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OMISSIONS AND COMMISSIONS

Republic Day celebrations evoke keen public interest for two main reasons—the awe-inspiring parade in the nation's capital depicting India's military power and the tableaux showcasing the cultural diversity of the world's largest democracy, and the awards and medals announced on the eve of the day. During the last two decades, however, security concerns have placed a huge burden on the government in ensuring incident-free celebration at every level. Not only the tensed-up government but also the public have a sigh of relief that it all has ended well.

If security concerns dampened, to some extent, public enthusiasm for the R Day celebrations the announcement of awards and honours has not enhanced the government's credibility in the exercise. The omission of some names is as glaring and puzzling as the inclusion of some. The approach of the government of India in these matters is irritating and irrational. It is time the President and the Prime Minister bestowed serious attention on the matter so that the Republic Day honours and awards attain greater credibility and public appreciation.

These acts of omission and commission pale into insignificance before the more serious lapses that afflict the nation, now celebrating its sixtieth anniversary as a Republic. First and foremost is the menace of corruption which is cancerous in its growth. Hardly a few branches of the huge governmental machinery are free from the taint of corruption. If James Manor wrote that an honest politician in India is a contradiction in terms, an honest official too may be a square peg in a round whole. Not that there are no honest politicians and officials but the fact is that people tend to paint the politician and the official with the same brush as 'dishonest.' John Stuart Mill famously wrote that in a society in which people are unjustly imprisoned the place for the just man is also the prison.

The steep decline of professional autonomy and personal integrity of public servants has hastened the collapse of institutions at both national and state levels. Parliament is no longer the nation's highest forum for the discussion of public issues. Its place has been taken over by

the electronic media debating issues and non-issues round the clock. Nobel Laureate Octavio Paz warned long ago that the affluent middle classes were becoming the 'children of television'. Today not only affluent middle classes but also the helpless poor are the victims of 'the new opiate.'

Political parties are another paradox and puzzle of Indian democracy. Most of them have neither an ideology to work for nor a plan of action to pursue. Dependent on individual leaders they thrive on sycophancy and tedious flattery of their political masters. Bandhs on roads and railway tracks and protests and walk-outs in assemblies and Parliament are the main activities of political parties, leaders and workers. A nation that has so many public holidays and that loses so many precious hours and days due to bandhs and strikes can never progress even if half the population are young and many of them brilliant as scientists, engineers and professionals.

Sunil Khilnani was dead right when he diagnosed the malady: "Politics and the state, once seen as the prophylactic that would invigorate the country, were now seen as the disease." The state is suffering from a serious ailment. Every citizen has the right and also the duty to pull up the government. Eternal vigilance is the price of liberty, it is wisely said.

But what are we, the people, doing? Watch on television the senseless acts of destruction of public property? Keep quiet when precious young lives are lost in violence, day in and day out, in some part or the other of India? Allow the dada-babu-neta -lala nexus to loot and plunder the nation's wealth and resources? If not exercising the vote during an election and not raising our voice in protest when necessary is an act of omission, allowing malignant corruption to grow unchecked, the criminal-politician to get away with his misdeeds is an act of commission. Let's not blame the government all the time. Let's stand up against unjust authority as often as we can. Politics and governance are too serious a matter to be left entirely to the politicians and the government.

- The Editor

*I must study politics and war so that my sons may have the liberty to study
mathematics and philosophy.* - John Adams

GANDHI, NEHRU AND INDIA'S INDEPENDENCE - V

- A.Prasanna Kumar

The integration of the Princely States with the Indian Union was an achievement of gigantic proportions. Sardar Patel, 'the great unifier' completed the task of bringing under the Indian Union, the near six hundred Princely states, using both persuasion and pressure as the instruments of his strategy. Simultaneously the Constituent Assembly, chaired by Rajendra Prasad, consisting of such stalwarts as BR Ambedkar, BN Rau, Alladi Krishnaswami Aiyar and KM Munshi completed in less than three years the stupendous job of drafting the Constitution.

Having adopted the simultaneous change model, Nehru began to raise institutions to usher in development on all fronts. The Planning Commission, Atomic Energy Agency, and University Grants Commission were among the many institutions raised by him. He laid emphasis on the cultivation of scientific temper and approach as "a way of life, a process of thinking, a method of acting and associating with fellowmen." He wanted "to make Indian people and even the government of India conscious of scientific work and necessity for it." Even in the early fifties the Prime Minister of India had the vision to foresee the importance of power in national development. "It is on the basis of steel and power that countries are industrialized and advanced," he said. At the same time Nehru was firm in his commitment to the democratic framework even if it meant a slow pace of development and in the last years of his life he even conceded that the pace of progress was not rapid enough. Still he chose to defend it saying that "the essential objective of increased production in agriculture and industry is the quality of the individual and the concept of dharma underlying it." A few months before his death he said: "We are not only industrializing the country through the democratic process but also at the same time trying to maintain the unique features in the Indian philosophy and way of life and individuality of India."

Nehru felt that 'the task of nation- building was a continuation of the freedom struggle'. Independence was 'the prelude to massive reconstruction of the polity and economy.' Transforming Indian nation state into a modern democracy was an enormous challenge, what Tobias Engelmeier describes as 'spectacular salad in a fragile identity bowl.'

Nehru's role in the evolution of India's foreign policy right from the Haripura Congress session was discussed

earlier.(In partII) Prof Appadorai explained how Nehru believed in the Gladstonian dictum that 'the first condition of a good foreign policy is a good domestic policy.'(quoted in Tobias F. Engelmeier *Nation- Building and Foreign Policyp* 199) When he hosted the Asian Relations Conference at Delhi in 1947 Jawaharlal Nehru proclaimed to the world a new awakening among Asian nations led by India. "For too long we of Asia have been petitioners in western courts and chancelleries. That story must now belong to the past. We propose to stand on our own feet and to cooperate with all others who are prepared to cooperate with us.We do not intend to be the plaything of others," declared India's Prime Minister. Swiftly and firmly Nehru began to give shape to India's foreign policy which the western scholars called ' sophisticated' and 'a fascinating study.' Nehru's vision transcended national boundaries and accordingly he sought to formulate a policy not just for India or Asia but for the larger humanity. Few statesmen of modern times had such an abiding commitment to universal ideals. His speech at the Columbia University in October 1949, was a classic exposition of India's goals which Nehru stated in these terms. "The pursuit of peace not through alignment with any major power or group of powers, but through an independent approach to each controversial or disputed issue, the liberation of subject peoples, the maintenance of freedom, both national and individual, the elimination of want, disease and ignorance which afflict the greater part of the world's population." Such a foreign policy declaration evoked world-wide attention, even admiration from many quarters.

Between the Asian Relations Conference held in 1947 and Bandung eight years later many initiatives emanated from Delhi to reduce global tension caused by cold war politics. Bertrand Russell lauded Nehru's efforts saying "perhaps it will be he who will lead us out of the dark night of fear into a happy day". Nasser saw in Nehru "the expression of human conscience itself." Escott Reid conceded that Nehru played the role of ' an honest broker' in the relations between the west and China. S.Gopal, Nehru's biographer, wrote that Nehru "seemed to enjoy the rare distinction of being of advantage to his own country as well as to the world."

But the west, in general, felt neither happy nor convinced about the genuineness of India's policy articulated by Nehru. Henry Kissinger, among others, came down heavily on Nehru's policy of non-alignment. He even lamented that "We sometimes act as if we and the communists were engaged in a debate in the Oxford Union, with the uncommitted nations acting as

moderators and awarding a prize after hearing all arguments.” India’s reluctance to condemn Russian occupation of Hungary in as strong terms as India had used in condemning Western powers over the Suez crisis evoked sharp comment in the Western press. Nehru was accused of adopting ‘double standards.’ Worse was to follow as China, after making full use of India’s help and support, began to reveal her intentions. At the Bandung conference China’s designs were noticed by foreign policy experts. The era of bonhomie and goodwill was coming to a close between the two giants of Asia. By 1957-58 Nehru, according to some Indian policy experts, realized the shift in Chinese policy but chose to play it down. The ‘great Chinese betrayal’ and aggression against India in 1962 ended Nehru’s dream and the euphoria of the Sino-Indian bonhomie of the early fifties.

(to be continued)

Bajaj’s *Oxford*

“Jamanlal Bajaj had improvised a curious vehicle –which he called Oxford— for journeys between Wardha and Sevagram; it consisted of an old Ford motor car drawn by a pair of oxen. That was used by Nehru, Patel, Rajagopalachari and others.” B.R.Nanda

Jiddu Krishnamurti on vegetarianism:

Question: Do you advocate vegetarianism? Would you object to the inclusion of an egg in your diet?

KRISHNAMURTI : Is that really a very great problem, whether we should have an egg or not? Perhaps most of you are concerned with nonkilling. That is really the crux of the matter, is it not? Perhaps most of you eat meat or fish. You avoid killing by going to a butcher, or you put the blame on the killer, the butcher – that is only dodging the problem. If you like to eat eggs, you may get infertile eggs to avoid killing. But this is a very superficial question – the problem is much deeper. You don’t want to kill animals for your stomach, but you do not mind supporting governments that are organized to kill. All sovereign governments are based on violence; they must have armies, navies, and air forces. You don’t mind supporting them, but you object to the terrible calamity of eating an egg! (Laughter) See how ridiculous the whole thing is; investigate the mentality of the gentleman who is nationalistic, who does not mind the exploitation and the ruthless destruction of people, to whom wholesale massacre is nothing-but who has scruples as to what goes into his mouth.

WORLD DEMOGRAPHIC TRENDS-12 ENERGY FOR THE BILLIONS

- Prof. M.N. Sastri

“If developing countries like China were to follow the US example in energy consumption, then the entire global oil supply should be sent to China- and it would still not be enough.” - GUO SHUQING, Chairman, China Construction Bank.

Energy from the Sun, the only God we can see, sustains all the life processes on our planet. The light energy radiated by the Sun converts carbon dioxide, water, nitrogen, sulphur and phosphorus into chemical energy in the form of carbohydrates and other energy-rich compounds in plant materials, which become food for plant eating organisms (herbivores) and a succession of meat-eating (carnivores) organisms. Huge quantities of this plant material are also accumulated underground over millions of years turning into chemical energy in the shape of coal, oil and gas (fossil fuels). Humans developed the capacity to convert this stored chemical energy into desirable forms, i.e. plant materials to meat, wood to heat and the fossil fuels to electricity and locomotion. This activity began with the primitive human, who originated in East Africa about two million years ago. To begin with he did not discover fire and its use. He could therefore eat only what was available from vegetation. After learning how to make fire about 1.5 million years ago, the primitive human was able to cook the animal meat he hunted and eat it, marking the beginning of the use of heat energy through burning wood. The early agricultural human who evolved about 5,000 years ago harnessed draft animals for growing crops, which helped him consume more energetic food. The advanced agricultural human of 1400 A.D. invented devices for tapping power from wind (windmills) and water (water wheels) and began using small amounts of coal for heating and animals for transportation. With the ushering in of the steam engine during the Industrial revolution in England in the 18th Century, there was a sea change in energy use. The steam engine helped in unlocking the huge deposits of coal, which became a rich energy source. The steam engine also allowed the transport of coal on a massive scale, providing power to locomotives, factories and farm implements. Coal became an energy source to produce steel for machinery. The world coal production, which was about 10 million tons in 1800, shot up hundredfold by 1900. The coal

powered steam engine was used for installing the world's first electric generator in 1880. Very soon electrical lighting was commercially available. The steam engine helped humans to unlock the Earth's vast fossil fuel and mineral deposits. This period also marked the harnessing of the hydro energy of the fast flowing rivers to generate hydroelectric power.

By 1800, oil, a new form of fuel underground came on to the energy scene. Initially it was used for lighting. By the end of the century oil was processed into gasoline (petrol) and this became the fuel for the internal combustion engine, challenging the steam engine for use in automobiles. The steam and oil engines brought about a total transformation of the means of transport over land, sea and in the air. With the development of the assembly line method of production, automobiles came within the reach of the common man. Ships and ocean liners of larger and larger dimensions displaced the sailing ships on all ocean routes of the world. Air transport became a reality in the 20th century with regularly scheduled flights crisscrossing the nations and continents. The decades following 1935 saw the use of diesel, a less expensive fuel. The diesel engines became the workhorses in industries, locomotion, and heavy transport.

Advances in electrical energy generation represent a landmark in energy production. Initially used for lighting, centralized electrical generating systems began operating urban electric tramways and underground railways (e.g. London underground) by 1880s. Several centralized electricity generating systems in Europe and North America began supplying electrical power to large urban centres. By the turn of the 19th century numerous electrical appliances such as stoves and irons, vacuum cleaners, washing machines and other domestic appliances that made domestic chores less exacting, appeared in the market. Gas supplied through pipes laid over long distances also met the energy requirements of the urban centres.

The early decades of the 20th century saw the development of hydro energy for electrical power generation through construction of dams across large rivers (e.g. Hoover Dam in the US). The post World War II period saw the harnessing of nuclear energy for electrical power production. Nuclear power plants soon sprang up in the industrial economies.

The second half of the 20th century ushered in the plastic era with oil and natural gas as the feedstock. The production of a variety of plastics (e.g. polystyrene,

polyethylene, PVC, polyacrylonitrile and Teflon) and chlorofluoro compounds (refrigerants) enabled the manufacture of myriad energy-consuming appliances such as air conditioners, driers, television sets, power tools and even fancy appliances like electric shoe buffers and tooth brushes. Synthetic fibres, antibiotics, fertilizers, pesticides and other chemicals and pharmaceuticals also are the products based on oil and natural gas. Several dramatic innovations in communications technology, printing, photography, telephone, mass communication systems etc. based on electrical energy made a tremendous social impact on human society.

These developments based on fossil fuel sources, which were considered cheap and plentiful, brought about revolutionary changes in the lifestyles of people transforming them into a technological society. Mechanized agriculture, fertilizers and pesticides increased food production. New pharmaceutical products provided better healthcare services. Millions moved to cities creating large urban complexes. Mass produced consumer goods and appliances offered the means for more comfortable living. Rapid transport systems, mass communication media made the world appear suddenly smaller and more accessible.

No other century in human history can compare with the 20th century for its growth in energy use. The technological man typified by an American citizen consumes about 115 times the energy consumed by the primitive man whose energy consumption was only through the food he consumed. Rough calculations show that the world in the 20th century used 10 times more energy than the energy used in the thousand years before 1900 AD.

The most notable feature, however, is the wide disparity in the energy consumption pattern between the industrialized countries and other developing countries. The US with less than 5% of world's population consumes 25% of world's energy. The per capita annual energy consumption (thermal, electrical etc) for 2007 in terms of Kilograms Oil Equivalent (Kg OE, the unit in which total thermal and electrical energy consumption is represented) for some representative countries in the two categories are, US – 7,920.5; UK – 3,993.8; Singapore – 7,103; China – 886.5; India – 514; Pakistan – 441; Bangladesh – 144.9 and Sri Lanka – 422 with a world average value is 1,788 Kg OE. This energy comes from Oil (34.4%), Natural Gas (21.2%), Coal (24.4%), Nuclear (6.5%) and Renewable (essentially hydro and wind)

(13.3%). The International Energy Agency (IEA) in its forecast for 2009 projects that the total world energy use will rise 44% from 2006 to 2030. 73% of this rise will be in non-OECD countries (e.g. China, India, Brazil and South Africa) compared to 15% in the OECD countries (30 industrialized countries including Japan and Korea).

Electrical energy is the most important energy source in domestic and industrial sectors. The per capita annual electrical energy consumption (in kWh) of some countries is, US – 12,924; UK – 5,773; China – 2,179; 8,176; India – 466; Pakistan – 430; Bangladesh – 139.54 and Sri Lanka – 348 with a world per capita average of 3,240 kWh. A major part of world population still lacks access to electricity. The UN estimates that more than 2 million villages worldwide are without electric power for water supply, refrigeration, lighting and other basic needs. Many African and Asian countries, including some oil-rich countries (e.g. Nigeria) are dogged by irregular and sparse electrical energy supply through a combination of droughts, wars and ageing equipment.

Worldwide demand for oil products could rise from 85 million barrels per day (mbd) in 2006 to 91 mbd in 2015 and 107 mbd in 2030. At the same time oil production rate is projected to decline by 6.7% in 2007 and 8.6% in 2030 putting pressure on oil supply leading to price escalations, as is being experienced already. Over 2/3 of the oil is used by the transport sector. Motor vehicles cars, trucks, buses and scooters account for nearly 80% of this transport related energy. In 1950 there were only 70 million cars, trucks and buses. By 1994 their numbers rose to 630 million. If the present rate of growth continues there will be 1.5 billion vehicles on the roads by 2025. If all the world's motor vehicles were to line up bumper to bumper they would circle the globe 120 times! US has a quarter of the cars with 1000 cars for 1200 people. China has 8 vehicles per 1000 people and India 7 cars per 1000 people. Actually the number of motor vehicles has roughly tripled in India while it has increased 10-fold in China. It is projected that transport energy use will rise in the developing economies (especially China and India) accounting for 60% of the rise in oil demand. To meet this rising demand China and India are already scouting the oil-rich countries in Africa, Middle East and Asia for oil and natural gas. Unconventional oil sources like oil sands are also being exploited for oil.

Unconventional biofuels are currently attracting attention as an alternative to fossil fuels as energy sources. The biofuels include ethanol and biodiesel. The consumption of biofuels is projected to reach 5.9 mbd in

2030. Biofuels currently make up some 1.67 per cent of the world liquid fuel (petrol, diesel etc), up 0.4 per cent since 2007. The consumption growth will be particularly notable in the US where production of biofuels is projected to increase from 0.3 mbd in 2006 to 1.9 mbd in 2030. Central and South American (e.g. Brazil) countries, OECD countries and some non-OECD countries including India would increase biofuel production. Diversion of land for biofuel production is already having serious adverse impact on world's food output.

If natural gas, a comparatively less expensive fuel is increasingly in demand for industrial use and electricity generation, with a consumption of 104 trillion cu.ft. in 2006, the demand is projected to increase to 163 trillion cu.ft. by 2030. One advantage of natural gas over oil is its higher energy/carbon ratio than oil and also less pollution effect.

Coal, the dirtiest fuel, continues to be in demand with its consumption projected to increase 127 quadrillion Btu (British Thermal Units) in 2006 to 190 quadrillion Btu in 2030. Much of the projected increase in coal use occurs in non-OECD countries, mainly in China and India. The coal based electricity generating capacity of China is projected to nearly triple from 2008 to 2030. Power generation in India will triple between 2005 and 2030, most of it based on coal and natural gas.

In the wake of dwindling fossil fuel resources and their rising costs as well as efforts to limit greenhouse gas emissions from the carbon-based fossil fuel sources, interest is once again directed to nuclear energy for electricity generation. Nuclear power generation which stood at 2.7 trillion kWh in 2006 is projected to increase to 3.8 trillion kWh in 2030. But nuclear power will continue to be dogged by controversy in the matter of nuclear power plant safety, radioactive waste disposal and concerns that nuclear power programmes could be abused for the covert production of destructive nuclear weapons.

Exploitation of benign renewable energy sources for electricity generation is now attracting greater attention in view of global warming from the emissions from fossil fuels. Currently much of the renewable electricity supply comes from hydro energy and to some extent from solar and wind energy. Estimates show that some 20 per cent of all electricity comes from hydro energy with China, Brazil and India being leading producers. WorldWide Fund for Nature (WWF) estimates that world's

economically feasible hydro energy potential is 2,270 gigawatts (GW) out of which only 740 GW are currently utilized. As most of the hydropower sources in the OECD countries have already been exploited, additional power contribution will be mostly from non-OECD countries like Brazil, China, India and South-East Asia. The growth in hydro power is slow because of the disastrous impacts on human settlements. Millions of people are forced to leave their traditional habitats which will be subjected to submersion through river dam construction. Ironically all the electrical power generated benefits the urban settlements and industry leaving very little for the displaced population. Wind energy has grown significantly over the past decade, from 11 GW in 2000 to 121 GW in 2008. The leading producers of wind power are: US, Germany, Denmark, China and India. With a wind energy potential of 45 GW in states of AP, Tamilnadu, Karnataka, Gujarat, Maharashtra and Rajasthan, India has till 2008 achieved an output of 9,655 MW of wind power. With an installed capacity of 12,210 MW China has overtaken India in wind energy output. Solar power, the most limitless source is not yet an economically viable energy source. But where electricity prices are very high, say in remote areas, power through photovoltaic is in use. Currently worldwide installed photovoltaic solar energy generation capacity in 2008 is 16.5 GW. Another method for the exploitation of solar energy is for cooking food, heating water and generating steam for power production by concentrating solar radiation using mirrors. The method, called the photo thermic method, is best suited for power generation in arid and semi desert areas that receive a great deal of sunlight. A plant covering 1,000 acres and producing 345 megawatts of electricity is currently operating in the Mojave Desert of South California. Plans are afoot for installing photo thermic plants in the Sahara Desert for supplying power to Europe. A similar programme is on the anvil for implementation in Gujarat state in India. As a part of an ambitious solar energy exploitation mission, India has recently approved expanding its current 3 megawatts output of solar energy to 20 GW by 2020 and 200 GW by 2050 at an estimated cost of \$20 billion. Other renewable energy sources such as tidal energy and geothermal energy only make marginal though meaningful addition to the world energy supplies.

As a consequence of the heavy reliance on fossil fuels as energy source during the last century, anthropogenic carbon dioxide emissions into the atmosphere have been rising very rapidly leading to global warming with adverse impact on climate and eco services. At the present rate

of fossil fuel consumption these emissions are projected to rise from 29.0 billion metric tons in 2006 to 33.1 billion metric tons in 2015 and 40.4 billion metric tons in 2030. Much of the increase is projected to occur in rapidly developing economies in the non-OECD (e.g. China and India) group mainly through the use of coal as the fuel. China plans to build 500 coal-fired plants during the coming decade. In 2006, the non-OECD emissions exceeded the OECD emissions by 14 per cent. This will rise to as high as 77 per cent by 2030. The Intergovernmental Panel on Climate Change predicts that this rise in the emissions will lead to a global temperature rise of 1.1-6.4 degrees Celcius (2-11.5 F) leading to catastrophic effects on biosphere. Some projections predict even a higher temperature rise. As a follow up to the Kyoto Protocol which expires in 2012, 193 nations met in December 2009 at Copenhagen and approved an accord with weak emission control pledges spelling out a target of less than 2 degrees Celcius for global warming. The rich nations pledged US \$30 billion per year and US \$200 billion a year from 2020 onwards as assistance to the poor countries 'for mitigation and adaptation' to the adverse effects of climate change. Another important component of the accord is to take steps for reducing deforestation. This pact however is not legally binding and allows countries to avoid any carbon energy constraints on their economic growth and do what they feel. Experts say that these weak pledges made are likely to place the world on a path towards a devastating temperature rise of 3 degrees instead of the 2 degree limit. Such a rise would drastically melt the Greenland and West Antarctic ice sheets causing submergences of low lying islands and cities, put the Amazon rain forest and other rain forest systems at risk of collapse, intensify droughts across the globe resulting in fall in food output and increasing hunger. Denis Meadows the lead scientist of the Club of Rome that produced the monumental report "Limits to Growth" in the 70s says, "It might have been possible to prevent serious climate change in the 1970s and 1980s but it is not anymore. We are on a roller coaster at the top of the hill; all we can do is to hold on tight."

The Copenhagen Accord betrays the reluctance of both developed and developing economies to move away from addition to lifestyles based on carbon-based fuels. The reason the world economies use carbon-based energy is due to its being the cheapest source of energy at the present time and is likely to remain so in the foreseeable future whereas the economic cost of decarbonizing the world's economy (through the use of

renewable alternate energy sources such as solar, wind) is massive, running into trillions of dollars. A commentator remarked, "The global community is left resembling an alcoholic who has decided to save up for a liver transplant rather than give up drink." The ramifications of this political Accord will emerge in the confabulations preceding the run-up to the Mexico 2010 summit which is slated to evolve a plan giving shape to mechanisms that spell out legally binding emission targets, deadlines and penalties for failures as well benefits to achievers.

The fortunes of the human society are inextricably linked with energy supplies that do not harm the biosphere. Providing affordable energy security to sustain global economies and pulling developing economies out of poverty, halting climate change, and protecting the eco services constitute a major technological challenge of the 21st century.

ENGAGEMENT WITH THE WEST - II

- Dr. R.V. Vaidyanatha Ayyar, I.A.S. (Retd.)
Former Secretary to the Govt. of India
Former Professor, IIM, Bangalore

Mahatma Gandhi was a major voice among nationalists but he was not the sole voice. Thus his views on the system of education that the British introduced were not shared by all his contemporaries. In fact, if one goes to the previous generations of Indians, we find Raja Rammohan Roy urging his countrymen to study the language and literature of the English, and Western science. Even now, nearly one hundred and seventy years later, it is not unusual for educational discourse to begin with a ritualistic execration of the infamous minute of Macaulay as being the fountainhead of all that is wrong with Indian education. One need not agree with the view that 'only when the document is read ahistorically and decontextually that the text comes across as an amalgam of racist and prejudiced opinions and an exemplar of the colonial-imperial mindset'. The hubris and prejudice of an English utilitarian are writ large in the minute. It is difficult for an India not to revolt against a goal of education that seeks 'to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect'. One wonders the Macaulay of the Minute is the same Macaulay who spoke in the House of Commons contending that it is 'far better for us that the people of India...were ruled by their own kings, but wearing our

broadcloth, and working with our cutlery, than that they were performing their salams to English collectors and English magistrates, but were too ignorant to value, or too poor to buy, English manufactures'. In public affairs it may be more appropriate to judge people by what they do than what they say; it is not unusual for a judgment to be right though the ratiocination might be wrong. Likewise, Macaulay's Minute should be judged by what it unintendedly did though, and not by the prose that was led astray by rhetoric. Many Indians who lived through the freedom struggle were not unaware of the merits of English education. K's father used to say that English education was for a living and for understanding political freedom, and Sanskrit education was for spiritual upliftment. One need not agree with all that Marx said about British rule in India; yet it cannot be gainsaid that British rule caused a 'social revolution in Hindostan'. During the freedom struggle, the boastful claims of the British that they civilized India were no doubt galling. But with the passage of time and the *Raj* ceasing to be a personal experience for most Indians, it is time to objectively evaluate the *Raj* period without nostalgia or personal revulsion. It is difficult to disagree with the assessment of the eminent historian, R C Mazumdar:

"India awoke from the slumbers of ages as a result of the impact (of English education). Rationalism took the place of blind faith, individualism supplanted the tyranny of dogma and traditional beliefs and authorities...the achievements of the Europeans in arts and science...infused new ideas and generated fresh vigour among men who had hitherto been content to leave everything to fate, to look back upon the past rather than the future, and turn the searchlight inwards rather than outwards over the wide world...one of its most precious gifts was the birth of nationalism in India".

Without any irony, one can say that Mahatma Gandhi himself was the product of English education.

Macaulay was challenged by the Oriental party headed by H T Prinsep, Secretary to Government of Bengal in the education Department, who wanted the Company to continue supporting Sanskrit and Arabic education. Naik and Nurullah felt that both the parties to the dispute were wrong, and that the correct solution to the problem would have been to adopt the Indian languages as the media of instruction, and to build a modern national system of education upon the foundations of the indigenous system. It would be fair to say that they underestimated the difficulty of developing

Gandhi was, and remains, greatly admired by some and cordially detested by others.

- Ramachandra Guha 7

textbooks in Indian languages at a time when dialects were so predominant with every major Indian language. And it was far too much to expect of foreign government which was chary of expenditure even on public works to develop teaching learning in multiple Indian languages. When K came across their views in their history of Indian education he was not sure and asked for C's opinion. C said that the best way to test the robustness of their views was to raise the counterfactual question of what if British did not emerge as the paramount power. Naik and Nurullah themselves provide the answer:

Certain of the higher castes were wholly literate in so far as the male adult population was concerned, while women of all castes (with a very few individual exceptions) and the entire population of lower castes were wholly illiterate...

Another feature that emerges from the study of the sources is that, at the beginning of the nineteenth century, the indigenous system of education was fast decaying on account of the prevailing anarchy or the growing impoverishment of the people under the British rule'.

Even when Mahatma Gandhi expounded his ideas of basic education, there was considerable criticism. Basic education was an 'embodiment of Gandhi's perception of an ideal society as one consisting of small, self-reliant communities'. Few, not even most of his followers, subscribed to his perception of an ideal society. As Ambedkar brought out vividly, the village society as it existed was far different from the ideal village society that Mahatma Gandhi spoke about. The Wardha Scheme coincided with the setting up by the Congress party of the National Planning Committee (NPC) with the avowed objective of creating a controlled planned economy and rapid expansion of large scale industries. NPC's sub-committee on general and technical education was reluctant to recommend a shift from the existing system, more so when there was an increase in the efficiency of the primary schools under the Congress ministries. It expressed the view that 'it would, therefore be wrong to displace the movement by one in favour of basic education'. It recommended that the 'introduction of basic education should be a process of grafting on to the elementary education'. Grafting was what the Congress ministries attempted after independence, with the heroic exception of Uttar Pradesh where all existing elementary schools were converted into basic schools without investing the complementary resources required for the conversion. The graft wilted away all over the country for many reasons, including the unwillingness of parents

to settle for what they perceived to be a second-best education. Opposition was particularly vociferous in Madras province. Teaching though craft is considerably more capital-intensive than normal teaching in formal schools because of the need to procure equipment and materials. With his remarkable ingenuity, Chief Minister C Rajagopalachari sought to overcome resource constraint by letting students learn craft from their parents at home in out-of-school hours. This triggered the criticism in that province with a long-standing anti-Brahmin movement. There was shrill criticism that the Chief Minister was trying to perpetuate Brahminical hegemony by forcing lower caste children to stick to the occupations of the castes in which they were born. Basic schools came to be a convenient stick for the opponents of Rajagopalchari within the Congress party to mount a challenge to his leadership; eventually the scheme of basic schools was withdrawn. Thus from a historical perspective, the Mahatma Gandhi magnificently failed in regard to basic education as much as with the three other things which he always stressed: the *Charka* or spinning wheel, denunciation of violence as a political method, and the Hindu-Muslim unity. However, it would be foolish to judge, like a nit-picking auditor, the achievement of a world-historical personality like the Mahatma solely with reference to discrete failures. What matters ultimately is his overall contribution, the enormous boost he gave to the spirit of independence and the lofty ideals he held before mankind.

Further, from his study of K lost his patience with name-calling and labeling and with the customary attribution of all the ills of Indian education to Macaulay, and to erosion of values. And further, as brilliantly, and on the spur of the moment, put by Arjun Singh in a parliamentary debate, to continue to blame Macaulay is to ignore the post-independent contribution of Indian educators like Sarvepalli Radhakrishnan, Zakir Hussain and D.C.Kothari. K acquired a better understanding of educational administration and he drew valuable lessons. First, the challenges of access, participation, quality and equity are not amenable to quick fixes. Secondly, educational interventions take a long time to yield results. Thirdly, best can often be the enemy of the good. Fourthly, success or failure depends not so much on the loftiness of the idea that one espouses or the eminence of the figure who espouses it, but whether that idea is acceptable to the parents and students. Fifthly, practical programmes that carry forward educational reform process are needed rather than rhetorical pleas for uprooting the existing systems. Lastly, statesmanship in

any field including educational reform consists in recognizing that administration is the art of the possible and yet striving to extend the limits of what is possible. The challenge of Education demands not *ad hominem*, knee-jerk reactions, but a well-considered response, which positions the challenge in its proper perspective, draws lessons from history and builds upon the efforts of the Past and visions of the future. To paraphrase Newton, what was needed was to stand up on the shoulders of Giants to see further and go further.

(Concluded)

Corruption in public service delivery and welfare programs - the supply-side explanation and solutions

- *Shri N. Gulzar*, IAS
CMD, APEPDCL, Visakhapatnam

(Lecture delivered at the Centre for Policy Studies on Dec. 26, 2009)

Government corruption, defined as “sale by government officials of government property for personal gain”, imposes debilitating economic costs on the society and its stakeholders. Its economic cost includes increasing the cost of doing business - bribes, transaction costs, delays, uncertainty risks associated with contract and law enforcement; raising the opportunity cost for citizens by way of lost time and money; lowering the quality of works and services delivered and thereby its net or life-cycle benefits; imposing entry barriers to competitors; shifting activities out from the country/state/area; and misallocating resources away from productive capital investments and to rent-seeking and speculative activities.

To this extent, it is the largest tax paid by both consumers (by way of higher prices and poor quality) and producers (lower profits) and drives a wedge between the actual and privately appropriated marginal product of capital. And being illegal, it creates more incentive distortions than the usual taxes apart from not adding anything to the revenues of the government.

Conventional explanations of corruption have relied on supply side arguments which claim that government officials “demand” bribes and therefore leaves citizens with no option but to pay up or else face harassment and delays in accessing public services. Bribery, fraud, embezzlement, kickbacks, cronyism, and extortion by the nexus of politicians, bureaucrats and criminals nicely fit

into the popular stereotype of government corruption.

The conventional approaches to controlling such corruption are typically top-down and include fool-proof regulations, strict enforcement of severe punishment for violators, limiting discretion for officials, transparency, accountability, decentralization of administration and supervision, and awareness creation among citizens. There is a limited role for the citizens in these solutions.

However, I am inclined to argue that the aforementioned explanation is only half the story and ignores the demand-side forces that often triggers and certainly amplifies the supply-side pressures. However much recent financial market turmoils have discredited the “rational economic man” hypothesis, it cannot be denied that human beings respond to incentive, and incentives matter even more when the stakes are high or pay-offs substantial and the costs of deviation minimal and its deterrent low.

The socio-economic and administrative environments in countries like India provide ample opportunities for corruption and pilferage - an entrenched culture of tolerance for such corrupt practices, people willing to pay much higher prices for accessing services, badly paralyzed and ineffectual enforcement mechanisms, governments with monopoly of delivering public services and so on.

People “pay” bribes to illegally (ineligible, out-of-turn etc) access government services at a lesser cost and without any inconvenience. Incentive distortions that encourage people into acting so arise due to benevolent rules, incomplete monitoring of rules etc. Consider the following sets of incentives.

Why access services with great difficulty, when it can be had conveniently by outsourcing the activity for a price (and the agency finds ways to keep costs down by gaming the system and developing a greased-palm network)? Why abide by (building or factory licensing) regulations when you can avoid or get around it by paying for it? Why pay more taxes when you can evade taxes at a much lesser cost (by bribing the official)? Why leave out the easy money in government contracts when you can bribe the official and compromise on service or work quality? Why stand in ques when one can access the need/service out of turn by using connections or by bribing the official? Why not grab public resources and encroach government land or buildings when it can be had at far lesser price than its market value?

The Independence of 1947 was the triumph of British ideas and institutions without the British.

- Octavio Paz 9

Corruption in the myriad welfare programs has been the focus of much attention and debate. A multi-layered bureaucratic architecture, supported by an elaborate system of guidelines and procedures exist to both select beneficiaries and administer the delivery of benefits. However, the complexity of this bureaucracy creates ample opportunities for collecting bribes for moving files and expediting decisions, bribes for sanctioning works and selecting beneficiaries, and disbursing benefits.

Addressing corruption therefore requires going beyond the usual regulatory approaches to appropriately aligning incentives within the system so as to get officials and citizens to act in accordance with rules. Change incentives to change behaviour.

Regulations have to be kept to a minimum and as simple as possible. It is important to avoid falling into the trap of excessive reliance on procedural rigour and bureaucratic oversight that ironically enough ends up increasing rather than decreasing the opportunities for corruption. Some official discretion, with attendant risk of rent seeking, is a more efficient trade-off, especially in an appropriately tailored regulatory environment. It is surely better to have a program that achieves at least some of its objectives (while enriching a few), than have one that only enriches the many without achieving any of the objectives!

A more institutional approach to containing corruption in the delivery of welfare programs is to expedite the implementation of two recent initiatives of the government - Total Financial Inclusion (TFI) and Unique Identification (UID) number. A UID number helps in targeting beneficiaries of welfare programs, so as to avoid duplication and fraudulent claimants. An individual bank account provided under the TFI program enables the direct transfer of welfare assistance, and thereby avoid the problems of leakages and pilferage that characterize the delivery of welfare benefits. Taken together, both UID and TFI can go a long way towards eliminating corruption in welfare programs.

We can also go beyond the traditional norms of transparency by rating various government agencies on the levels of corruption in them. Such ratings, to be done by an independent non-government agency, can use surveys to measure actual and perceptions of corruption. Grading can be done across departments and sections within the same department. These grades can then be publicized so as to create public stigma and instill a sense of shame among officials of the department, and thereby

generate some momentum towards reform. The same rating disclosure can be extended to cover officials in various departments.

It is commonly observed that people's willingness to pay for specific services/goods are higher than the price formally charged. In view of the general perception of difficulties associated with accessing government services, people access the service by resorting to paying the differential (or a part) as rent directly to the official concerned or outsourcing to a broker for a price. These brokers in turn end up striking a mutually beneficial partnership with the officials and a rent-seeking chain gets entrenched.

The problem arising from the higher willingness to pay for civic services can be overcome by introducing differential pricing for them. In other words, citizens who pay brokers and agents to access services without inconveniencing themselves can be encouraged to make those payments directly to the government by offering an additional category of service provision that takes care of the concerns of these people and deliver services swiftly and without any hassles. The tatkal service for railway tickets, priority banking services are examples of such service delivery.

Since government monopoly of public service delivery is a major contributor towards breeding corruption, it is only appropriate that there be alternative channels for delivering the same service - either within government or private ones. The competition arising from this can be an effective check on keeping some control on corrupt practices. For example, the delivery of civic services like assessment of property tax or birth registration can be either through the regular municipality office or an outsourced customer service center. Within the same department itself, the presence of multiple officials at different locations and levels to access for accessing specific services can generate competition among them and keep corruption under check.

A more subtle way to address the corruption challenge is to "nudge" people into acting or taking decisions in a manner that they would otherwise not have done. This can be done by structuring or designing the environment in which they act or make decisions. Computerization by way of work-flow automation environment of entire chain of activities, using default choices and pre-defined options and an integrated database can help design the environment so as to make people to act as desired.

Ancient India had a larger atheistic and agnostic literature than any other classical civilization.

- William Dalrymple

Other examples of nudges include removing drawers from the tables of government offices so as to eliminate the preferred location for stashing away bribes; removing the pockets from the pants of officials working on regulatory beats (like the Nepalese government did with airport staff at Kathmandu international airport); unmanned honesty cafes (as being experimented in Indonesia) where people can help themselves of beverages and snacks and make payments voluntarily into drop boxes.

BASIC STRUCTURE AND BASIC HUMAN RIGHTS – A RELOOK AT KESAVANANDA

- Prof. R. Venkata Rao
Vice-Chancellor
National Law School of India University
Bangalore

There are times in the life of a nation when events overtake it. *Kesavananda Bharati v. State of Kerala* is undoubtedly such a moment for India. Indeed, much has been said about this decision, and many adjectives have been coined in an inadequate attempt to fully grasp the magnitude of its contribution to Indian democracy. Much has been written about the role its progenitor, Nani Palkivala, played in the episode. I do not propose to revisit these, important as they are, for there is one feature of *Kesavananda* that has gone curiously unnoticed - its contribution to *human rights*.

The average observer of Indian law and politics would not associate *Kesavananda* with human rights in the manner he would *Maneka Gandhi*. The reason perhaps is that human rights flow *from* the basic structure doctrine, but did not create it. In other words, it is not *solely* the concern of protecting human rights that moved the court to evolve the basic structure doctrine. However, this cannot detract from the importance of the connection between the doctrine and what has unquestionably emerged as the most important branch of public law in the 21st century - human rights.

Judicial History - *Sankari Prasad* to *Golaknath*

The Constitution (First Amendment) Act, 1951, which inserted inter alia Articles 31A and 31B in the Constitution was the subject matter of decision in *Sankari Prasad's* case, the first of the trilogy of cases that preceded the seminal decision in *Kesavananda Bharati*. The main arguments in favour of unconstitutionality revolved around whether the amendment procedure whether the Amendment Act, in so far as it purports to take away or

abridge the rights conferred by Part III of the Constitution, fell within the prohibition of Article 13(2). The Court rejected all contentions based on the amendment procedure. In response to the contention on the scope of Art. 13(2), the Court opined:

Although 'law' must ordinarily include Constitutional law there is a clear demarcation between ordinary law which is made in the exercise of legislative power and Constitutional law, which is made in the exercise of constituent power. In the context of Article 13, 'law' must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.

The next time the issue came before the Court was 13 years later in *Sajjan Singh's* case. It is interesting note that the propriety of *Sankari Prasad Singh Deo* was not challenged in *Sajjan Singh*, but Justice Gajendragadkar, C.J. still thought it fit to give reasons in support of the reasoning of Justice Patanjali Sastri in *Sankarai Prasad Singh Deo*. The learned Chief Justice thought that the power to amend in the context was a very wide power and it could not be controlled by the literal dictionary meaning of the word 'amend'. He further held that when Article 368 confers on Parliament the right to amend the Constitution, it can be exercised over all the provisions of the Constitution. He thought that "*if the Constitution-makers had intended that any future amendment of the provisions in regard to fundamental rights should be subject to Article 13(2), they would have taken the precaution of making a clear provision in that behalf*". He was of the view that even though the relevant provisions of Part III can be justly described as the very foundation and the cornerstone of the democratic way of life ushered in this country by the Constitution, it cannot be said that the fundamental rights guaranteed to the citizens are eternal and inviolate in the sense that they can never be abridged or amended. According to him, it was legitimate to assume that the Constitution-makers visualized that Parliament would be competent to make amendments in these rights so as to meet the challenge of the problems which may arise in the course of socio-economic progress and development of the country.

These two cases show the approach of the Court to questions of the status of fundamental rights and, in turn, human rights. The Court rejected the contention that fundamental rights could not be amended, and allowed such amendment by normal amendment procedure, leaving these so-called inviolable shorn of much-needed protection. However, while these decisions were

detrimental to fundamental human rights, that is not, in itself, an indictment of their reasoning and rationale. For one, much could be said for the textual interpretation of the relevant provisions by Justice Sastri and Justice Gajendragadkar. Secondly, the Court pointed out the very valid concern that the unamendability of fundamental rights would mean that Part III of the Constitution could not stay in step with socio-economic changes and developments. Such a static Constitution was clearly not in the best interests of the nascent Indian democracy, and could not have been intended by the drafters. Finally, a survey of decisions in this period reveals a general reluctance on the part of the Court to impose competence-based restrictions on the Parliament. Given that India became a Republic in the year when *Sankari Prasad* was decided, and was all of 14 years old at the time of *Sajjan Singh*, this sentiment cannot be criticized either. However, while a majority of the Court interpreted the Constitution with a strong emphasis on the presumption of constitutionality of Parliamentary legislation, a dissenting note was struck by Justice Hidayatullah, which went on to lay the foundations of *Golak Nath's* case. In his words,

It is true that there is no complete definition of the word 'law' in the article but it is significant that the definition does not seek to exclude Constitutional amendments which it would have been easy to indicate in the definition by adding 'but shall not include an amendment of the Constitution' ... The meaning of Article 13 thus depends on the sense in which the word 'law' in Article 13(2) is to be understood ... The Constitution gives so many assurances in Part III that it would be difficult to think that they were the play-things of a special majority. To hold this would mean prima facie that the most solemn parts of our Constitution stand on the same footing as any other provision and even on a less firm ground than one on which the articles mentioned in the proviso stand.

This dissenting view of Justice Hidayatullah, formed the foundations on which the decision in *Golak Nath's* case was based. As observed by no less a jurist than Granville Austin, the period around the time Ms. Indira Gandhi came to power was when the confrontationist stance between the Court and Parliament began to emerge, and the evolution of the basic structure also possibly owes its origins to this politico-judicial situation. In *Golak Nath*, the petitioner urged before the Court that *Sankari Prasad's* case and *Sajjan Singh's* case had been wrongly decided by this Court. Subba Rao, C.J. speaking for himself and 4 other judges summarized the conclusions as follows:

(1) The power of the Parliament to amend the

Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure. Amendment is a legislative process.

(2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

However, the Chief Justice refused to express an opinion on the contention that, in exercise of the power of amendment, Parliament cannot destroy the fundamental structure of the Constitution but can only modify the provision thereof within the framework of the original instrument for its better effectuation. Justice Hidayatullah reaffirmed this decision, observing that:

(i) the Fundamental Rights are outside the amendatory process if the amendment seeks to abridge or take away any of the rights;

(ii) *Sankari Prasad's* case (and *Sajjan Singh's* case which followed it) conceded the power of amendment over Part III of the Constitution on an erroneous view of Articles 13(2) and 368.

(iv) that this Court having now laid down that Fundamental Rights cannot be abridged or taken away by the exercise of amendatory process in Article 368, any further inroad into these rights as they exist today will be illegal and unconstitutional unless it complies with Part III in general and Article 13(2) in particular;

(v) that for abridging or taking away Fundamental Rights, a Constituent body will have to be convoked

This mapping of the judicial path traversed by the Supreme Court from 1950 to 1967 shows how judicial deference gave way to an activist protection of fundamental human rights over the better part of two decades. It is against this backdrop that the decision of 13 judges of the Court in *Kesavananda Bharati* assumes great relevance.

Kesavananda Bharati - Redefining the Indian Constitution

I mentioned earlier how the dissenting opinion of Justice Hidayatullah in *Sajjan Singh* led to the decision in *Golak Nath*. Similarly, it was Justice Mudholkar's dissent in *Sajjan Singh* that led to *Kesavananda Bharati*, and the evolution of the 'basic structure' doctrine.

Interpreting the intent behind the different provisions in the Constitution, the learned judge observed that it was meant to be a document that gave effect to some sacrosanct values, and had to be interpreted as such. All the efforts of the Constituent Assembly were directed towards the founding of a nation based on these immutable values. *“Above all, it formulated a solemn and dignified Preamble which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indications of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution?”* Further, *“It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368?”* This line of argument was taken further by the likes of M.K. Nambiar when arguing *Golaknath*, but finally saw the light of day in *Kesavananda*.

The period between 1967 and 1973 was one of great Constitutional conflict, with the status of the right to property, and issues of the guardianship of the Constitution dominating political and judicial debates. Finally, the constitutional validity of amendments by which two State enactments were added to the Ninth Schedule, and granted Constitutional immunity, was challenged before a full Bench of 13 judges of the Supreme Court in *Kesavananda Bharati*. These enactments had already been struck down as unconstitutional by the Kerala High Court in *VN Narayanan Nair* before the said amendment. The Supreme Court decision comprises eleven separate judgments, resulting in a veritable quagmire of judicial *dicta* and jurisprudential controversies. In an attempt to resolve some of these issues, nine judges signed a summary I statement which records the most important conclusions reached by them in this case. However, as Granville Austin correctly points out, there are several discrepancies between the points contained in the summary signed by the judges and the opinions expressed by them in their separate judgments. However, these discrepancies aside, the decision gave birth to the seminal concept of the ‘basic structure’. Seven of the thirteen judges in the *Kesavananda Bharati* case, including Chief Justice Sikri who signed the summary statement, declared that Parliament’s constituent power was subject to inherent limitations. While there was a great degree of uncertainty as to what these limitations were, a majority of the Court agreed that there were *some* limitations. These limitations were the basic structure of the Constitution.

However, one question that has troubled jurists and constitutional experts alike is: where does the basic structure *originate* from? Is it a set of values that the drafters of the Indian Constitution *sought to protect*, and which, in turn, should influence its interpretation? Or is it a set of *provisions of the Constitution*, which were meant to be its foundations, which should be preserved at any cost? The decision in *Kesavananda Bharati* seems to be deeply ambiguous on this issue. The emphasis placed by some of the judges like Justice Sikri on the Preamble suggests that the basic structure has an extra-Constitutional origin. However, Justice Chandrachud’s enunciation of the basic structure doctrine in the subsequent decision in *Indira Gandhi v. Raj Narain* suggests otherwise. While he dissented from the majority in *Kesavananda Bharati*, he laid down a test that is now widely quoted as the accepted standard for a basic structure analysis- *“to examine in each individual case the place of the particular feature in the scheme of the Constitution, its object and purpose and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of the country’s governance”*. This statement can be taken as very strong authority for the proposition that the search for the basic structure of the Constitution begins and ends in the Constitution. This issue is quite apart from the other raging debate of what the basic structure consists of, which essentially, is an issue of substance. This issue is one of procedure- where does one look for the basic structure of a Constitution. As I will now elaborate, especially in the context of human rights, this debate is of immense importance.

Kesavananda Bharati and Human Rights

Having discussed the evolution of the basic structure doctrine and its actual enunciation in *Kesavananda Bharati* and the cases which follow, I now move on to the final issue I shall be discussing here. One of the most interesting aspects of the relationship between *Kesavananda Bharati* and *Golak Nath* is the differing stances adopted on the sanctity of fundamental rights.

From an entirely human rights perspective, the decision in *Golak Nath* seems *prima facie* ideal. Laying down that the fundamental rights are immutable and unchangeable, the decision seemed to establish beyond doubt the primary importance of the rights in the Indian Constitutional scheme. On the other hand, *Kesavananda Bharati* seemed to be more equivocal on this aspect. Six judges on the Bench were of the opinion that the basic structure doctrine found no place in Indian jurisprudence. Six were of the view that the basic structure doctrine was a tool available to the Indian judiciary, and that fundamental rights formed an essential part of this basic

structure. Justice Khanna, whose opinion is probably the narrow thread on which Indian Constitutional integrity rests, opined that while there was a basic structure to the Indian Constitution, fundamental rights *per se* did not form a part of it. In this scenario, did *Kesavananda Bharati's* departure from *Golak Nath* signify a departure from the primacy of fundamental human rights?

I think the answer to that question must be in the negative. The effect of *Golak Nath* was that Part III of the Constitution was rendered untouchable. Not only was a *dilution* of the rights impermissible, any *modification* of the rights would also not be possible. This means that in cases where the socio-economic milieu of the country necessitated the adaptation of existing rights, or the addition of new rights to Part III, the Parliament would be powerless to do so. This static Part III clearly could not have been the intent of the Constituent Assembly, which intended a Constitution for the future of India. Thus, the rigidity of the *Golak Nath's* decision is a double edged sword which crystallizes the fundamental human rights as they existed at the time of drafting, which safe as it may be, is not in the best interests of Indian Constitutional dynamism, and neither in the best interests of actual effectual human rights delivery. *Kesavananda Bharati*, on the other hand, laid down the broader proposition that there is some basic structure to the Constitution which is immutable and unchangeable. As long as this is preserved, the Constitution can be amended and adapted to cater to changing socio-economic and politico-legal realities. This means that Fundamental Rights in India can be amended, as long as they do not depart from what was intended as being a part of the basic structure. The decision is left to each subsequent Bench of the Supreme Court, to decide on facts before it, what comprises the basic structure. This stance, in my opinion, is more ideally suited to constitutionalism than the view adopted in *Golak Nath*. The only down-side to the dynamism that *Kesavananda Bharati* allows is the possible reluctance of future judges of the Supreme Court to be champions of civil, political economic and social liberties. However, a survey of the Indian Supreme Court's jurisprudence over the last three decades proves this concern to be unfounded. The Supreme Court has repeatedly shown itself to be the bulwark of these rights, adopting an activist and firm stance to accommodate social concerns in the Indian Constitutional jurisprudence. With such dynamic judges on the Court, concerns about the basic structure doctrine proving to be an illusory doctrine can be laid to rest in peace.

The final issue that remains to be addressed harks back to the question of origins of the doctrine. I mentioned

earlier that it is unclear whether the basic structure doctrine originates from the Constitution or is extra-Constitutional. The significance of this decision cannot be better explained than by looking at the decision of the Supreme Court in *ADM Jabalpur v. Shivkant Shukla*. Widely regarded as one of the lowest ebbs of Indian Constitutional history, there is much which could be said for the legal reasoning adopted by the majority. Their point was simple- the rights granted by the Indian Constitution are exhaustive, and have no place outside the Constitution. Hence, any suspension of these rights permitted by the Constitution, extinguishes the rights altogether. Justice Khanna, in a sole scathing minority opinion, begged to differ. In his view, Part III of the Constitution merely codifies the rights which exist outside the Constitution. Hence, even if part III may be suspended by a Constitutionally permissible procedure, the rights continue to exist. This clearly shows the significance of resolving whether the basic structure finds place outside or inside the Constitutional document. The other importance of this debate is the possibility of borrowing from international jurisprudence, if the basic structure were considered as having a wider scope. Over the few decades, there has been an active human rights movement all over the world, which India is still lagging behind in. Taking a more expansive view of the basic structure doctrine will allow the Court to guide the evolution of the Indian Constitution to be in step with international human rights developments, thus truly making it a document for eternity.

In short, it is time to reassess the basic structure doctrine as a matter of some urgency. To add greater cohesion to this doctrine, it is indubitable that courts must define it more precisely than has been possible to date. While it is no doubt the case that these are terms that resist a precise definition, I have tried to demonstrate that perhaps this exercise may usefully take the *direction* of human rights, and fundamental rights. History will, as ever, be the ultimate witness to the success or failure of these efforts - but it is certain that April 24, 1973 will always be remembered as a day that defined India's constitutional history.

THE IDEAL WOMAN-II

- Sri C.Sivasankaram

Sita in one of her previous incarnations was Vedavati. Her captivating symmetrical physical features caught the sinful eye of Ravana. He hastened to rope her in as the queen of his harem. The Aryan womanhood, Royal in its spartan tradition induced her to self-immolate lest the

China is a big power with a small power mindset, and a small power chip on its shoulders.

unlawful hand of Ravana should touch the skirt of her indubitable chastity. She vowed to wreak vengeance against the giant king Ravana in her next incarnation as Sita risen out of Mother earth found in the furrow carved by plough. Her vow is realized having been born as Sita in the house of King Janaka.

God manifests himself as the universe in active association of Maya. His visible consort Sita is the creative energy. She creates the animate and the inanimate eternally staying in inseparable proximity of Sri Rama. For Sita Sri Rama is ever vigilant witness, pure self. He is *parabrahman sat, chit, anandam* and imperishable. She is the doer. She is the rightful enjoyer. She is the tower of energy circulating it non-stop all through her created world.

Destiny so willed that Sri Rama was to go on exile to forest. Sri Rama himself being *purushottama* by calling and as it is derogatory to the nobility of his calling and regal prerogative, and having been able to surmise the cause of the tumult and wailing in the Royal chambers he himself sentenced to live in forest as exile for a term of fourteen years to fulfil the promise of two boons his father made to his favourite spouse Kaikeyi the mother of Bharata. Without awaiting king's pronouncement Rama the *purushottama* took the road to forest. That had been the sublime way a son of supreme commitment should follow.

(Sita the Aryan woman was conscious of her part to the hilt in the avataric mission of Sri Rama). Sita was the operative principle in the process of execution of the task of subduing the foe and bring to book all elements working against the law of the land. It may not be taking too much of liberty to say that the Ramayana, so to speak

is the veritable and curious annal of Sri Sita. In fact, the subtitle of the first epic is the chronicle of Sri Sita. Sita is *Pokavimohini* inspired and animated by intense love and concern for the world. She being the concentrated dynamo of feminine power (Maya/Sakti) could effect extinction of the bloody enemies of good life, peace, law and order. She was quite justly eager and anxious to go along with her lord Sri Rama for He without Sita is void and devoid of virility. Sri Sita the daughter of Mother Earth, was aware of the pain and suffering her mother has been going through having been subjected to bear witness to the marathon anti-human misdeeds of the arrogant giant king Ravana.

Sri Sita the matchless pativrata wished to follow the light of her splendid life, Sri Rama, the acknowledged embodiment of Dharma, to the forest. Sri Rama tried to dissuade her from following him to the terrible forest. He cited some unsavoury unfavourable and harmful features of the forest and the road that Sri Sita had to face. He wanted her that the road would be littered with stones and thorns and some kind of poisonous insects and snakes etc. Pat came the answer from the Aryan woman Sri Sita that the so called disadvantageous stones would transform into flowers, and the violent beasts metamorphose into pents and the poisonous snakes etc. would turn innocuous creatures when the monarch of her heart Sri Rama was beside her and she would experience the pleasure of walking along a superbly mended Royal road. There is spotless love and heavenly romance in the artless answer of Sri Sita. Her love is tender, graceful, delectable, immaculate and unearthly.

(to be continued)

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