longest constitution in the world India has arrived at the same situation as exists in the United States, which has probably the shortest constitution, where it has long been held that the constitution is only that which the apex court says it is. The merits of the two competing contentions raise points which will follow later, but the door has been opened afresh for them by the claim made by Mr. Jethmalani that "the necessary constitutional measures" can be found to "get round" an adverse verdict.

Two lesser but not unimportant bouts might also be in the offing, one concerning the respective domains of a river waters tribunal and the Supreme Court, and the other the jurisdictions of the Election Commission, on the one hand, and the Union Government services, on the other. Each may concern the rights of Parliament as well.

The constitutional problem concerning the waters of inter-State rivers is nearly

## Endangered Democracy

The most visible blot on India's democratic record is the Emergency imposed on June 26, 1975 on the ostensible ground that the country's security was threatened not by external aggression but by internal destabilisation. The Shah Commission which enquired into Emergency-era excesses is categorical that there were no intelligence reports or assessments warranting the imposition of Emergency. The Commission also held that the Emergency was declared solely to enable Indira Gandhi to continue as prime minister after she had been unseated from Parliament and debarred from holding office by the verdict of the Allahabad high court. Once the Emergency had been declared there was no difficulty for the Supreme Court to reverse the Allahabad verdict. When Mrs Gandhi decided to continue in office using such draconian measures, all our democratic institutions failed the country. The President, who had sworn to defend the Constitution, the Supreme Court, whose duty was to protect the constitutional rights of citizens, members of the cabinet, whose collective endorsement was needed to extinguish the freedom of the people, and Parliament were all found lacking. None had the courage to stand up for the cause of liberty. When tens of thousands of people were arrested and imprisoned, there was no massive upsurge. There was no spontaneous assertion of democratic rights in contrast to what happened in 1942, when the country was under the Defence of India Rules. It appeared as though the people who braved and resisted the British Raj were prepared sullenly to accept native tyranny. This despite the excesses of forced sterilisation and widespread police brutality.

When Mrs Gandhi finally felt compelled to call elections, she was punished and her party routed in terms of parliamentary seats. But it should not be forgotten that her Congress party did not do badly in terms of overall votes polled. It was the transient opposition unity that unseated her more than the collective anger of the people. This was proved when the opposition got fragmented in less than three years and she returned to office. Though some steps have been taken to ensure that another internal emergency of this type is not imposed in the future, the innate arbitrariness, authoritarianism, dynasticism and lack of commitment to democratic values which characterised Mrs Gandhi and brought about the Emergency are still to be found in most of our present-day political leaders. These are exhibited in their unruly behaviour in Parliament and legislative assemblies, the use of coercion in bandhs and other activities which disrupt the orderly life of people, rampant corruption, and their resort to communal and casteist politics. The Emergency symbolised the repudiation of democratic values among a section of our political class. Though the democratic form of government has been restored and sustained since 1977, it is a sad fact that a majority of our political leaders behave as though they are wannabe Mrs Gandhis. Though Indira Gandhi and Laloo Yadav opposed each other in the 1970s, Mr Yadav's record shows that their style and objectives are the same. Populism degenerates steadily into authoritarianism. The Emergency may be a distant memory. However, the nation continues to experience the different aspects of that tyranny even today in the behaviour of our politicians. On this day let it be remembered that the threat to democracy from our political leaders is far from over.

THE TIMES OF INDIA

7 JUN 1977

# State of Emergency Recreating History in Politics

By SHASTRI RAMACHANDARAN

UNION urban development minister Jagmohan could not have chosen a more inopportune time to launch his demolition drive in Delhi — just when the BJP is gleefully reminding people of the atrocities perpetrated during the Emergency. For nothing stirs memories of those dark 21 months in 1975-77 as Jagmohan's bulldozers which, inspired by Sanjay Gandhi, had gone into overdrive and uprooted thousands of homes reduced to rubble represented the demolition of democracy as well as all courts of appeal against an authoritarian march.

Since then, Mr Jagmohan has come a long way. He has endeared himself to arch opponents of the Emergency such as Mr George Fernandes, who is not only his cabinet colleague but has also worked with him during the V P Singh government. Mr Fernandes, like other anti-Emergency crusaders, including Messrs A B Vajpayee, L K Advani, Murasoli Maran, are now settled in a comfortable equation with not only Mr Jagmohan but other stars of the period such as Sanjay's widow Maneka Gandhi, Mamata Banerjee and Rangarajan Kumaramangalam.

Twenty-five years after the fateful night when Bobby was telecast and JP and other opposition political leaders arrested to the tune of playing of *Hun tum ek kamre me band hon*, the legacy of the Emergency is yet to be demolished. Little wonder that the Vajpayee-led NDA government opted for discretion as the better part of principle and left it to the BJP to 'celebrate' the silver jubilee of the Emergency. Silence is truly golden. It was a culture of silence that enabled the imposition of Emergency and the horrors that came with it — press censorship, persecution of political opponents, denial of the right to life, suspension of fundamental rights, subversion of the Constitution, stifling of the judiciary, indiscriminate detention and torture, forced sterilisation, suppression of dissent, terrorisation by the state and its agents and an overwhelming atmosphere of fear. All in the cause of Indira Gandhi's drive for absolutism. "The nation was on the move". People and institutions were simply run over. Democracy had been derailed, but the trains were running on time, for some time.

Looking back, one finds that history is remembered so that it may be repeated — without making the same 'mistakes'. Thus, Mr Jagmohan's demolition drive this time is different: those evicted will not be housed in alternative sites as was done during the Emergency.

The post-1947 generation came of political age during the Emergency which raised fears of whether India too would go the way of other post-colonial societies, with "excesses" of democracy leading to a dictatorial regime. However, the vibrant democratic pulsations in India's polity could not be easily cauterised; and there was an alert and resolute opposition to mobilise anti-authoritarian sentiments. As a result, the Indian voter rejected the falsity of the bread or liberty question. And the 1977 election, called by Indira Gandhi to legitimise her rule, upturned the Emergency, restored fundamental freedoms and reaffirmed people's conviction in bread and liberty.

Fortunately for India, as then Army Chief General T N Raina hinted in one of his less-reported speeches, the armed forces remaining stoutly apolitical was crucial in foiling the dynasty's ambitions to perpetuate its dictatorship. Unlike other, candy-chasing heavyweights in Indira's cabinet who kow-towed to Sanjay Gandhi, and even welcomed his presence and partici-

but venal and repressive as well.

Consider the many emergencies being lived today. The fact that the Congress party now holds an appeal for the liberals is recognition that most other parties are no less authoritarian and subject to some sort of internal dictatorship of a single leader. Such dynastic impositions are not confined to Laloo Yadav and Bihar. Today's extra-constitutional force is not an indulgent prime minister's pampered son brutally violating the children of lesser mothers. Instead, the elected elite is subject to the dictates of extra-constitutional forces like the RSS, Vishwa Hindu Parishad and Bajrang Dal. The remote control has become political fashion.

Assumption of the status of a 'national saviour', patriotism as a monopoly business of parties in office, targeting and alienating communities which cannot be fitted into the "mainstream", fomenting xenophobia by harping on the "foreign hand", destroying institutions through denial of funds and pressure tactics or suborning them to be run by guided loyalists, rewriting history, subverting academic bodies while re-ordering their direction and content of work, defining what is acceptable in the realm of art and cultural expressions — all these are projects underway, pursued with far more ideological fervour than during the Emergency.

There might be no pre-censorship today, but the retrograde provisions of the Information Technology Bill make a mockery of the right to information and uphold the technology of state control. That IT is an outgrowth of democracy and a technology of free expression is recognised only for putting clamps that will throttle its liberating potential. Although basic rights have not been suspended, the scale, intensity and organised violation of human rights is much more appalling than the atrocities inflicted during the Emergency. Even the right to one's faith is fraught with danger. Whole communities are besieged by fear and cut off from a sense of belonging to the country. The MISA gave way to TADA and the lapse of this draconian law which left judges in search of their jurisdiction is now sought to be replaced by an even more monstrous Prevention of Terrorism Law. And, of course, the new online mantra is "the law will take its own course".

Given the strong arm of the law and the rule of lawlessness in an increasingly criminalised political culture, the emergency is as permanent as the state.



pation in governmental deliberations, Gen Raina was reported to have put his foot down against any extra-constitutional interference in areas under his charge.

The most instructive lesson of the Emergency and the failure of the Janata Party experiment is that pluralism, constitutional rights, civil liberties and human rights are far too valuable to be left to politicians to be safeguarded on our behalf. If democracy has survived in India it is not because of political parties, but in spite of them. This is borne out not only by political developments in the immediate years after the Emergency but also underscored by conditions prevalent now. It is important for the post-Emergency generation, which has voted in three general elections — 1996, 1998 and 1999 — to grasp the import of this lesson. Otherwise, this generation will fail to see the dangers that are gathering because of the many emergencies imposed on us by a state that is not just authoritarian in a paternalistic sense

THE TIMES OF INDIA

26 JUN 2000

## *I was opposed to the idea of Emergency: Gujral*

By Smita Gupta

The Times of India News Service

NEW DELHI: "My differences with Indira Gandhi sharpened within a few minutes of the Emergency being declared," recalls former Prime Minister Inder Kumar Gujral, who was the information and



broadcasting minister on June 25, 1975.

"We came out of the cabinet meeting and I had a tiff with Sanjay Gandhi, who was waiting outside. The fact was I was unwilling to impose censorship. I could not accept the Emergency and was opposed to the idea of an extra-constitutional authority. Within a day, I was moved to the Planning Commission."

Did he see the Emergency coming? "There was the Navnirman movement in Gujarat and the JP-led agitation which was gaining momentum. From January 1975, there were those in the Congress who had begun to talk of a change of system, saying it was a farcical democracy. When I look back, I can see things moving in that direction," he said, trying to distance himself from the Emergency.

"But I had no personal knowledge for though I was a minister. I was not an insider. It was a period in which Mrs Gandhi was totally out of her depth — she didn't know how to deal with it. She was a political victim of the coterie around her and I was at the receiving end as it was thought that political challenge could be met through radio and TV," reminisced Mr Gujral, adding, "I sent a note to Mrs Gandhi, telling her the media

under the best circumstances was a marginal activity and in a crisis situation more so, and political problems have to be dealt with politically. She was not happy with that."

When asked the reason for accepting a cabinet-rank post in the Planning Commission instead of quitting the government if his views on the Emergency were so strong, the former premier said, "In those days, it was what P.N. Haksar used to call a gaushala for those out of tune with the system."

Ask him for his reaction when he was offered the ambassadorship in Moscow in 1976, pat came the reply, "I was very hesitant because I knew it was a banishment. But I also wanted to get out of the country." Fortunately, he did not have to justify the Emergency abroad because the Soviet Union in those

days dealt with Mrs Gandhi directly through the Russian ambassador.

The former prime minister is a bit ill at ease reflecting on this period, and so he moves to the "positive" things which, according to him, emerged from the Emergency. "There used to be this element in our elite who would sit in their drawing rooms and say that democracy was not meant for India and that what the country needed was dandaraj. After the Emergency, they stopped saying that. And two, the results in 1977 demonstrated that the people of this country were willing to put up with the aberrations and failings of democracy but not compromise with the Emergency. And the political party, which was the main instrument of the Emergency, never regained its initial glory."

THE TIMES OF INDIA

1975

95-8 A 19-month wait for the return of democracy

# In the Emergency jail

JUNE 26, 1975, has gone down as the blackest day in the history of India's democracy. On that day, for utterly phoney reasons, a state of Emergency was declared. On June 12, the Allahabad High Court had unseated Indira Gandhi by allowing an election petition against her. The legitimacy of her continuance in power was questioned. The evening of June 25 witnessed Jayaprakash Narayan addressing a mammoth crowd in Delhi. He had called for a satyagraha from the next day. Indira Gandhi, pushed to a corner, decided to strike back. At midnight, she proclaimed a state of internal Emergency.

I had returned home in the late hours of June 25 after attending the rally. There was a knock at the door around 2 a.m. The police had come to arrest me. My father, a practising lawyer, demanded to be shown my detention order. None existed. He got into an argument with the police while concealing my presence in the house. The police whisked him away, only to release him a few hours later. I used this altercation to escape from the house and go to a friend living nearby for shelter. I made hectic phone calls which revealed that arrests were going on all over the country. We got on to a two-wheeler scooter to find out what was happening. There were raids at the houses of prominent leaders and political party offices. On Bahadur Shah Zafar Marg, the electricity supply had been cut off at the newspaper offices. Many senior leaders were held in New Delhi and taken to detention centres in Haryana, then ruled by Bansi Lal with an iron hand.

We were young students full of idealism. I got together a few student activists. Among them were Vijay Goel, now an MP from Delhi, and Rajat Sharma, now a well-known TV personality. We organised a large group of students and youth activists in the Delhi University campus. The crowd had swelled to a few hundreds. Goel, with his customary enthusiasm, hurriedly prepared an effigy of the government. We organised the first and, perhaps, the only protest of the day. We marched from college to college shouting slogans

against the government and reached the Vice-Chancellor's office. There I delivered a speech and burnt the effigy. We could see hundreds of policemen gathering around. I knew that I had to be arrested. I advised my colleagues to slip out and continue the protests and offered myself for the arrest. I was taken to the Civil Lines police station where I heard that the Emergency had been proclaimed and the newspapers were subjected to censorship. Mass arrests were going on all over the country. A detention order was served on me and I was taken to the Tihar jail.

Conditions in the jail were pathetic. The wards were not equipped to take the load. Newspapers were not permitted. For the first few days the source of information was limited to the new detenus who kept

tured in their behaviour. The conditions here were stricter than in Delhi but the jail was cleaner. The food allowance under the conditions of detention order was Rs 3 per day. After a hunger strike, this was increased to Rs 5 per day. After protests, we were given newspapers to be shared among us. These were hardly of any use since they were totally censored and carried columns eulogising the government.

There was a sycophantic build-up of both Indira Gandhi and her son Sanjay. The government had announced a 20-point economic programme and Sanjay added five points to it. The great M. F. Husain painted Indira Gandhi as Durga. Yamini Krishnamurthy performed a dance to the tune of the 20-point programme and some religious leaders talked of the



ARUN JATLEY

**Not one police officer stood up against registration of fraudulent FIRs and not one district magistrate refused to issue a detention order without valid grounds**

pouring in. After about 10 days, the jail superintendent arrived in the ward and announced a list of about 20 names. We were asked to assemble in the jail office along with our baggage. Late in the evening, we were taken to the Ambala jail.

The detenus were a mix of political workers mostly from the Jan Sangh, the RSS and the ABVP and some from the old Congress and various socialist factions. There were some activists of the Naxalite movement, Ananda Marg and Jamat-e-Islami. Political differences did not prevent bonhomie amongst the detenus. The Ananda Margis would dance in one corner to the tune of *Baba Naam Kewalam* and repeated the sentence in different rhythmic modes several times. The activists of Jamat-e-Islami were all committed to their ideological philosophy but cul-

programme as the 19th chapter of the Bhagwad Gita. One of India's tallest citizens, Acharya Vinoba Bhave, hailed the Emergency as *Anushashan Parva*, a festival of discipline.

Besides the detention orders, false prosecutions were filed under the Defence of India Rules. Not one police officer stood up to resist the registration of fraudulent FIRs. Not one district magistrate stood up to say that he would not issue a detention order under Maintenance of Internal Security Act in the absence of legitimate grounds for detention.

Seven cases were filed against me. These proved a blessing in disguise as I had to be transferred from Ambala to Delhi to stand trial. No trial ever took place and, when the government at the Centre changed, the cases were withdrawn. But

this enabled me to be taken at least twice or thrice every week to the criminal court in Delhi. By this time the jail conditions were slightly relaxed. We started paying for our own newspapers. *The Indian Express* and *The Statesman* stood out as honourable exceptions. Once back in the Delhi jail, 13 of us were housed in five small rooms of Ward No. 1. This ward had a large garden and we planted saplings of roses. We had a regular badminton court and played for a few hours every day. In Ward No. 2, where there were about 200 detenus, we had a large volleyball court and played matches.

The jail is a state of mind. If you allow yourself to be unduly worried and disturbed, there is a danger of your morale collapsing. But if you retain the strength of your conviction, it can become a challenging period.

Months passed by and we were not sure how long the detention would last. Periodically, our detention orders would be extended. One of the saddest days in jail was when the Supreme Court pronounced the judgment in the preventive detention case, holding a detention order non-justiciable.

On January 18, 1977, the radio informed us that Indira Gandhi was to address the nation. She announced general elections. There was a debate on whether the elections should be contested or boycotted. The overwhelming view was that they should be contested and used as an occasion to campaign against the Emergency. Over the next few days, a number of us were released.

My release order came on January 25, 1977, almost 19 months after my arrest. Bag in hand, I stopped a taxi outside the jail and reached my residence. When I arrived home, it was a happy coincidence that my mother was present and, in the regular course, had organised a kirtan. We were unsure how long this freedom would last. Once the campaign started and the mass upsurge against the Emergency was visible, I had not the slightest doubt that the worst for Indian democracy was over.

*The writer is a Union minister*

INDIAN EXPRESS

27 JUN 1977



Remnants of the Emergency have become part of our culture of politics and bureaucracy

# Remains of the days

By KRISHNA KUMAR

**E**VERY ANNIVERSARY of the Emergency reminds me of the strange fact that my students know nothing about it. This is because we have made no provision for teaching the history of independent India in our schools. The history syllabus and textbook come to a stop in 1947. For the knowledge of history beyond this point, the young Indian must depend on the occasional documentary he might see on television or on family gossip about Nehru and Indira. No wonder, the brightest among the young cannot distinguish between the political styles of these two leaders.

They have heard that Indira Gandhi created Bangladesh and exploded India's first atom bomb, but they have no idea of the Emergency she declared in June 1975. Their ignorance of this last fact I find quite worrisome, for I believe the inheritance of the Emergency is still with us. The young must know this inheritance if we want them to overcome it at some point.

When my students ask me to describe the Emergency, I end up telling them about my first encounter with it. I had spent the first three weeks of June that year preparing a group of children in my home town to stage Antoine de Saint-Exupery's classic, *The Little Prince*. We had fixed June 27 as the day of our public performance. All was going according to plan, until suddenly we heard the morning news on June 26. The All India Radio bulletin sounded strange, indeed somewhat incredible, so we turned to the BBC. That was when we learnt that Jayaprakash Narayan and hundreds of other leaders had been arrested and censorship had been imposed on the press.

What worried me most was the prohibition of any gathering of more than four people. Surely our play would attract a crowd, I thought, and decided to meet the district collector to seek his permission. He heard our request with sympathy but asked us to see the superintendent of police for a formal permission. The SP was quite sure that the Emergency rules

were applicable to our play. He said we were willing to help, provided we first showed him our script and agreed to drop any portion he might find unsuitable. It now dawned on me that the Emergency meant a sudden and massive enhancement in the power of civil servants. We had no choice in submitting Exupery's classic to the scrutiny of a district police officer. I knew that *The Little Prince* was nothing but an anti-totalitarian allegory, and as such it would invite censorship.

When we met the SP next morning, he apologised for not finding the time to read our script. I argued that the children would be most disappointed if we cancelled the play now. Reluctantly, the SP told us to go ahead, the only condition he imposed was that we shouldn't let the parents come in.

Exupery, thus, survived censorship, but thousands of other stories, articles and news items did not. Some national dailies tried to let their readers know what was happening by leaving blank spaces where censored news would have fitted in. Within a few days they were told to stop this practice, and then onwards everything started looking normal. Only *Sarika*, the Hindi short story monthly, came out once with huge blackened blocks of space, not out of any protest, of course.

There was absolutely no room for protest or criticism of the Emergency regime. Approval and sycophancy were the norm. If you felt somewhat embarrassed in praising Indira Gandhi directly, you could applaud her 20-point programme or simply the punctual running of trains. Many of today's senior writers and journalists wrote articles after article in that vein, and became quite good at the game as time went by.

Those who didn't want to write in this fashion had no choice. Many of them left the country, some stopped publishing. *Seminar* suspended publication in order to avoid censorship. *Shankar's Weekly* stopped altogether. In the last, voluminous issue, Shankar wrote a guarded editorial about the problems of sustaining a humour magazine. One felt deeply sorry that even a man of his stature and closeness to the Nehru family could not call a spade a spade.

Not even academic journals made an effort to present the facts pertaining to mass arrests, forced family planning, distortion of the Constitution, and so on. Fear became a part of civic life, and carrying on with routine duties without noticing anything became the core of being civil.

When the Emergency was lifted, there was a general outcry that the wrongs must be undone and the guilty punished. Soon enough, however, the euphoria of 'second freedom' drowned such demands, and the memory of the Emergency started fading. Some of the obnoxious amendments to the Constitution made by the captive Parliament were erased, but the section on the so-called fundamental duties was allowed to remain. The poor quality of writing and the poverty of concepts one sees in this section continue to reveal the era when this section was added.

Less concrete remnants of the Emergency stand all over the place to this day, having become part of the culture of politics and administration. Suppression of debate had occurred prior to the Emergency too, for instance, after Pokhran-I in 1974. But the Emergency introduced the tendency to regard criticism as hostility. Fearless exchange of views became a possibility in post-Emergency

India, but not in ministerial meetings. Calculation and circumspection acquired a high status among the qualities expected of people active in public life.

Even the Janata Government under Morarji Desai, which had every reason to sound idealistic as it symbolised the end of the Emergency, became muddled with cost-benefit analysis of every step it might take. The great upsurge of Bihar's youth disappeared into the vortex of feudal-style governance, leaving JP utterly frustrated and many others free to write off his movement as Right-wing adventurism. Though the Eighties brought in an upsurge of mass movements, personal loyalty remained a strong value. Surely, Mrs Gandhi was not its inventor, but her Emergency regime revived and legitimised it as a political value.

The regime also revived the fear of state power in the public mind, undoing Mahatma Gandhi's great enterprise of making Indians feel undaunted by the brute power of the *Raj*. The late J.P. Naik, India's greatest educational planner, said in a personal conversation in early 1981 that the youth had lost the courage they had in the Forties.

What made the Emergency a practical option for Mrs Gandhi was the willingness of the bureaucracy to cooperate. In this sense, the Emergency gave new vigour to the bureaucracy. Shorn of colonial powers, the bureaucracy had submitted itself to the hard challenges of development and welfare in the first two decades after Independence. The sumptuous mouthful of unquestioned authority munched at leisure during 1975-76 enabled our bureaucracy to regain its old obsession with power. Education or health, any area of governance was now ready to serve as an arena for the play of power. No more was there a need for ideology, for power itself became an ideology.

Others involved in the Emergency expressed regret in one fashion or another; the bureaucracy did not. I wonder if its younger members today can spare some time for professional introspection concerning the inheritance of the mid-Seventies.



# Refusing to learn

Harsh Sethi

*Not only are many of the dramatis personae (of the Emergency) still strutting around the political stage in much the same way they did earlier, the culture of demanding conformity remains as deeply entrenched.*

ONLY IN theory do anniversaries set into motion exercises in meaningful reflection. More often than not they provide occasions for producing hagiographies, for re-enacting forgotten glories. It is thus not inconceivable that the 25th anniversary of the declaration of the Emergency too will result in a process of vociferous extolling and castigation, all the while asserting that the dark episode cannot recur.

The BJP, prime constituent of the ruling NDA, has already declared its intention to launch a nationwide pedagogical exercise to remind those who might have forgotten, even more those born subsequently, of the insidious role of the then ruling party, Congress(I), in particular of its key functionaries, the late (and maligned) Indira and Sanjay Gandhi. They have wisely de-sisted from targeting Ms. Sonia Gandhi, the rationale being that she was then a mere *balua*. What is more likely is that this course of action would inevitably focus attention on the other, at that stage the more dominant, *Babu* who is now an ally.

Equally, while there may be some talk about the heroics of a George Fernandes, there is some lack of clarity about their once-favourite Scarlet Pimpernel, Mr. Subramaniam Swamy. There is, of course, the additional complication of explaining the presence of Mr. Jagmohan, best remembered for his enthusiastic (and brutal) drive to cleanse the capital of the eyesores, an enthusiasm that he seems loathe to give up.

While the BJP exercise, as also those of other actors/parties such as the Congress (I), the Left Front, and the many socialist offshoots, is likely to be riven with contradictions though probably providing comic relief, we as citizens are unlikely to be any the wiser about the deeper reasons behind the dark chapter. It remains a tragic testimony to the quality of our political analysis that even a quarter century later we have no authoritative tract on the Emergency, barring, of course, the now-forgotten Shah Commission Report.

What we do have, and these are being rapidly resuscitated, are a few first person accounts and prison memoirs — those by the Hon'ble Minister, Mr. L. K. Advani, the

journalist, Mr. Kuldip Nayyar, the evocative tract by the social activist, Ms. Primiila Lewis, to name a few. Even the eagerly-awaited memoir of Mr. P.N. Dhar, at that stage Secretary to the Prime Minister, reads more as an exercise of self-redemption than a credible explanation of either the imposition of the Emergency or how it was run or managed.

More popular, at least in the late Seventies, were psychological accounts foregrounding the personality of Indira Gandhi. That the lady, having been elevated to the status of microcosmic Empress at *Garibi Hatao* and *Bangladesh*, was unwilling to relinquish power when faced with a movement questioning her legitimacy. That she was a lonely, insecure woman, unwilling to trust even her closest advisors. Or painting her as an over-indulgent mother going in to the underground and authoritarian projects of her son. Additionally, they highlighted the dynamic ambitions of the Nehru family.

Finally, we had what one might characterise as the political economy accounts. From Mohin Sen, the one unapologetic defender of the Emergency, to P.N. Dhar now are those who saw the Emergency as a defensive reaction to the machinations of right-wing forces out to derail the Indian socialist project. Others deployed sophisticated class analysis to read into the Emergency the strategic manoeuvres of monopoly capital to crush the working class and peasant movements.

What none of the above explains is the relative ease with which the Emergency was imposed, and why, despite many thousands thrown behind bars, most citizens quietly accepted the suspension of the Constitution and fundamental rights. If anything, and this seems clearer in retrospect, the Emergency did not represent a moral crisis for the nation. No members of the bureaucracy resigned, nor did any of our hallowed judges. The Supreme Court actually held the Emergency constitution-

al. The middle class, in general, welcomed the establishment of order — trains running on time, queues at bus stops, full and timely attendance in offices, relatively prompt redress of complaints about breakdowns in power supply or telephone. Only partly can this widespread acquiescence be explained by fear — of being imprisoned or thrown out of jobs. Even conventional sites of dissidence — college and university campuses — were in the main silent. There was relief that classes were being held and examination results came out in time.

Almost every 'repugnance' act that we witnessed through the Emergency months had been experienced before, and since. The border States of the Northeast and Jammu and Kashmir had been kept in a state of undeclared Emergency for long. Few recollect that the Armed Forces Special Powers Act was promulgated during Jawaharlal Nehru's tenure without discussion in Parliament. Closer to the actual event, the crackdown on the Naxalites or the brutal suppression of the Railway Strike (1974) had provided indication of the state resolve to dispense with democratic niceties.

That the Emergency represented a moral crisis, a political watershed, it should have had some impact on our political-institutional culture, at least among those who claim a record of opposition and are still politically engaged. From Mr. Laloo Yadav's BJP to Mr. Karunanidhi's DMK, the various Akali Dal to the octogenarian CPI (M) what is notable is the lack of internal democracy. The choice remains what it was — comply or depart. The tragedy is that what is true of political parties has infected most NGO formations, today heralded as the mainstay of modern civil society. What continues to surprise most is the ease with which the Emergency came to a close. And while there are explanations galore about her defeat (all of *post facto*), her reasons for holding elections re-

main shrouded in mystery. Even those who castigate her authoritarian streak at this stage invest her with a love for democratic norms. For here we do know that the ruling cabal did oppose elections, at least till the gains of the Emergency had been consolidated. Did Indira Gandhi lose the elections primarily because of the excesses — family planning, slum clearance, or was it that the common citizen felt deeply humiliated by the denial of voice and choice. And once provided the opportunity, responded by voting out those held responsible. Whatever the reason, collective ire was rather short-lived. In less than three years, Indira Gandhi and the Congress(I) returned to power. So did the idea of the Emergency really disturb us?

Not only are many of the *dramatis personae* still strutting around the political stage in much the same way they did earlier, the culture of demanding conformity remains as deeply entrenched. Not for us the maxim, let a thousand flowers bloom. Bespoke seeming diversity and multiplicity of forums, effective public debate on issues of concern is rare, often following pre-set patterns. Even as momentous a decision as going overtly nuclear won overwhelming approval from a citizenry fed on the revival of national glory. This is under-statable. What is less so is the chorus of conformity from those — scientists and defence experts — who are expected to know better.

The sociologist, Mr. Shiv Viswanathan, has coined the evocative metaphor of a *floating emergency*, small and decentralised acts of doubt and despotism that hold the common citizens down. This, in fact, is the one institutionalised innovation post-1975. Our rulers have understood that small and everyday acts of displacement, uprooting over time millions, do not make news. A Sardar Sarovar dam does.

In the absence of a vibrant movement for transparency in governance, in acquiring the wherewithal for fixing accountability, it is unlikely that we will ever experience the needed changes in rules and procedures that convert citizens into supplicants. This, however, does not constitute the agenda for our political parties. And we wonder why the anniversary of the Emergency will go unnoted?



# Statute panel ready for LS term debate

FROM R. VENKATARAMAN

New Delhi, April 22: The commission looking into the Constitution today set up nine sub-committees to deal with subjects of review.

Panel spokesman Justice B.P. Jeevan Reddy said that while "fixed tenure of the Lok Sabha" is not a specific subject of review, a discussion on it "might come up" once members pick up the issue for debate.

"We certainly will go into the aspects of political stability and good governance," he said, indicating that the commission would discuss "ways and means" to ensure stability.

"Executive renders accountability to Parliament on day to day basis and a fixed term is not a necessary ingredient of the parliamentary system. However, the issue may come up for discussion," Justice Reddy said after the commission's second meeting.

Justice Reddy said questionnaires inviting suggestions would be distributed among the public, but the parliamentary system of governance and the basic features of the Constitution will not be tampered with. "Parliamentary democracy, basic structure of the Constitution and rights of minorities, Scheduled Castes, Scheduled Tribes and Other Backward Classes are non-negotiable," he said.

"These areas will in no way be curtailed or diluted. Efforts will rather be made to strengthen them."

Justice Reddy is the member in charge of subjects dealing with

strengthening of institutions of parliamentary democracy, working of the legislature, executive and judiciary, their accountability and "exploring the possibilities of stability within the discipline of parliamentary democracy".

Subhash Chandra Kashyap, former secretary-general of the Lok Sabha, is in charge of electoral reforms and Justice K. Punayya will look into socio-economic development and removal of poverty.

Former attorney-general K. Parasaran has been entrusted with literacy, employment and social security while Justice R.S. Sarkaria, who heads a one-man commission on Centre-state relations, has been given a similar task.

The only political representative, former Speaker P.A. Sangma, will study "decentralisation, devolution of powers and strengthening of panchayati raj institutions".

Attorney-general Soli J. Sorabjee will handle subjects like fundamental rights and media personality C.R. Irani has been given charge of fundamental duties. Social worker Sumitra Kulkarni will look into enforcement of directive principles of state policy.

The commission will hold its next meeting on May 16. Experts from outside the commission also have been drafted. Justice V.R. Krishna Iyer will chair the committee on fundamental rights and Justice O. Chennappa Reddy will preside over the panel on directive principles of state policy.

THE TELEGRAPH

28 APR 2000

# Can there be a repeat of the Emergency?

All  
IN  
All



H.Y. SHARADA PRASAD

It would be an exaggeration to say that my telephone did not stop ringing last week. But I received a number of calls from newspapers, magazines and television channels, asking me for my reminiscences of the Emergency for the special features they had been preparing to mark its twenty-fifth year. One correspondent even helpfully said: "We want someone to give Indira Gandhi's side of the story." They found me unforth-

coming. But, writing this on 25 June, I cannot help reliving some of my experiences of those very trying, even grim, days. I recall the remark of Professor P.N. Dhar at the end of the meeting of the Cabinet which endorsed the Emergency declaration. He and I and the Cabinet Secretary were the only three officials present. When the ministers and the Cabinet Secretary had left the room and the rays of the morning sun were just lighting up the sky, Professor Dhar said to me: "Do you realise that we have been party to an evil act?" (I mentioned this a couple of months ago in this column while reviewing Professor Dhar's memoirs.)

Many things that we heard in the year and a half that followed were indeed painful. But I was also convinced at that time, and I hold to that view even now (I am not one of those post-retirement radicals who disown all that they did while in service), that if Indira Gandhi had thrown in the towel at that point of time, it would have greatly weakened the Indian state. Yes, the Emergency did damage our democratic roots badly but the state had been saved from a very grave challenge. And it had all been done within the framework of the Constitution.

Our national tradition has given the world a new weapon of political action, namely Satyagraha. For every weapon system, sooner or later, a counter is developed. But we have not evolved any safeguard or remedy against the harm resulting from a perverse use of the weapon of Satyagraha.

Some of the leaders of the present ruling alliance have announced that we should undertake a systematic programme for strengthening the country's democratic backbone so that it becomes impossible for anyone to declare an Emergency again. This will involve an earnest attempt to rule out the launching of Satyagrahas to force any government to resign before the end of its elected term. Until 1975, when Emergency was proclaimed, the Central government had been the monopoly of the Congress party. Now other parties have also had direct experience of what it means to run a national government. They have begun appreciating the importance of



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the Central government having a longer tenure, unabbreviated by forms of direct action. At any rate, by imposing the Emergency in 1975, Indira Gandhi has herself ensured that the expedient will not be easily resorted to again.

For one thing, nobody else will have the reckless daring. Secondly, it is unlikely that there will be a convergence of a political challenge by the Opposition and a legal challenge of the prime minister's election — it is this convergence that provided the main motive force for finding a desperate remedy. There are many second-guessers who have put forward the theory that if Mrs Gandhi had only temporarily stepped

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down and handed over the reins to someone else, like Jagjivan Ram, she could have bounced back once the Supreme Court had upheld her election petition. But she knew her Congress and her colleagues and the game of politics too well to believe that that could happen. And she had her mental reservations about the ways of law courts. She was also aware of the intensive interest that quite a few foreign powers took in political goings-on in our country. It may be fashionable for editorial writers to laugh at her references to the Foreign Hand. But security professionals would not be so dismissive. There is reason to believe that the Emergency would have been shorter in duration if the assassination of Sheikh Mujib had not taken place.

And a further reason why the Emergency is unlikely to be repeated. The most distressing feature of the Emergency was the emergence — the emergence of Sanjay Gandhi. During the weeks of legal waffle following the Allahabad High Court judgment and the political tensions building up over the Jaya/Prakash Narayan movement, Indira Gandhi seemed to think that it was only her son Sanjay who seemed to be clear that she should stand firm. And when Siddhartha Shankar Ray came out with the suggestion that Article 352 should be invoked and internal emergency proclaimed, Sanjay jumped on the idea and acted with lightning speed. It was he who put together his own Unthink Tank and drew up lists of who should be hauled away to jail. (One cannot be sure that the prime minister had seen the full list.) It was he who had instructed that power supply to newspaper offices be cut. I remember how impervious he was to the mother's suggestion that the decision be reconsidered. Many months had to pass before Indira Gandhi was heard to say: "Sanjay, you do not understand these things."

But in the first year or so of the Emergency the main switch was in his hands. Extra-constitutional may be but his was the authority. Central ministers, chief ministers, and many senior officials dealt directly with him. The Prime Minister's Secretariat and even the Cabinet became withered limbs looking after humdrum administrative and economic matters, greatly diminished in their political clout.

It is amusing now to recall a reply which Indira Gandhi had given in the first few months of her prime ministership to the question what would have happened if she had been Jawaharlal Nehru's son instead of his daughter. "I would have been a

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big embarrassment to him," she had replied. A son had to earn his living and whatever he did might create a problem for the parent whereas a daughter had no such compulsion. In Sanjay's case she forgot this very valuable insight. He had to do something to earn his livelihood. When he said he would build a car the mother thought he was entitled to every help that he expected. Step by step this led to many developments within government and the party. The glory of the Bangladesh victory quickly faded. Jaya Prakash Narayan was able to portray her as the Mother of Corruption. For it was not only Sanjay that she protected but also persons like Lalit Narayan Mishra.

Jaya Prakash and Indira. What unusual adversaries they were! There was always a feeling on his part that she should have consulted him more, treated him like a father confessor, and given more importance to the ethics of politics than to the power aspect. Her attitude towards him was that he was a person who had let down her father. And also a person who kept most dubious company — now Ayub Khan, at some other time the luminaries of the Congress for Cultural Freedom, and finally the Jan Sangh. If the two had not been sparring partners, the Emergency would not have happened.

A good part of the political leadership of our country during the last century has come from five major movements — the Bengal Partition protest of 1905-1911, the Non-Cooperation movement of the early twenties, the Civil Disobedience movement of the early thirties, the Quit India movement of 1942, and the JP movement in the early and mid Seventies. What remains inexplicable is how, with all her political deftness, Indira Gandhi did not practise Divide and Rule among her opponents but gave them enough opportunities to form an alliance by throwing them together in the same jails.

Many people think that Indira Gandhi was so taken in by Intelligence reports of mass support for her that she decided to call for elections. I am not so sure. Watching her from near I was convinced that she was tired of being called the Rani of Emer-Jhansi and wanted to absolve her guilt through the Gangetic bath of elections. And when Jagjivan Ram and H.N. Bahuguna bolted from the Congress she knew that victory was very chancy. But even she was not prepared for the sheer ineptitude of the Janata government. She knew it was an uneasy alliance but she didn't expect them to make themselves into clowns that quickly.

Another quirk of fate: If many among those who were arrested on 25 or 26 June I would have imagined that young man responsible for loss of freedom would have his life within five years fact, two days short of years?

H.Y. SHARADA PRASAD  
formerly an advisor  
Prime Minister of India

# Left sulks, Trinamool claps as Shah plans Midnapore visit

HT Correspondent  
Calcutta, April 28

**G**OVERNOR VIREN Shah's decision to visit the districts of Midnapore and Hooghly on May 5 and 6 has caught the leaders of the Left Front on the wrong foot in the State. But the Opposition parties — the Trinamool Congress, the BJP and the Congress — have welcomed the Governor's decision.

In the last couple of months, the intense rivalry between the CPI(M) and the Trinamool Congress-BJP combine in Midnapore and Hooghly has set ablaze hundreds of houses and killed many more. In fact, Keshpur and Garbeta in Midnapore and Goghatal, Arambagh and Khanakhul in Hooghly have witnessed the worst kind of political violence in recent times.

"We have repeatedly requested the Governor to personally go there and take stock of the situation. We are glad that he has responded favourably. We will present a memorandum to him in Midnapore to give him the details of the CPI(M) atrocities on our partymen," said senior Trinamool leader Pankaj Banerjee.

"He has taken the right step. His decision proves that he is not satisfied with the State and the district administration," added WBPCCC vice-president Pradip Bhattacharya.

He pointed out that Viren Shah's visit to trouble-torn districts of Midnapore and Hooghly will set a precedent in Bengal. "During the President's Rule here in 1969, Governor Dhawan visited

Burdwan after the brutal murder of the Sain family. But with a democratically elected Government in power in Bengal now, the Governor's visit will raise doubts about the ability of the Left Front Government to check violence here," he added.

State BJP president Ashim Ghosh, too, welcomed the

over the issue and waited for Chief Minister Jyoti Basu to return from Delhi. Other Left Front leaders expressed unhappiness about the development.

Senior Left leaders pointed out that the Governor should have discussed the matter with the Chief Minister and Deputy Chief Minister Buddhadev Bhattacharya before embarking on such a fact-finding mission.

"This could be a political move to show that the State Government is inept in handling the crisis. This will definitely send wrong signals about the State Government to the Centre as well as to the people of Bengal," said CPI State secretary Manju Majumdar.

Forward Bloc State secretary Ashok Ghosh said that the Governor being the constitutional head of the State has the right to visit any place he likes, but if he is trying to probe the law and order situation, it will not help matters. "If he is really interested in restoring sanity, he should hold meetings with the Chief Minister and his deputy," he urged.

"If he goes to the districts without taking consent from the local and State administration, then there is ample scope for us to doubt his intentions," said RSP State secretary Debabrata Bandopadhyay. "At least, he should consult Buddhadev Bhattacharya since he is also the State Home Minister." According to Raj Bhavan sources, apart from meeting the administration, Viren Shah will meet "public delegates" during his visit to Midnapore and Chinsurah in Hooghly.



Governor Viren Shah will tour Midnapore and Hooghly on May 5 and 6. The districts have been wracked by political violence. Photo: HT

Governor's decision.

"The Governor has the right to be informed about the developments in the State. Constitution provides that clause. But in spite of repeated persuasion and intimation, the Left Front Government has failed to check the violence in the two districts. So the Governor has rightfully taken the matter in his own hands. This is very encouraging for the people of Bengal," he said.

"We hope that the Governor will play a meaningful role to bring sanity back in the police and administration.

"We also demand a White Paper on the law and order situation in Bengal be brought out by the State Government immediately," added BJP vice-president Muzzaffar Khan.

While the CPI(M) kept mum

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