

INDIA AT SIGNIFICANT CROSSROADS ?

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Mirpur was a small town, in the erstwhile state of Jammu & Kashmir (J&K), now a part of Pakistan occupied Kashmir. Soon after the invasion of Kashmir, by Pakistani irregulars, approximately 25,000 Hindu men, women and children – amongst them, my close relatives - were force-marched, to a refugee camp in Ali Beg. There were massacres and kidnappings, en route, and only 5000 made it to the camp. A year later, when the International Red Cross, reached Ali Beg camp, they found a mere 1600 Mirpuri survivors awaiting repatriation to India.

Many relatives either perished or were kidnapped during this tragic episode, but my immediate family was luckier. We lived close to Srinagar, and the arrival of Indian troops, on 27th October 1947, enabled my mother and siblings to flee, in the Dakotas which had flown them in. We returned to the Valley, six months later to find our home burnt to cinders.

My reasons for gratuitously offering these personal details to the reader are two-fold. Firstly, notwithstanding the blood-bath of 1947, no member of my extended family – whether of the pre-partition or post-partition generation - bears hatred towards the ‘other’ or carries a sense of ‘victimhood’. Like lakhs of other refugees we realize that, in the madness of partition, such tragedies occurred on both sides. I also wish to establish my bona-fides, and exercise my right of expression as a non-partisan, septuagenarian-citizen, and a military Veteran; without being assigned absurd ideological labels: a current practice to discredit every contrarian viewpoint.

This is being written as the nation’s socio-political fabric comes under tremendous strain in the aftermath of the passage of the Citizens’ Amendment Bill, as well as the impending creation of a National Register of Citizens. Without entering into a debate on the merits

of these incendiary issues, I wish to draw attention to other factors which have assumed importance of critical proportions for the nation.

No matter what its root causes, India’s economy is in parlous straits. With continuing agrarian distress, varying only in degree from state to state, and slowdown in manufacturing, jobs have been scarce for a long time. As schools and colleges continue to churn out young and hopeful job-seekers, frustration levels amongst the youth are rising. The ‘demographic dividend’ that India had once dreamt would help it overtake an ‘ageing China’ is turning into a nightmare. The current unrest and protests in college campuses as well as increasing blue-collar crime and gender-violence could be early manifestations of approaching tumult.

Placed 102 out of 117 countries in the 2019 Global Hunger Index, India remains home to a third of the world’s poor. Our filthy cities, teeming with slums, have seen India placed at 129 out of 189 in the UN human development index. So mesmerized are we, by GDP numbers, and so inured have we become to our country’s vast and endemic poverty, that ‘poverty alleviation’ did not find mention in the 2019 election manifestoes of the major political parties.

With the common man still in quest of ‘roti, kapda, makan’, one had expected that utmost priority would be accorded by our elected representatives to addressing unemployment, hunger, health care and education. It is bitterly disappointing to see our resources, attention and energies being frittered away on far less urgent but inflammatory issues related to religion, places of worship and even bovine welfare. These may garner votes, but we cannot evade the reality that unless India’s national leadership focuses on economic, industrial, scientific and technological progress, the country will remain backward and firmly anchored in the third world.

India is unique, worldwide, in its religious, ethnic, linguistic and caste diversity and models of governance, applicable to homogenous societies simply do not work here. Pakistan, next-doors, provides an example of how

An ounce of goodness is better than a ton of theory on how to be good. Self-reform leads to social reform.

Sri Ramana Maharshi

simplistic approaches can have disastrous consequences. Created as the first theocratic state of modern times, Pakistan started unravelling as soon as it adopted Islamic fundamentalism as state policy and mobilized ‘sharia’ laws to victimise religious minorities and non-conformist Muslim sects. By 1971, it had become clear that religion could not provide the glue to hold together two distinct ethnic entities; and East Pakistan freed itself to become Bangladesh.

Historically, the prime causes for India succumbing to foreign invaders have been lack of visionary leadership and absence of internal cohesion. If history has a lesson for us, it is that divisive bigotry and religious hysteria, can destroy nations, while social-cohesion and nationalism hold them together. Those who believe that converting India into a theocratic state – a virtual Pakistani clone – will make it strong and united, are living in a delusionary world. Worse still, such an objective will set the country on a path of fratricidal conflict and eventual disintegration.

To put things in the simplest perspective, let me cite our military leadership, which has, frequently, called for readiness to fight a ‘two and a half front war’. The ‘two fronts’, obviously, refer to our neighbourhood adversaries, China and Pakistan who, individually and collectively, pose a formidable threat.

While the ‘external threat’ is quantifiable and can be countered militarily, it is the ‘internal threat’, arising from India’s socio-economic disparities, as well as religious, sectarian and caste-based tensions, that poses a far greater peril. Now, if internal discord is going to be superimposed on the existing Naxal insurgency and ongoing separatist movements in Kashmir and the North-East, they could cumulatively pose an existential threat to India.

At this critical juncture in our history, it is for India’s decision-makers to pause and consider, whether India’s security, well-being and international image will be enhanced or undermined by pursuing majoritarianism of any kind; by engendering insecurity in any segment of our heterogeneous society; or by alienating a

major section of our citizens through intimidatory or discriminatory legislation?

On the other hand, will the nation not be immeasurably strengthened if we retain sharp focus on enhancing internal cohesion through assimilation, inclusivity and maintenance of domestic harmony – and above all, on economic development?

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Hatred will have costs for India’s diversity and security

Ostracising Muslim citizens and linking the entire community to terror will have serious implications

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Children enacting plays and recalling significant national events is an endearing activity, and December is a special month given that it is the end of the calendar year, and whether one subscribes to Santa Claus or not, the holiday ambience is contagious. However, in an unsavoury but not surprising development, on December 15, a school in Karnataka had children enact the demolition of the Babri Masjid. A video clip of the “demolition” that was widely circulated on social media noted that the footage was taken at the Sri Rama Vidyakendra High School in Kalladka in south Karnataka and that the school is owned by Rashtriya Swayamsevak Sangh (RSS) leader, Prabhakar Bhat. Union minister Sadananda Gowda and the Lt Governor of Puduchery, Kiran Bedi, also reportedly attended this event, though the minister was said to have reached the venue after the Babri demolition episode ended.

Be that as it may, local media reports indicate that the two schools run by this RSS leader have inculcated an ideology of hatred against the Muslim-Christian faiths among their students, and that while this is against the provisions of the Constitution, the institution continues to receive State patronage. This pattern, as noted, is not unsurprising in states where Bharatiya Janata Party (BJP) governments are in

It is the duty of every man to realize the purpose of life and utilize his time in the performance of his duties, to sanctify his existence.

Sri Sathya Sai Baba

office — and Karnataka is no exception. Police have arrested three members of the governing body of the school, but it remains to be seen if there will be any deterrent action.

This inculcation of casting the Muslim faith and its adherents as the “other” to be despised is acquiring a large footprint in many educational institutions across India that have an empathy and affinity with the Hindutva ideology. In recent years, an insidious linkage has found traction wherein the Muslim citizen is framed as a potential terrorist or a sympathiser of jihad.

This was repeated on December 22 at Prime Minister Narendra Modi’s rally in the capital, where young people were seen chanting slogans that dripped with this derision for the other, among them, “*Desh ke gaddaron ko, goli maaro saalon ko* (Kill these national traitors — with an expletive added)”. There have been other visuals, particularly from rallies held to support the Citizenship (Amendment) Act, which show young people chanting slogans such as, “Aatankwad ki kya pehchan? Mulla Masjid Pakistan (What is the identity-marker of a terrorist? Maulvi-mosque-Pakistan)”.

The total disregard for the spirit of the Constitution and the tolerance for diversity of all hues that India espouses is self-evident, and the nature of the transgression is the same whether in south Karnataka or the national capital. While this recourse to divisive politics by the BJP is often justified as deft electoral strategy — the cynical stoking of religious animosity to garner the majority’s support and advance the ideology of exclusionary Hindutva (as opposed to inclusive Hinduism) — the implications for national security are corrosive.

Ostracising the Muslim citizen and casting sly aspersions about the links of the entire collective (of 200 million) with terrorism can have very serious repercussions for the internal security of the country in the long run. Modi won his second term on the plank of national security and the Pulwama-Balakot trajectory. Jihadi terror has been highlighted as the most serious threat to the country, and the illegal immigrants

morphing into potential sleeper cell recruits is the dominant strand of the prevailing security discourse.

Modi, in an electoral rally in Jharkhand, alluded to dress as a marker of the potential miscreant/terrorist, and asserted that those “creating violence” could be “identified by their clothes.” The reference to the Muslim community needed little elucidation.

Fake news pertaining to purported Muslim acts of violence originating on social media outlets has become staple fare in India, and many audio-visual platforms report such unverified news and often embroider the unsubstantiated rumour to pander to communal sentiments. Many instances of mob violence against the minorities (both religious and socio-economic categories), leading to the loss of innocent lives, have been triggered by fake news reports emanating from social media outlets.

India is entering uncharted waters by way of the impact of the bushfire like dissemination of fake news through social media. It is estimated that social media users in India include 300 million on Facebook; 200 million on WhatsApp; 73 million on Instagram; 250 million on YouTube; and 90 million on TikTok. Many young Indians are likely active on all or most of these platforms.

While the two case studies are not similar in any manner, the Rwandan experience is illustrative of a worst case exigency for India. The African country paid a very heavy price in the mid-1990s when pent up hatred among two tribes and historical grievances, compounded by fake news spread through radio, resulted in colossal damage to life and property.

Sowing the seeds of hatred and divisiveness will cause irreparable damage to the distinctive societal ozone layer that has nurtured India’s diversity for centuries. Surely, this is not the path towards a \$5 trillion economy.

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Self-realization is impossible without service of and identification with the poorest.

Mahatma Gandhi

Youth and the Hour of Transition

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When Disraeli said, “Youth is a blunder, middle age a struggler and old age a regret,” he was in fact summarising the pessimism of a number of Western intellectuals who wondered about the very purpose of life, the value, if any, of the suffering we experience as well as about the very meaning of death. Such a pronouncement on life was not likely to come from India steeped in the Vedantic lore, because the Indians consciously or subconsciously believed in the theory of reincarnation. Since our soul goes on taking birth after birth, there had to be some purpose behind the process. It followed that the process had been set into motion by some mighty Power who means well and however ignorant a human being may be mentally or intellectually, about the exact nature of that purpose, the Power operating the process knows what it is.

In a few centuries past when our entire educational system was more and more influenced by the Western values, by and by we forgot to reflect on the basic purpose of life. By and by utilitarianism dominated our thought and today it has reached almost a point of no return. Tragically, for a larger section of the youth, this utilitarianism has culminated in the goal of hedonism, extracting as much pleasure from life through satisfaction of desires as possible.

And the inevitable follows since there is nothing as true satisfaction in the realm of desires - a truth that is proclaimed not only by mystics but also by psychologists today - what follows is frustration leading to depression. At a time when we have uncountable means of satisfying our desires, it is predicted that in a few decades to come the greatest menace threatening mankind will be an obstinate depression.

What then is the remedy? There is no alternative to reorganising our educational structure. Importance must be given to the fact that life has a purpose greater and far more sublime than pleasure and power. We have to recognise the truth that idealism is a cardinal element in the consciousness of the youth; it is spontaneous and inherent. That instinct must not be perverted into

careerism. Nobody discounts the value of a career. It is indispensable. But the youth must not be hypnotised into the notion that nothing matters more than that. Indeed, what matters more than anything else is one's satisfaction derived out of a continuous growth of consciousness within oneself.

Once we begin to reflect along this line, the definition of youth itself will change. As once the Mother wrote in an answer to a query from a seeker, “Sincerity, humility, perseverance and an insatiable thirst for progress are essential for a happy and fruitful life. Above all, one must be convinced that the possibility of progress is unlimited. Progress is youth; one can be young at a hundred.”

To accept this statement or to realise its truth may not be easy, but a few facts of life are indisputable: (1) We are all seeking happiness. (2) Hedonism, social success, huge income etc. can create illusions of happiness, or even give us some temporary pleasure, but in no time there follows a reaction in the nature of a sense of futility. (3) This situation cannot be averted unless we recognise that there is a consciousness deep within our being - call it a soul if you please - that looks forward to something else and unless its demand is taken care of the happiness we are aspiring for will ever remain an unfulfilled dream.

This core truth, concealed deep within, is generally felt in the youth - those relatively developed - as an urge for a goal or as a drive towards an ideal. In a few this takes a spiritual turn. In the most it becomes an urge to serve a lofty social cause, above one's small self. Before India achieved independence the youths of this subcontinent were inspired by the ideal to fight for freedom. Once that was achieved, a vacuum seems to have been created in their consciousness - a position that has been exploited by unscrupulous elements in the lives of many and by a selfish ambition in the lives of the rest.

Can any powerful ideal be placed before the youth today that could fill up the vacuum?

The youth today is intelligent and open, free from bondage to several taboos, superstitions and Samskaras that bedevilled the minds of yesterday's youth. Secondly, the youth today is much more global than ever in the past. The idealism to which they should be exposed must benefit their psychological status. I believe the one vision that transcends politics, religion and boundary

Let no one look upon work as a burden. Good work is the secret that keeps life going.

of any kind is the vision of the future evolution of man presented by Sri Aurobindo. Man need not remain forever what he has been so far for the millennia past - a puny being helpless before his numerous weaknesses and limitations including his compulsory servitude to disease and death. Sri Aurobindo reveals the dynamism of evolution that intends to carry man forward beyond his mental boundaries - into a new phase of existence that he terms as Supramental.

Sri Aurobindo's vision is not an alternative to any political, religious or philosophical discipline, but it brings a touch of fulfillment to all, gives us a justification for our struggle for a perfect life on the earth that has continued since times immemorial.

The vision brings a new impetus for life, imbues into the consciousness of the youth a new optimism that can prove a vanguard against any attack of frustration or depression.

This will also help us to interpret man in a novel light.

Means can certainly be found to incorporate this vision into our schemes of education if we have the will. The youth must be inspired to aspire for such a future. A collective aspiration is a great clue to its realisation.

Here is a relevant and significant anecdote - the source of which this author is unable to recollect:

Three riders were proceeding towards a certain destination. It was a moonlit night. While galloping along a road overshadowed by tall trees, they suddenly heard a voice commanding them to halt. They pulled the reins of their horses and stopped. 'Dismount!' the voice commanded again. As if under a spell, they obeyed the command.

"Pick up as much pebbles as you would like to have and carry with you. In the morning you will be happy and sad at the same time," said the mysterious voice.

The three riders did as instructed, though quite mystified about the prophecy. They reached their destination in the morning and looked at the pebbles they had collected. The stuff had turned into balls of diamond. Now they understood the meaning of the prophecy. They were happy that the pebbles were transformed into diamond; they were sad that they had not collected more.

We are passing through an evolutionary crisis which is also an hour of transition. All the problems are basically the problems of our old consciousness and our nurturing the old values. But this is also a time of great opportunity for the young - for a new light is waiting to invade the encircling gloom. With the right aspiration, the pebbles of the youth's experiences could be transformed into diamond. The stronger the aspiration, the brighter would they shine. The future of the youth could be a state of meaningful happiness unmixed by sadness.

(From '*Of Mystics and Miracles and other Essays*')

HEARTY CONGRATULATIONS TO PROF. MANOJ DAS

We deem it an honour to convey our felicitations and greetings to Prof. Manoj Das on being awarded Padma Bhushan for his outstanding service to education and literature. A seer among scholars the venerable Prof. Manoj Das is Professor of English Literature at Sri Aurobindo International Centre of Education, Pondicherry. In early 2010 I sought Prof. Manoj Das ji's permission at Sri Aurobindo Ashram to publish an essay from his book *My Little India* in the Bulletin of Centre for Policy Studies. With a gentle smile he graciously replied 'Why one? You can use all of them if you want to.' Beginning with the April 2, 2010 issue the CPS Bulletin has not only had the privilege of publishing all the essays in the book but also his scholarly contributions in every issue of the bimonthly publication during the last ten years. I cannot adequately thank Prof. Manoj Das ji for his generosity and kindness. The renowned author of more than sixty books and recipient of numerous honours and awards including the Orissa Sahitya Academy (twice) and the Sahitya Academy's highest honour - the Fellowship which is conferred on 'Immortals in literature'. It is my privilege to convey to this gentle literary colossus our hearty congratulations and felicitations on this joyous occasion.



A. Prasanna Kumar

Let us face the future not with easy optimism or with any complacency or weakness but with confidence and a firm faith in India.

Jawaharlal Nehru

Criminal Justice on Trial

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We have finally arrived at the much-talked about year (twenty-twenty) 20/20. Many people have targeted this 'mile-stone' year for achieving what they thought was most important thing or things to achieve. In medical parlance, twenty-twenty stands for visual acuity or sharpness of vision. As far as I know, this phrase was first used in the political context by Dr. Mahathir Mohammad - a medical doctor by training – and presently Prime Minister of Malaysia and was later picked up by other political leaders. At home, our former CM was fond of 20/20, though he did himself out of office when it finally arrived! Indian Republic is now 70 years old; this decadal mile-stone, is good time for people to look back and take a critical look at the way our institutions of democracy have evolved. On this occasion, let us look at the evolution of Criminal Justice.

The recent Disha tragedy provides a good case-study to judge the effectiveness of our CJS. An educated young woman in her 20s was gang-raped by four ruffians who later burnt her body, obviously to destroy evidence. All this close to the national highway, less than 10 kms away from the Hyderabad airport. As could be expected, there was wide-spread public outrage with angry crowds demanding instant justice by which they meant elimination of the accused then and there!

In a remarkably professional operation, the police could fix the identity of the offenders, locate them about 80 kms away in a village and arrested them and produced them before the TV and Press cameras, all in a day! Normally an efficient operation like this would have won them laurels; the angry crowds, however, were not content with the arrests. Someone reminded them about the accused in the Nirbhaya rape case still being at large seven years after they were sentenced to death. The rapists took the case in appeal after appeal and managed to gain time in the disposal of the appeals. After all the appeals were exhausted, they petitioned for commutation of the death sentence to the President; the mercy petitions were still to be disposed of.

In a frenzy, student and women's organizations started demanding that the accused be eliminated as was done by the police in an 'acid-throwing' case a few years earlier! Opposition parties joined the melee and tried to make an issue of what according to them was a deteriorating L&O situation in the State and the government's failure in ensuring the safety of women compelling the government in office to demonstrate that they were as good or even better than any government.

In the midst of it all, two days after the arrest, we were told that the four accused persons died in an exchange of fire with the police at the scene of offence where they were taken to 'reconstruct' the scene as part of the investigation. According to the story put out to an obliging media, the accused persons tried to snatch the weapons of the police officers who in self-defense opened fire and got them all, a familiar story you read in newspapers from time to time! Pressured from all sides and compelled to live up to the crowd's expectations, prima facie the government and the police seem to have done what the people expected them to do.

The sad episode – sad for both the victim and the perpetrators – illustrates the widening gap between what the people expect of our CJS and what it can deliver. People expect expeditious justice at 21st century pace while the system, if at all, delivers it at the pace of 19th century when it was contrived and put in place. While attempting to bridge this gap, through extra-legal ways, both the police and the political executive often end up in trouble. In dealing with them, both governments and law-enforcement agencies over-stretched themselves and often went beyond the permissible legal ways ending up in trouble or leaving over-enthusiastic officers in the lurch.

Without sitting in judgment, I would merely say what has happened is most unfortunate and this would further undermine the confidence of people in the CJS. The right way would be to amend the laws and make the system more effective rather than take to the extra-legal ways. Let me go on record that the initiative of the Govt. of Andhra Pradesh in taking a holistic view of the CJS, bringing about the necessary amendments to the law and fixing the investigation and trial of cases affecting women in a time frame, is a mature reaction and responsible move.

Every citizen of India must remember that he is an Indian and he has every right in this country but with certain duties.

Sardar Vallabhbhai Patel

Mob retaliation has been taking place in many such instances. We often see vehicles being burnt on the spot when they are involved in fatal accidents, hospitals being attacked when a patient dies because of presumed negligence of doctors, govt. officials being attacked for their negligence or non-performance etc. In one case an MRO was even burnt in her own office by an enraged farmer. One wonders if we are going back to Hammurabi's "eye for eye, tooth for tooth" times? An intelligent observer would understand it as people losing faith in legal justice or justice according to law which has become time-consuming and uncertain and doesn't do much to protect the interests of the victim. In the present adversarial system of jurisprudence, it is often said that the victim is twice hurt once by the offender and a second time by the law itself. Even when the accused person gets a punishment, the victim gets no relief or compensation for what he or she has suffered! Hence the temptation for people to settle scores outside the courts, very often on the spot.

Delays in Investigation

Police functions can be broadly divided into two: Order-keeping and Crime Investigation. The Third Police Commission and Justice Malimath Commission on Criminal Justice strongly recommended that these two functions should be separated and the Investigation wing of the Police should be independent. Still better if it is made autonomous and accountable to an agency outside the government. That would make it more professional and non-partisan. Such a division would require additional staff and officers in the Police department. A beginning can be made with the available officers and staff. However, delays occur more at the time of trial than investigation

Delays in Trial

Over the years, "unmerited acquittals have become general, tending to lead to a disregard of the law, and this in turn has led to a public demand for more severe punishment of those who are found to be guilty!" A cardinal principle in criminal jurisprudence is that early and humane punishments are more effective deterrents than delayed harsh punishments.

These days people are demanding capital punishment for rape and other offences against women. If death sentence could not prevent murders, can it

prevent rapes? On the other hand, there is every chance of the victim being killed to destroy prime evidence as has happened in this case. Death sentence belongs to primitive times; civilized societies are removing this from the statute books. Merely because a murderer has taken a life, State has no business to take another life!

The main reason why people seem to be losing faith in legal justice is the enormous delay in the disposal of cases by courts and uncertainty of punishment i.e. better opportunities for the offender to escape than the victim to get justice! Law's delays are notorious and are epitomized by sayings like "Law is a bottomless pit," "A lawyer never goes to law himself" "Going to law is losing a cow for a cat" etc. In our country, we have about 33 million cases pending disposal in various courts; of these, 85% are in the subordinate courts and the other 15% in the Supreme Court and the 25 High Courts. This pendency has been increasing over the years as more cases are instituted every year than are disposed off. It is often said that we have far fewer judges compared to other democratic countries. For a million population, the number of judges is about 100 in the US, 50 in the UK, 40 in Australia and a mere 18 in India. While there is good case to double or even treble the number of judges, this however is not the only reason why the wheels of justice grind slow.

As important as the numbers, is improving the output of work in the subordinate judiciary by improving the in-house procedures and the leisurely pace of work. A 'work-study' in these courts by a professional group is badly needed. The Courts often resist this; they are comfortable with their own way of functioning. Judiciary by its harsh comments and 'learned' suggestions seems to be more keen on improving administration in other wings of government than their own. One common comment is judiciary is notoriously precedent-bound and is culturally prone to looking backward rather than forward. It's impervious to change and reform. Apart from inadequate number of courts and judges, there are many outdated court procedures and over-due reforms in law that contribute to delays. Some of them:

1. Decriminalizing offences like those relating to marital disputes, civil rights etc. and creating tribunals for their disposal.

India must have a socio-economic revolution to achieve the real satisfaction of the fundamental needs of the common man and a fundamental change in the structure of Indian society.

Dr S. Radhakrishnan

2. Making more and more simple offences compoundable.
3. Defining more offences ‘summary-trial’ offences and making them punishable with substantial fines.
4. Introducing ‘plea-bargaining’ with fine if the accused admits the offence before the trial starts and holding out imprisonment as punishment, in case he opts for trial and loses the case.
5. Limiting the number of adjournments to two each for defense and prosecution in a case.
6. Re-categorizing bailable and non-bailable offences and withdrawing the powers of the Courts to grant bail in non-bailable offences.
7. Carrying on with the trial where the accused jumps bail and absconds.
8. Limiting the number of appeals to one.
9. Creating more and more fast-track courts giving discretion to the District Judge to transfer the long pending or more-important cases to these courts.
10. Providing for day-to-day trials in all long-pending cases.
11. Posting the cases for trial ensuring that the long-pending cases are posted for continuous trial or on short adjournments.
12. Creating more and more tribunals presided by serving judges and equating them to the High Courts and bringing them under the Judicial Accountability Commission i.e. the appeals on their judgments should lie only to Supreme Courts and not High Courts.
13. Decluttering High Courts and Supreme Court by better scrutiny of appeals at the admission stage etc.
14. The Supreme Court to entertain appeals in criminal cases involving capital sentence only; in all other criminal cases the High Courts should be the final appellate courts.
15. Creating five Regional Supreme Courts at Bangalore, Bombay, Delhi, Bhopal and Kolkata and creating an exclusive Constitutional Court in Delhi to resolve issues involving the Constitutional Law.

Innumerable suggestions have been made by Law, Police and Criminal Justice Commissions for

expeditious justice. A concerted effort is still to be made to turn these recommendations into amendments to procedural law. It is necessary to set up a working group in the Union Home Ministry for this purpose. Making more and more offences bailable and punishable with fines, not petty but hefty fines, would not only subsidize costs of administration of justice but would also reduce the numbers of our under-trial prisoners.

While there is a good case to have more subordinate judiciary courts, there is also urgent need to fill the vacancies of judges in High Courts. In 25 High Courts with a total strength of 1044 judges, there are as many as 443 vacancies which is about 40%. This unfortunate situation has come about because of the Supreme Court’s decision in holding National Judicial Appointments Commission Act (NJAC Act) unconstitutional. In a rare event, all the political parties in the Parliament came together and passed this bill unanimously. The Supreme Court, for obvious reasons wanted to retain the present process of selection by the collegium presided over by the Chief Justice. The view of the Govt. was clearly expressed by the Attorney-General that the business of Judges is to dispense justice and not to appoint brother judges which should be left to a more-representative body comprising both the ruling and opposition parties

Justice Chalmeshwar who had given a dissenting verdict in the NJAC case had said “proceedings of the collegium were absolutely opaque and inaccessible both to public and history”. He had stressed upon the need for transparency in appointment of judges and commented that “primacy of judiciary” in the appointment of judges was “empirically flawed”.

The Supreme Court relying on an earlier judgment struck down the legislation without any enabling provision in the Constitution. The decision almost amounted to challenging the sovereignty of the Parliament. This naturally hurt the Govt. and often the panels sent by the Supreme Court are not approved by the President on the advice of the government leading to the present logjam in appointments. In everybody’s interest, the Supreme Court would do well to review what is perceived as a self-serving judgment and arrive at a proper working relationship with the Executive.

Judicial Accountability:

Unless the party that happens to be in power in the Centre develops conventions to shed its party affiliations in the matter of its relations with the states, the federal government cannot effectively function in our country.

Justice K. Subba Rao

Our Constitution gives all autonomy to our Judiciary but doesn't prescribe any accountability. Thus, many of our judges, while they are zealous about their autonomy, have no sense of accountability. A British judge even remarked that Indian judges seem to mistake autonomy for accountability. Justice VS Malimath Committee on the Criminal Justice System has this to say about Judicial accountability.

“Judicial credibility is enhanced when it is transparent and accountable..... The Judiciary is independent in the sense that it is not answerable to anyone. This does not give it license to function arbitrarily. It has to function in accordance with the Constitution and the relevant laws. The Judiciary is as much subject to rule of law as anyone else. It has to discharge the judicial functions assigned to it in accordance with the mandate of the Constitution. In that sense it is accountable to fulfil the constitutional mandate.”

The High Court is given power of control over subordinate courts by Art.235 of the Constitution. In the spirit of this article, it is about time we create a full-time Judicial Accountability Commission and charge it with the responsibility of reviewing the functioning of the Subordinate Judiciary and enquiring into any complaints against them in the discharge of their functions, both judicial and administrative. In other words, it should be the Commission's responsibility of assessing the quality of their work based on inspections.

Justice Malimath further observes

“So far as High Courts are concerned no similar power of control has been conferred on any one and not even the Supreme Court. The High Courts in that sense are independent though their judgments can be reviewed by the Supreme Court. Under our Constitution, a Judge of a High Court or of the Supreme Court of India can be removed from his office by the President only for ‘proven misbehaviour’ or ‘incapacity’ and only in the manner provided for in Article 124 (40); that is by an affirmative vote of at least half the total membership of each House of Parliament and a majority vote of two thirds of the members of each House present and voting on the motion.”

While Impeachment is appropriate in respect of removal of a Supreme Court Judge, it is necessary to make removal easier in respect of High Court Judges; this cannot be achieved unless the Supreme Court itself takes the initiative and moves for the amendment of the Constitution.

Apart from it all, the work culture of the High Courts and the Supreme Court is still colonial. As it was in British India, the Courts not only have a 5-day week but shut down for summer holidays, winter holidays and holidays for Christmas, Holi, Deepavali and Dusshera. As a result the Supreme Court works for 190 days and High Courts for 210 days in a year. It is time the Courts work like other government departments so that the output would improve.

Very often High Courts and Supreme Court make harsh comments on governments and their officers bringing them down in public esteem. While the Courts can comment on the functioning of the executive wings, it should be with restraint and with a view to improving matters. Before a harsh comment is made on others, the judge concerned would do well to recall the Biblical saying: Why behold thou the mote in thy brother's eye, but consider not the beam in thine own eye?

To summarise, the need of the hour is to arrest the declining faith in legal justice; this is best done by delivering justice on time! The government would do well to constitute a Committee or Commission to study the available material and recommend the ways and means to ensure that all Criminal cases (including all appeals) are disposed of in one year and all Civil cases in two years. Our country particularly the South Indian States are in a welfare mode. Many things are free for many sections of people. It is time for us to realise that there can be no better welfare than timely justice.

(From D.Ch.Tirupathi Raju Memorial Lecture organized by Centre for Policy Studies and Visakhapatnam Public Library on January 3, 2020)

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Nothing in life is outside the scope of the transforming power of the Divine.

Manoj Das

JUDICIAL REVIEW IN INDIA

By Prof. R.V.R. Chandrasekhara Rao

Former Vice Chancellor, Dr. B.R. Ambedkar Open University, Hyderabad & Ex-Head of the Dept. of Politics & Public Administration, Andhra University.

(Kalyani Printers, Lalapet, Guntur, (2019) Pp. 340. Price Rs./-.)

Prof. R. Venkata Rao

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Professor R.V.R.Chandrasekhara Rao rightly claims that with the demographic shift and rise in social standards, sensitivity towards legal activism is a progressive or social transformation. The importance of this book can be appreciated from the fact that this manuscript was awarded Ph.D. from the prestigious London School of Economics and Political Science back in 1959. It is in this regard the author has rightly made the present endeavour of knowledge transfer to benefit the next generation of researchers and scholars.

This astute book comprises 14 chapters including an appendix, reports, official papers and bibliography. Chapter one is the 'Introduction' and it deals with the basis of judicial review. It explains (in detail) how judicial review in the context of a Constitution is of paramount importance. The author thereafter brings a comparative study for judicial review under the Colonial, Dominion and American systems; and argues how Constitution acts as a paramount law or the legal basis for judicial review.

The second, third, fourth and fifth chapters can be seen as background chapters that reflect on history, analysis and thereafter study of the growth of judicial review in colonial India i.e. during 1773-1935. Perhaps, one remarkable feature captured through these chapters is the study of Indian opinion that favoured a federation. Citing Professor R. Coupland, who was critical of the Indian idea of federation, the author writes "It is the nature of the distribution of legislative power that decides the presence or absence of the federal principle".

Chapter six is titled 'Fundamental Rights and the Problem of Judicial Review'. The chapter makes a comparative study of the implications of individual

rights. The author is of the opinion that though judicial review is nothing more than the function of upholding the terms of a written Constitution and of invalidating enactments, particularly when written limitations are overstepped as ultra vires "yet the role of the doctrine in United States makes one feel that an enumeration of a list of individual rights tends to differentiate the role of judicial review". He further explained this conundrum from the perspective of the Indian Constituent Assembly debates wherein the author opines, "general phrases like 'due process' were deliberately avoided". This perhaps illustrates the desire of Constituent Assembly to limit the exercise of judicial review to ultra-vires doctrine and narrow down any scope for judicial law making. The author fairly reveals this attitude of Constituent Assembly in the subsequent chapter.

Chapter eight proceeds to inquire into the practice in relation to Fundamental Rights, particularly with right to personal liberty, right to freedom and right to property; all of which in the opinion of the author, and rightly so, are intricately connected. Interestingly, the manuscript also looked upon the influence of Directive Principles of State Policy (DPSP) over the interpretation of Fundamental Rights. Similarly in the next chapter the author studies the scope for judicial intervention in detention cases.

Chapter ten deals with the interpretation and analysis of perhaps a controversial provision i.e. right to property. The author examines the extension of eminent domain over the entire field of property rights by courts; and thereby explains how ultimately the same went into the state of decline with its fall through constitutional amendments. Likewise in the following chapter the author surveys the interpretation of Article 19 of the Indian Constitution. The author laid down test of judicial inquiry to Article 19 and opines that it can be based on "observance of two requirements, (i) whether restrictions are imposed for the purposes mentioned in clauses (2) to (6) and (ii) whether they are reasonable." The author in the following chapter opines that if one compares the power of courts to question the wisdom of legislative action, Article 14 of the Indian Constitution is no less, which "confers a power of no less extent". It is argued that the whole Article 14 incorporates the equal protection clause of the XIV Amendment of the American Constitution,

where the term offered as much scope for judicial review as the due process clause. However, as pointed out earlier, the Constituent Assembly did not examine the implications of the scope of judicial review under this article. Perhaps, this chapter explains the importance of this book in the sense that courts in India have (over the course of time) asserted as much power under Article 14 as the American Courts did.

Chapter thirteen reveals in detail the influence of judicial review upon DPSP. On a plain reading of the text of the Constitution we would presume that DPSP couldn't override the Fundamental Rights. However, the history of constitutional interpretation affords illustrations, which in the opinion of the author "cannot be explained by such simple proposition". The author argues that the exercise of judicial review of Part III is influenced by Part IV, especially on account of their unenforceability. In the final concluding chapter, the author opined that the courts in India have adhered to the duty (in the initial years as the manuscript was written way back in the early decades of Constitution formation), especially with regards to the words of the Constitution, and have worked within the fold of legal basis of judicial review.

The book is a valuable addition to contemporary constitutional discourse in a variety of ways. Refreshingly, it commendably combines the approaches of a political scientist and a legal academic. The book presents a comprehensive analysis on the subject of judicial review from historical, comparative and jurisprudential perspectives. To a great extent, the book has largely succeeded in its aim of fulfilling the socio-political challenges of legal governance. In this regard, the book will be useful for students and others concerned with the study of constitutional theory and judicial practice.

To sum up, the book is conceptually interesting and attempts to provide a picture of the wide range of issues that together are relevant for ensuring a holistic understanding and it does (also) capture an in depth study of judicial review that can impart a good comprehension of how fundamental rights were built to reinforce the legal framework that has now widened incrementally to the current form of an ever expanding horizon.

The book enriches the constitutional jurisprudence of the doctrine of judicial review.

* * *

The Institutions India is Proud Of

Dr. Uday Balakrishnan

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Chairman Investment Board

Most of those who are critical of the British period often go overboard by emphasising only on the worst colonial rule did to us over two hundred years. There is another and more lasting contribution of the British that simply cannot be ignored- the institutions of repute they created in an India which had none, and those they inspired soon after independence through Jawaharlal Nehru's time as Prime Minister. In a talk in Kolkata recently I listed these after I was surprised to learn that not many of the potential leaders of leading institutions, I was addressing were aware of them.

Of these intuitions I would single out a few, starting with the most famous and critical one for our country, the Survey of India set up more than 250 years ago in 1767. To this institution we owe the detailed mapping of our country in over seventy years between 1806 and 1871 as well as the borders we have with China.

A great explorer like Nain Singh Rawat who covered nearly 1700 miles on foot entering Tibet in disguise, could only have emerged from an institution like the Survey of India, so also the great mathematician Radhanath Sikdar who calculated the height of Everest at 29002 feet which, as later calculations established, was close to the 290037 it actually is.

The establishment of the Survey of India was closely followed by the setting up of the sprawling Botanical Gardens in Howrah now named after one of our very famous scientists, JC Bose. Well-known for its collection of botanical material, it was set up 234 years back in 1786 and was responsible for bringing one of the most famous cash crops in history, tea, to India from China and promoting its cultivation in Bengal, Assam and elsewhere.

The other great institution that came up was the Royal Asiatic Society in 1794, where the rich past of India unfolded through the likes of the great orientalist, William Jones and James Princep, the latter famous for rediscovering India's greatest emperor ever, Asoka the Great and for deciphering the Brahmi script.

Ignorance of the law excuses no man except the lawyer.

Jeremy Bentham

Then who can ignore the tremendous contributions of the Thompson College of Engineering, Asia's oldest for civil engineering established in 1847? It is better known today as IIT Roorkee masking its stellar past.

Three of India's earliest universities- Madras, Calcutta and Bombay- were set up in 1857, the year of the start of India's first war of Independence. These were followed by the establishment of Allahabad University in 1887 in turn inspiring Indians to set up universities on their own- BHU and Mysore in 1916, AMU in 1920, Andhra University as well as the Indian School of Mines, now IIT Dhanbad, in 1926. Jamia Milia Islamia came up in 1920, moving to Delhi in 1935.

Still a class above all other institutions of Science and Technology, the Indian Institute of Science was established in 1909. Also noteworthy is the fact that the Indian Agricultural Research Institute, started life in 1911 as the Imperial Institute of Agricultural Research in 1911. The famous Forest Research Institute came up in 1911.

Clearly inspired by these, Pandit Nehru went on to set up some of India's most famous post-independence institutions of excellence, which remain so to this day - the Delhi School of Economics in 1949, the Institute of Economic Growth in 1958 and the four IITS - Kharagpur (1951) Bombay(1958) Madras (1959) and Delhi in 1961.

It was also in Nehru's period that the two of the three most reputed IIMs – Ahmedabad and Calcutta – came up in 1961 along with the National Institute of Design, still the best of its kind India.

India's Atomic Energy Department and ISRO of which we all are justly proud of both came into being under Nehru, the former as the Atomic Energy Commission in 1948 and the later as the Indian National Committee for Space Research in 1962. The list of institutions created under the British and under Nehru referred to above is not exhaustive but only indicative for there are many more.

In understanding how the British, followed by Nehru could set up such wonderful institutions in hard times, we'll be recollecting a glorious higher educational and research past that we are fast forgetting. That each of these was achieved in hard times, overcoming stupendous physical, fiscal and logistics challenges, is hardly appreciated today. This collective amnesia needs dispelling.

* * *

Revisioning America : The Future of American Studies-I

Prof. Sachidananda Mohanty

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Study of national literature and literary sensibility has traditionally been linked to territorial imagination. For most, literary movements and disciplinary formations seem to rise and fall with an air of self-evident truth. Gerald Graff tells us insightfully in literature against itself. *Literary Ideas in Modern Society*, that thanks to an unwritten consensus, students seldom read disciplinary or institutional history with their links to pedagogy and literary sensibility in spatial and temporal terms. Instead of generic thinking leading to fruitful debates, courses are undertaken as the 'unproblematic given', negating thereby, the virtue of contextual reading and historicity.

How and why did English Literature originate in Oxford University as an appendage to the study of Comparative Philology? What lessons does the Morley-Freeman debate offer us for the way literature was dismissed in the earlier days, as 'mere chatter about Shelley'? Why was English Literature established in India before it found its institutional foothold in England? What could be the ideological origin of disciplinary formations such as American Studies?

The publications of two seminal volumes, *The Death of Literature* by Alvin Kernan, 1992, and the earlier, *English in America: A Radical View of the Profession* by Richard Ohman, 1976 removed this blindness to basic questions, and center staged issues such as literary history, canon formation, anthology making and the institutionalization of pedagogy.

What is the nature of the crisis that American Studies faces today? What are the implications of this crisis for our understanding of the American literary sensibility? And finally, what steps could be taken for the practice of American literature/studies in the classroom context in India? Based on the study of institutional history and pedagogic thinking, I shall attempt some answers.

The art of medicine consists in amusing the patient while nature cures the disease.

Voltaire.

American Exceptionalism

Emerson's clarion call to free America from the apronstrings of Britain, parallels the growth of the American nation and its manifest destiny for carrying out its mission in the world through the widely held belief in American exceptionalism. America must define the quintessential 'American experience' whether through the ideas of symbolism, self-reflexive language, the frontier-experience, the American Adam, homoeroticism, the American dream, or the 'melting pot'. This is evident in, as Russell Reising shows, pioneering critical works such as *The American Renaissance 1941*, *Symbolism and American Literature*, 1953, *The Form and Fable in American Fiction*, 1961, *The American Adam*, 1955, *The American Novel and its Tradition*, 1957 and *Love and Death in American Novel*;1960. Self-definition becomes a compelling national angst, especially for a young nation.

II

Manifest Destiny

The American manifest destiny, expressed through literature and culture and channelized through its foreign policy, has led to mixed outcome. The expansion of territories embracing Texas, New Mexico, Alaska, Puerto Rico, and Hawaii as well as the Pacific Islands went hand in hand with the discourse of meliorism. Here, as elsewhere, wars were fought for a mixture of altruism and self-interest.

The establishment of the Monroe Doctrine led to the spread of the American Capitalism in the hemisphere. The European powers, according to Monroe, were obligated to respect the Western Hemisphere as the United States' sphere of interest. There was, correspondingly less interest in the export of American language, literature or culture in the predominately Spanish speaking nations of Mexico, Central or South America. World War II changed all that, projecting America for the first time as a global power on the world map.

What was the impact of such developments on the fashioning of American Studies?

The Ideological Origins

In his essay 'The Ideological Origins of American Studies at Yale', Michael Holzman contends that

academic dons at Yale such as William Robertson Coe, William F. Buckley Jr. and Norman Holmes Pearson attempted to construct American Studies at Yale 'as something beyond the study of American literature and history, as an enterprise that would be, among other things, an instrument for ideological struggle in what some among them termed the American crusade in the Cold War.

Norman Pearson's narrative plays a crucial role in the institutionalization of the discipline beginning with Yale. An active member of the Office of the Strategic Services (OSS), Pearson returned to Yale after the war, in Holzman's terms, 'a married man with a family, a friend of the inner circle of English-modernist poets, a war hero with a fairly high rank and the experience of controlling spies all over Western Europe, a student of American literature, an editor of anthologies'. While Pearson received a handsome \$4600 as an Assistant Professor of English for the new program in American Studies, the equally, if not more accomplished Louis Martz, received \$4100. Clearly, as Holzman shows. Pearson would be 'the best paid member of the English Department of his rank'.

In January 1946, in a note by Professor Ralph Gabriel, the Committee's Chairman wrote to President Seymour of Yale, proposing that 'an independent organization' be created to be known as 'The American Studies Group' the purpose of which will be to train at the undergraduate and graduate level selected students whose primary purpose is to achieve a broad understanding of American civilization, its origins, evolution and present world relationships'. President Seymour approved the proposal after a week.

Yale School of American Studies

By the Spring of 1946, at the 'Yale School of American Studies For Foreign Students', the shift clearly had taken place from the intrinsic worth of study of American literature and culture to scholarship in the field as a 'possible instruments of state.' The Prospectus of the 'Summer School Program of American Studies Group' declared its purpose in the following words:

1. Purpose: The development of the leadership of the United States in the cooperation of the world's people for peace is necessarily accompanied by an extension of

The man who reads nothing at all is better educated than the man who reads nothing but newspapers.

Thomas Jefferson

American cultural influence. Among the world's peoples, there is an increasing desire for a deeper understanding of American democracy, especially its ideals and methods, and of the mainly "knowhow's" which contribute to the American standard of living. The fact that the United States Government pursues an international policy which finds not in the domination of other peoples but in the common advancement of all peoples the best service to the American national interest brings other peoples to welcome rather than fear American cultural influence. Indeed this influence is regarded by many people as the one foreign factor they can admit which will support their own attempts to modernize their ways of life without threatening to disrupt them.

2. In view of these circumstances, Yale University believes that it has a special duty to perform not only for the American people but also for common humanity in providing access to an understanding of American life and culture that will serve the interests of both. It proposes, therefore, to establish a School of American Studies of Foreign Scholars, professional persons, leaders, and students that will offer instruction in specially planned courses in the development and current aspects of American Life.

The Cold War

Events were moving swiftly. By the end of 1948, the world situation was getting increasingly polarized thanks to the onset of the Cold War. In 1949, President Seymour received a note, perhaps from Dean De Vane, expressing concern about the developing situation in the following words:

None of us can afford to minimize the Communist threat to America. We ought to utilize all the resources that we can mobilize to teach our students the fact of Communism and the implications of Russian ideology and foreign policy . . . the Communist threat must be met vigorously and in a positive sense. The direct means of confronting it is through a fundamental Understanding of American Principles'.

Dean De Vane wrote to President Seymour expansively:

If I should chance to forget – President Seymour might be interested to know that in speaking to alumni groups, the subject arousing the most favorable interest,

is possible extension of American studies in which boys will obtain a basic understanding of our American culture, etc., etc. usually gets spontaneous applause and much favorable comment in discussion. A real out and out venture in this direction would bring immense publicity and greatly favorable public opinion – and money. (Office of the University Development, H.W. Haggard to C.F. Stoddard, January 16, 1949).

However, it must be said to the credit of several Professors of American Studies at Yale that despite pressure, they did not give up the intrinsic value of the subject and refused to align it with the American Foreign Policy goals, a fact stoutly opposed by critics who thought otherwise. For instance, William F Buckley, a graduate from Yale, published *God and Man at Yale* and dealt in a section of his book with American Studies and disfavored the 'neutral' character of the program which some saw as the correct way of promoting the American view of life. Buckley wrote:

The major course in the American Studies Program is taught by Ralph H Gabriel. . . Mr Gabriel is a fine scholar and his course is of vital scholarly interest. But in what way does it attempt to persuade the student to line up on one side or the other of the collectivist issue . . . ? There is clearly no bias – for or against free enterprise – in [other courses in the American Studies Program] . . . Mr. Coe's generous gift to Yale has made possible highly interesting studies in American cultural history. But it is nonsense to assume that the instructors of the courses dedicate themselves to affirming a 'belief in the validity of our institutions of free enterprise and individual liberty.'

Patronage System versus Scholarly Pursuits

As Holzman's essay shows, there was a protracted battle between the donor Coe and his son William Rogers Coe on the one hand, and David Potter on the other in 1955, whether the discipline was to be 'objective' or it should be 'affirmative' in character, whether it would be Study of America for scholarly purposes, or to be done so primarily for indoctrination. The letter of Potter dated 21 December 1955 puts the matter very succinctly:

The problem lies, as I see it, in the fact that there is a distinction, which may be fine, but is also clear, between having a primary purpose to teach American history, with

The best way to get a bad law repealed is to enforce it.

Abraham Lincoln

the faith that from such teaching an appreciation of the principles of individualism and free enterprise will result, and a purpose to teach the principles of individualism and free enterprise, using American history as the medium of instruction. One actually involves teaching . . . the other involves indoctrination. . . .

By no means was Norman Holmes Pearson the only key or decisive figure in the shaping of American Studies at Yale and elsewhere. That would be too reductive a reading of the situation. Nor was his passion to prepare students for government service necessarily endorsed by all his colleagues.

By the 1950, the trend in the study of literature, including American Literature had shifted to New Criticism that took away the interest from the socio-cultural and political dimensions. American studies would chart out a path for itself with varied forms of the patronage system, including that of the American Department of State and the Foundations such as the Ford.

III

American Studies in India: The Earlier Years

The genesis of the American Studies Program in India goes back to the Indo-U.S. binational educational exchange agreement better known as the Fulbright Program signed on 2 February 1950 between Prime Minister Nehru and the American Ambassador Loy W. Henderson. The Mussoorie Conference in 1963 brought together some of the leading Indian and American academics to deliberate on the best ways of teaching and research of American society, literature and culture in India. One of the important consequences was the setting up of the American Studies Research Center (ASRC) on the salubrious Osmania University Campus in 1964 under the leadership of its visionary Vice Chancellor D.C.Reddy. At the USEFI and the ASRC, there were dynamic program administrators like Olive Reddick. The PL.480 Rupee reserve came handy for the exchange of American and Indian scholars. American Studies thrived, primarily in two areas: American Literature and American History, although theoretically all aspects of America could be studied. The interdisciplinary nature of the discipline remained true notionally; in reality, Literature, History and at times International Relations were pursued independently. Scholarships both through

the ASRC as well as the USEFI encouraged a whole generation of scholars in the field of American Studies. Despite the pronounced Anti-Americanism in the government circles and antipathy towards capitalism and free-market economy, the Indian academics pursued American Studies diligently to the benefit of both the societies. The charge of cultural imperialism would continue in a somewhat blind and bigoted manner in India's media and political circles though. The collapse of the Cold War ended this fascinating academic experiment in India through the ASRC that benefitted a whole generation of Indian and American scholars.

Cultural Imperialism

'Do American Studies in India carry a hidden political agenda? Are they designed to win over political converts?' asks Professor R.K.Gupta in an incisive essay on this topic. He gives a fairly mature and convincing answer:

Those who consider the study of American (or British Literature) as a colonizing influence, oversimplify, I think, the relationship between what one reads and how it affects his character and personality. The relationship between reading and the reader's system of values is complex and unpredictable. The human mind does not simply absorb and accept all, it is exposed to but sifts, sorts out, critically analyzes. It is only totalitarian regimes with made-to-order books, doctored history, and centrally controlled teaching, and with alternative modes of experience blocked out and access to them totally denied, which can hope to use books for indoctrination with some modicum of success.

(To be concluded)

* * *

Vedanta Desika's Hymn in Prakrit

Dr. (Mrs.) Prema Nandakumar

The hymnal literature in India embraces several languages, like Tamil, Telugu, Sanskrit, Pali, Marathi, Kannada, Punjabi and Gujarati. These poems have brought priceless solace and peace to millions of devotees. Sri Vedanta Desika, considered an incarnation of the Bell of Sri Venkateswara at Tirumala, was an

If you live each day as it was your last, some day you will most certainly be right.

Steve Jobs

inspired hymnologist. His mastery of the Sanskrit and Tamil languages is amazing. While his Sanskrit poems are rich with significances and may be considered naarikela paaka, his Tamil verses have an absolute simplicity about them., truly draaksha paaka. Here is a poem on surrender from his Amritasvadhini:

“I have no other refuge except your grace.
Having overcome all those long days
Of evil deeds, I have recognized the worth
Of your grace, and am certain that your feet
Are my only refuge. I
have chosen you
To lead me to the life divine
Away from the dark embroilments of life.
Do not turn me away, O Lord of Lakshmi!
Give me sanctuary.”

Vedanta Desika’s Daya Sathakam on the compassion of Lord Venkateswara personified as Daya Devi is justly famous. He has also written in Manipravala, a mixture of Sanskrit and Tamil. He has even indited a complete hymn in Prakrit!

It is said that Prakrit is common speech and reflects the sounds and idioms of everyday life. The Jains used Prakrit in a big way to convey their philosophy and religion to a larger audience. The Prakrit they used is referred to as Ardhamagadhi language. Though there were allied dialects like Maharashtri and Sauraseni, Ardhamagadhi was at the forefront. Even today, students of Prakrit first learn Ardhamagadhi grammar.

In Tamil Nadu, Prakrit was used generally by Buddhists and Jains. However, Vedanta Desika who was a linguist had mastered Prakrit also. He has written the hymn, Achutha Sathakam in Prakrit. Deep thoughts and striking language mark the poem. Even if we know Sanskrit well, it is not easy to read Prakrit. One needs a special training for that. However, when read with the help of a teacher or a dictionary, the Sathakam becomes an unforgettable experience.

Vedanta Desika had performed Tapasya in Tiruvaheendrapuram for several years and gained the grace of Lord Hayagriva. The poem opens with his prayer to Hayagriva:

Jnananandamayam devam nirmalaspatikakritim
Aadhaaram sarvavidhyaanaam Hayagrivamupasmahe
(I salute Hayagriva, the image of Knowledge and Ananda
and who has a form like pure crystal. He is the base for
all arts.)

Sri Devanatha and Goddess Chenkamalavalli preside over the Tiruvaheendrapuram temple. Vedanta Desika was immensely devoted to Devanatha. He has written a Sanskrit hymn on the deity, titled Sri Devanatha Panchasath. There are innumerable ways of praying to God. Vishnu revels in ornaments: alankara priyaha Vishnu! He is also pleased immensely with stotras. Hence one finds a lot of joy overflowing these hymns. Elders have experienced a cleansing of heart by reciting them.

‘Achutha’ means the Unchangeable, one who has no changes, ‘chutha’. If we hand over ourselves to the Unchangeable, we need not be afraid of anything. Vedanta Desika asks us to fill our hearts with total faith: “This is Achutha, the Unchangeable. He will guard me”. He resides even in a tiny atom!

“O Achutha! Even when confined within an atom, your force remains undiminished. You are holding up the entire creation. Your power that has spread all over the universe has the same high potency even when found inside an atom.”

Thus each of the Prakrit slokas posits an eternal truth. Even as he praises the countless energies of the Lord, the million-faceted beauty of the Lord’s handsome appearance and the Lord’s never failing compassion, there flows immortal poesy from his pen. Desika is reminded of what Krishna says in the Bhagavad Gita: Paritranaaya saadhunaam vinaasaayacha dhushkruthaam. The Lord incarnates to save us from our pains and problems and in the process is ready to go through countless insults and hurt that are hurled at him by ignorant humanity. So Vedanta Desika calls the incarnations of the Lord as sandaviaparamadhamma (samsthaapitaparamadharma), indicating that the avatars are for safeguarding and settling Dharma on earth.

The Setu Bridge has been in the news for the last few years. Setu means a bridge, a barrage. Vedanta Desika sees devotees as images of such a bridge in this poem:

I find television very educating. Every time somebody turns on the set I go into the other room and read a book.

Groucho Marx

“My Lord! Your devotees have good hearts. You make use of them as a Sethu bridge so that through them people cross this ocean of existence. Commanded by you, these devotees have unswerving devotion in their hearts and move through the world and help people cross this ocean of samsara. Enough if we have darshan of the devotees!”

The Sethu bridge does not move. The devotees keep peregrinating to holy places. Enough if we see these two! The Tamil epic poet Kamban speaks of the Setu bridge in his Ramayana:

“Even lotus-born Brahma cannot exhaust
The bridge’s greatness. Lady with golden bangles!
What more shall I say? Listen.
Even sinners who have wronged beloved parents
And brought evil upon their teachers
And relations, get purified by merely seeing it.

Unless one bathes in the Ganges, Yamuna,
Narmada, Kaveri and all other streaming rivers
One is not freed of sins. But merely seeing this Setu
Struck by waves that bring in shells from the sea
One is freed of all impurities.”

Vedanta Desika was perhaps inspired by these verses in the epic to assure us that even as a darshan of the Setu Bridge can free us from all sins, having darshan of bhagavatas can also make us pure.

The Achuta Satakam moves forward like a royal elephant. Desika cogitates over life with the Lord in

Paramapada. Is it not enough that he has been battered in the ocean of life for so long? When will he get the good fortune of resting near the Supreme? ‘Kathaa’ (when) is a word that appears in these slokas often. Desika takes to bridal mysticism too:

“My Lord Achutha! When will you come to wed me, this young girl? You must tie the auspicious marital thread and accept me as your wife, O Devanatha!”

This is appropriate for in Sri Vaishnava sampradaya, the Lord is the only Purusha. All the rest, men and women alike, are the beloved of the Lord. In this final sloka Vedanta Desika indicates to us the story of the Prince who was brought up in a hunter’s community:

pakkananiya kaliya silaapamaniakumaram va nivo (Bhakkananeeta kalitakirathabhrama nijakumaramiva nrupah). The story is as follows.

A king went out hunting. His son got lost in the forest. He was a little fellow and so stood crying, knowing not which way to go. A hunter of the forest discovered the weeping child and took him to his hut and brought him up. The child grew into a young man. Though the handsome youth appeared to be of royal descent, his speech and ways were that of a hunter.

Once a few ministers of the land happened to see him in the forest and recognized him as the lost prince. They explained the circumstances to him. He understood and went back to the kingdom happily and was reunited with his father. We are also like the lost prince. We are spending our lives like hunters spending our days in vain in killing and hunting. But once we recognize our true worth, we begin to live a cultured life. For us cultured life means surrendering to the Lord and being his serviteurs.

Service to the Lord includes leading a dharmic life, doing one’s duty, never giving up faith in the Divine and holding on to the lotus-feet of Narayana. For all this, the base is bhakti. Hymnology was born to help sustain and increase devotion in our hearts. If we read regularly these stotras by the great devotees of the past, the heart will remain sweetly merged in devotion. The Lord will reside in the lotus of our heart. One can recite hymns in any language for this to happen: yes, even in Prakrit! Mokkasuharukkha moolam (moksha suka vruksha moolam) ...

“Guardian of your serviteurs! Hymns praising you are the roots of the tree of Moksha. For people who have grown prematurely old by indulgence in desires, these hymns act as rejuvenating medicine. Saluting you by repeating your innumerable names, doing naama sankirthana is the treasury that yields to us all that is glorious and good in this world and beyond”. Such is Vedanta Desika’s message in the Achuta Satakam.

* * *

It is easier to love humanity as a whole than to love one’s neighbour.

Eric Hoffer

Gandhian journalism – III

Dr. R. Sampath

Former Chief of Bureau, *The Hindu*
Visakhapatnam

Souribandhu Kar is amazed at Gandhiji's prolific writings on a variety of subjects other than politics and writes, "Gandhi was not only a journalist, editor but a great writer. No one else has used the staff of words on a massive scale than Gandhi. The uniqueness of Gandhi is beyond all questions, and is deliberate and at the same time fundamentally effortless merging of himself with the people of India." (Incidentally, Gandhiji effectively wrote on varied topics like vegetarianism, birth control, personal and social hygiene, emancipation of women, need for purity in personal and public life, etc.)

The following letter dated October 25, 1894, which Gandhiji wrote to the editor of the 'Times of Natal' over a contemptuously worded editorial titled, 'Rammysammy', speaks volumes about the Mahatma's eloquent simplicity in the choice of words to convey his thoughts, without being vitriolic in his reaction. Gandhiji wrote: "You would not allow the Indian or the native the precious privilege (of voting) under any circumstances, because they have a dark skin. You would look the exterior only. So long as the skin is white it would not matter to you whether it conceals beneath it poison or nectar. To you the lip-prayer of the Pharisee, because he is one, is more acceptable than the sincere repentance of the publican, and this, I presume, you would call Christianity. You may; it is not Christ's. Sir, may I venture to offer a suggestion? Will you re-read your New Testament? Will you ponder over your attitude towards the coloured population of the Colony? Will you then say you can reconcile it with the Bible teachings or the best British traditions? If you have washed your hands clean of both Christ and the British tradition, I can have nothing to say; I gladly withdraw what I have written. Only, it will then be a sad day for British and for India if you have many followers."

The Mahatma was against equivocation by journalists in their writings in order to circumvent any possible legal action against them. He wanted them to be fearless but at the same time use a tempered language. The following quotation from the Selected Works of Mahatma Gandhi, Vol. VI, amply explains his view:

"What is the duty of a newspaper in a country where there are laws like the Seditious Writing Act and the Defence of India Act to restrict freedom? In order to get over this limitation our newspapers have evolved a style of writing which makes it possible to interpret what they say on a particular matter, which may seem to fall within the purview of these Acts, in two different ways. Some have perfected this art to a science. But, in my opinion, this causes harm to our country. People develop a tendency to equivocate and fail to cultivate the courage to speak the truth. It changes the form of the language which, instead of being an instrument for expressing one's thoughts, becomes a mask for concealing them. I am convinced that this is not the way to educate our people. Both people and individuals must cultivate the habit of speaking their minds. Newspapers are in a position to impart such training to them. The right course, and the one which will ultimately be found to be out of the greatest advantage to us, would be that those who are afraid of the above laws and who do not want to get entangled in them should stop publishing newspapers, or that they should frankly state their true views and bear the consequences. Justice Steven has said somewhere that there can be no hatred in the language of a man who has no hatred in his heart. And if there is any hatred, one should frankly express it. In case one hasn't the courage to act thus, one should stop publishing a newspaper. In this lies the good of our people and our country."

By his own example, Gandhiji set the trend of facing legal actions like contempt of court. "As a journalist, Gandhiji never shirked from the responsibility of carrying the burden of proof, and he favoured objectivity in the news reports and also exhorted the newspapers to abide by objectivity instead of favouring other methods to escape the law. He boldly published a letter (in 'Young India') against the judge [Ahmedabad District Judge Kennedy] to express truth. He stood by his conviction in questioning the judge's attitude. He was prepared to face the consequences of violating the rule, and in the face of a tough stance of the judge, he firmly argued his case to resist contempt of court." ('Gandhian Journalism – Is It Relevant Today?' by D.V.R. Murthy). The contempt case related to the satyagraha pledge signed by some lawyers of Ahmedabad. Judge Kennedy sought explanation from them by issuing a show-cause notice as to why their 'sanads' should not be cancelled for having

Laziness has become the chief characteristic of journalism, displacing incompetence.

Kingsley Amis

signed the pledge. The judge felt that the explanation given by them was not satisfactory and addressed a letter to the High Court for suitable action. This letter was given to one of the pleaders of the satyagrahi lawyers, and it soon reached Gandhiji who published it in 'Young India' dated August 6, 1919, under the heading "O'Dwyerism in Ahmedabad" along with an article captioned "Shaking Civil Resisters". Following this, Gandhiji was asked to publish a written apology in the paper, but he refused to abide by that order. Thereupon the High Court declared that the publication of the letter would come under the contempt of court. Gandhiji stood firmly on the ground saying that he would honour the independence of the journalist and would go to any extent to undergo punishment. Thereupon, the court severely reprimanded the editor and publisher of 'Young India' (M.K. Gandhi and Mahadeo H. Desai respectively), but did not impose any sentence on them.

Later, writing an article, "Contempt of Court", in the issue dated March 21, 1920, Gandhiji wrote: "I had to conserve a journalist's independence and yet respect the law. My own reading of the law was that there was no contempt committed by me. But my defence rested more upon the fact that I could not offer an apology if I was not prepared not to repeat. The apology tendered to a court to be true has to be as sincere as a private apology....I venture to think that that I succeeded eminently in convincing the court that behind my disobedience – if it was disobedience – there was no anger or ill-will but perfect restraint and respect; that if I did not apologise, I did not because an insincere apology would have been contrary to my conscience. I hold that it was about as perfect an instance of civil disobedience as it ever has been my privilege to offer. And I feel that the court reciprocated in a most handsome manner and recognised the spirit of civility that lay behind my so-called disobedience. The luminous judgment of Justice Marten lays down the law, and decides against me. But I feel thankful that it does not question the propriety of my action. Justice Hayward's judgment recognises it as an instance of passive i.e. civil resistance and practically makes it the reason for not awarding any sentence. Here then we have an almost complete vindication of civil disobedience. Disobedience to be civil must be sincere,

respectful, restrained and never defiant, must be based upon some well understood principle, must not be capricious and above all must have no ill-will or hatred behind it. I submit that the disobedience offered by Mr. Desai and myself contained all these ingredients."

Later, Gandhiji had to face a sedition case against him for publishing three articles in 'Young India' during September 1921, December 1921 and February 1923. In these articles – 'Tampering with Loyalty' (September 1921), 'A Puzzle and its Solution' (December 1921) and 'Shaking the Manes' (February 1923) – he severely criticised the British administration, and asked the people to rebel against the Government, and in particular, the Indian sepoy to rebel against the Government. Because of these writings, a case of sedition was registered against the editor, M.K. Gandhi, and publisher, Shankarlal Ghelabhai Banker. The charges were "bringing or attempting to excite disaffection towards His Majesty's Government established by law in British India, and thereby committing offences punishable under Section 124-A of the Indian Penal Code".

"When the charges were read out in the court, Judge C.N. Broomfield called upon the accused to plead to the charges. He asked Gandhiji whether he pleaded guilty or claimed to be tried. Gandhiji pleaded guilty to the charges and Banker too pleaded guilty to the charges. The judge wished to give the verdict immediately, but the advocate-general, J.T. Strangaman, insisted that the due process of law must be followed. The advocate-general requested the judge to take into account 'the occurrences in Bombay, Malabar and Chauri Chaura, leading to rioting and murder' (in the course of the Non-Cooperation Movement). In respect of Banker, the second accused, the advocate-general said that the offence was lesser as he only published and did not write them. Therefore, the advocate-general asked for a substantial fine in addition to imprisonment as might be possible. However, the judge asked Gandhiji 'Would you like to make a statement?' Gandhiji agreed to give a statement, and the judge asked for a written statement to be recorded. Gandhiji made an oral statement which was followed by a written statement.

(To be concluded)

Early to rise and early to bed make a male healthy, wealthy and dead.

James Thurber

Why we should remember Nani

Shri Mohan Andavilli

16th January, 2020 marks the 100th birth anniversary of Sri Nani A Palkhivala. Given the ultra-sensational times we live and the highly charged geo political events of every day, it passed away without much reference to this great man except for a few of his friends and admirers. In celebrating a great life on this auspicious occasion, it is important to recall the Man for All Seasons. Dr. C. Rajagopalachari, the last Governor General of India and freedom fighter rightly said, "He is God's gift to India". His name was a byword in India's world of yester years. A man of many and varied parts, he has crossed with ease the law's narrow confines and has gone beyond into numerous other fields. We all need to constantly remember that a colossus like Nani strode the legal, economic, corporate, literary, cultural, global and social world. It is impossible to define Nani except with superlatives :He has been on the board of Tata Sons and its group companies for over four decades (he was the first Chairman of TCS) Chairman of ACC for 27 long years, Senior Advocate at Supreme Court with unparalleled knowledge and wisdom on our Constitutional, Company and Income Tax laws was Ambassador to United States, delivered to the common man the analysis of the Union Budget for more than 30 years he was President of Forum of Free Enterprise for more than three decades promoting the spirit of free economy in this country obsessed with socialism his book *The Law and Practice of Income Tax* first published in 1950 when he was only 30 years of age continues to run into several editions even today and is considered a Bible by people from the profession, to name a few. Most importantly he gave generously and unsparingly of himself and his talents to the nation whenever the occasion demanded - most particularly in defense of the rights and liberties of the common man, so that the well-springs of democracy may remain undefiled.

Today India stands tall in the world of nations as the most populous democracy. More than seven decades ago, when India found its freedom, it embarked on one of the most ambitious experiments ever by a human race. Men of that era fought to get freedom and then toiled to draft the Constitution of India which contained as many as 395 Articles. It was much longer than anything

else that had ever been devised by man so far. Granville Austin, the American historian called it a colossal work.

Sadly within a span of three decades since independence, Indian political system started moving away from the lofty and idealistic ambitions of the founding fathers of the nation. Adult franchise without having invested in primary education unleashed vote for notes politics and our democratic process and the Indian Constitution was under constant attack by the parliament that Nani in his book – *Our constitution Defaced and Defiled* wondered if it was the same nation that inherited such a lofty Constitution. Between 1967 and 1980, Nani fought some of the most legendary cases in Supreme Court starting with Golak Nath case in 1967, Bank Nationalization case in 1969, Privy Purses Case in 1970, Benet Coleman Case in 1972, St Xavier College case in 1974, Keshavananda Bharti case in 1973 and finally the Minerva Mills Case in 1980 and defended the rights of citizens and protected the sanctity of our Constitution. If there are top ten cases that defined our constitutional law in this country since we became republic in 1950, six of these were fought by Nani representing the common man to defend and save our Constitution. Speaking of the Emergency Period in 1975, former Prime Minister Atal Bihari Vajpayee said of Nani, "While we were fighting battles in the streets, Nani fought battles in Supreme Court to ensure we did not lose our Constitution". If today Indians continue to enjoy many freedoms, we all owe a great debt to Nani to have single handedly crusaded against the tendencies of politicians who wanted to take away those rights from the common man for their personal gains. Maj Gen Nagendra Kumar in his book *Nani Palkhivala: A Role Model* had listed 140 prominent cases in which Nani appeared and defended the Indian Citizen to ensure posterity will not be denied the spirit of what was enshrined in our Preamble to the Constitution. While India was fortunate to have had men of highest integrity and finest talent to have led the nation in its formative years of 1940s to 60s, it was men like Nani Palkhivala who played a stellar role in its normative years of 60s to 90s. If today India can proudly say that we are a democracy, a plural society and a free market, it is very important to gratefully remember that it was because of men like Nani that India remained so despite several attempts by parliament to be the contrary.

Anyone who lives within their means suffers from a lack of imagination.

Oscar Wilde

Nani reached the zenith of his fame and eloquence in the *Keshavananda Bharati* case in 1973. Everyone acknowledges that but for Nani Palkhivala's brilliance in that case, Parliament's limited power to alter, amend, abrogate any part of the Constitution even to the extent of taking away all or some of our fundamental rights would not have been established and protected the basic structure of the Constitution. In that landmark judgement, Nani presented the basic structure doctrine argument which forms the basis of power of the Indian Judiciary to review and strike down any amendments to the Constitution of India enacted by Parliament which conflict or seek to alter the fundamental nature of our Constitution which is pivoted around various freedoms of the citizen enshrined in our Fundamental Rights. This Basic Structure doctrine forever protects the Indian Constitution from the Parliament which has wide powers to amend but does not have the power to alter, destroy or emasculate the basic features of our Constitution as laid down by the Constituent Assembly and has been considered as the cornerstone of the constitutional law in India. Although the court upheld the basic structure doctrine by only the narrowest of margins, it has since gained widespread acceptance and legitimacy due to subsequent cases and judgments. Primary among these was the imposition of the state of emergency in 1975, and the subsequent attempt to suppress fundamental rights of citizens. When the *Kesavananda* case was decided, the underlying apprehension of the majority bench that elected representatives could not be trusted to act responsibly was perceived to be unprecedented. However, the passage of the 39th Amendment proved that in fact this apprehension was well-founded. In *Indira Nehru Gandhi v. Raj Narain*, a Constitution Bench of the Supreme Court used the basic structure doctrine to strike down the 39th amendment and paved the way for restoration of Indian democracy. Thanks to Nani's great forensic skills, Supreme Court was crucial in upholding the supremacy of the Constitution and preventing authoritarian rule by a single party. HM Seervai, an authority on Constitutional law who fought for Government in the *Kesavananda* Case later admitted that the basic structure theory preserved Indian democracy.

The *Kesavananda Bharati* case was the culmination of a serious conflict between the judiciary and the government, then headed by Mrs Indira Gandhi. In 1967,

the Supreme Court took an extreme view in the *Golak Nath* case, that Parliament could not amend or alter any fundamental right. Two years later, Indira Gandhi nationalized 14 major banks and the paltry compensation was made payable in bonds that matured after 10 years! This was struck down by the Supreme Court, although it upheld the right of Parliament to nationalize banks and other industries. A year later, in 1970, Mrs Gandhi abolished the Privy Purses. This was a constitutional betrayal of the solemn assurance given by Sardar Patel to all the erstwhile rulers when they agreed to accede to India. This was also struck down by the Supreme Court. Smarting under three successive adverse rulings, which had all been argued by Nani, Indira Gandhi was determined to cut the Supreme Court and the High Courts to size and introduced a series of constitutional amendments that nullified the *Golak Nath*, Bank nationalization and Privy Purses judgments. In a nutshell, these amendments gave Parliament uncontrolled power to alter or even abolish any fundamental right.

In 1975 at the height of emergency, a bench of 5 judges was hastily assembled by the Prime Minister, and presided over by Chief Justice A.N. Ray to determine the degree to which amendments installed by the government of Indira Gandhi were restricted by the Basic Structure theory. On 10 and 11 November, the team of civil libertarian barristers led by Palkhivala continuously argued against the Union Government's application for reconsideration of the *Kesavananda* decision. Some of the judges accepted his argument on the very first day, the others on the next that by the end of the second day, the Chief Justice was reduced to a minority of one. On the morning of 12 November, Chief Justice Ray tersely pronounced that the bench was dissolved, and the judges rose. According to one of the judges on the bench "the heights of eloquence to which Nani had risen that day have seldom been equaled and never surpassed in the history of the Supreme Court". It is no wonder that Nani was quoted 14 times in the book –*Working a Democratic Constitution*, The Indian Experience by Granville Austin. Nani firmly believed that the survival of our democracy and unity and integrity of the nation depended upon the realization that constitutional morality is no less essential than the constitutional legality. He said "Dharma (righteousness, sense of public duty or virtue) lives in the hearts of public men and when it dies there, no Constitution, no law, no amendment can save it."

We should take care not to make the intellect our god; it has of course powerful muscles,
but no personality. Einstein.

The finality to a closure of the desire of Parliament to destroy the fundamental features came in the form of Minerva Mills case in 1980. In this case the Supreme Court provided key clarifications on the interpretation of the basic structure doctrine. The court unanimously ruled that the power of the Parliament to amend the Constitution is limited by the Constitution. Hence the Parliament cannot exercise this limited power to grant itself an unlimited power. In addition, a majority of the court also held that the Parliament's power to amend is not a power to destroy. Hence the Parliament cannot emasculate the fundamental rights of individuals, including the right to liberty and equality. For the removal of doubts, the court declared that the clause in Section 4 of 55 in the 42nd Amendment that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article are unconstitutional and null and void. Arguing for the common citizen Nani said "Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one".

It is no wonder that in the last four decades since the Minerva Mills case, Supreme Court acted as a sentinel to our Constitution and ensured Parliament not cross the 'Lakshmana Rekha' and respect the Will of the People as laid down in the Preamble to the Constitution.

Nani's contributions did not end only in Indian Courts. When India needed someone to defend it in the international courts against neighboring countries on issues of border and water disputes, Government at the time turned to Nani. He argued a number of historical cases in international courts including the UN Special Tribunal in Geneva and the International Court of Justice in Hague. If all this is so much for an average man with only 24 hours a day, Nani equally gave significant focus

on activities in the public domain excluding courts. He was a self-taught economist who picked up the dismal science for advancement of his tax law practice. He would use this knowledge in a string of speeches and articles on economic policy that were keenly followed by the general public. His famous budget-day speeches started out as an informal gathering where he would dissect the Union Budget for the audience. Over the years, its popularity grew to such an extent that hiring of the Barbourne stadium in Mumbai would become a necessity to host over a hundred thousand people.

Given all the above, Nani was sometimes referred to as the Conscience Keeper of the Nation. In defending constitutional liberties and championing human rights, Nani wrote several articles and eight books in his life time. It was providence that saved India its democracy because Nani refused positions of being Attorney General, Judge of Supreme Court and to various other bodies only to take up for the cause of the citizen and fight against the Government. This, by itself, would be enough to enshrine him as a founder of modern India.

His life's work, as evidenced by history should not be forgotten. The great Spanish Philosopher George Santayana famously said "Those who cannot remember the past are condemned to repeat it". In today's day and age when many people have been awarded Bharat Ratna, one cannot but wonder why such a great soul who gave of himself so much to protect and defend our Constitution was only given Padma Vibhushan? May be, even that would do no justice to the stature of this Man for all Seasons!

* * *

"Scope of Article 21 needs to be expanded", says SC Judge.

There are areas which need to be focused on due to changing times, says Justice V.Ramasubramanian.

(Newspaper report on 'Expanding Horizons of Article 21' delivered by Shri Justice V.Ramasubramanian, Judge, Supreme Court of India in D.V.Subba Rao Memorial Lecture on December 21, 2019 organized by Centre for Policy Studies and Visakhapatnam Public Library)

I will go down to posterity not by the battles I have fought but by the codes I have given to France.

Napoleon

Article 21 in the Indian Constitution was formulated after hours of discussion and deliberations and there is scope for expansion, said Supreme Court Judge V. Ramasubramanian.

Justice Ramasubramanian was delivering the D.V. Subba Rao Memorial Lecture on ‘Expanding horizons of Article 21’, organised by Centre for Policy Studies and Visakhapatnam Public Library, here on Saturday.

“Article 21, considered the heart and soul of the Constitution, states, ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’. Initially, the wording was ‘due process of law’ in place of ‘procedure established by law’. But after painstaking discussions, it was decided to use the latter in the fine print, as the former would have burdened the judicial system,” Justice Subramanian said.

He also noted that though the then Constituent Assembly comprised about 82% Congressmen, Chairman of the Drafting Committee B.R. Ambedkar invited members from opposition parties to also be a part of the committee, so that it could be framed in the most democratic way. Justice Ramasubramanian said that the British were of the opinion that there was a dearth of intellectuals in India and that Indians would be incapable of drafting a Constitution. “But we proved them wrong,” he said.

Talking about expanding horizons, the Supreme Court judge was of the opinion that there were untouched areas which needed to be focused on due to the changing times. According to him, there are two main aspects in the Article - Life and liberty and equality. While life and liberty are political and civil rights, equality encompasses economic, social and cultural rights.

“The developing area is ‘fraternity’. It is the third generation of rights and covers areas such as collective rights and green rights,” he said. Elaborating on it, he said that this aspect touches upon sensitive but relevant areas such as dignity in death or euthanasia, right to self-identity and right to privacy.

Justice Ramasubramanian was introduced to the gathering by Director of Centre for Policy Studies Prof. A.Prasanna Kumar. He also spoke about D.V. Subba Rao and hailed him as a legal luminary. Andhra Pradesh High Court Judge and son of D.V. Subba Rao, D.V.S.S. Somayajulu, spoke.

(Courtesy: *The Hindu*, December 22, 2019)

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