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## OUR DEMOCRATIC REPUBLIC AND ITS GREAT INSTITUTIONS

*Nothing we think or do is void or vain;  
Each is an energy loosed and holds its course.  
The shadowy keepers of our deathless past  
Have made our fate the child of our own acts, ...*

Aurobindo, *Savitri* (Book IV, Canto IV)

### Introduction

I have evergreen in my mind the jubilation that my father felt on 26 January, 1950, when our country became a republic with its own Constitution. It was quite natural as he had undergone much travail working to realize this dream. Whenever I recall my memory of that day, I feel enthralled by the euphoria people shared then, and the steadfast vision of hope we all shared together with passionate intensity. Sometime in the early 1950s, I visited New Delhi along with my parents to see our country's capital. After a nice breakfast at the Moti Mahal Restaurant, we went to see various places which included a visit to the North Block of our Central Secretariat. I had read on the arch at Gate No. 3 a famous quotation from Charles Caleb Colton (1780–1832): 'Liberty will not descend to a people. A people must raise themselves to liberty. It is a blessing that must be earned before it can be enjoyed.' My father put his gloss on that telling me that, after a long struggle, we had raised ourselves to liberty within less than two decades of the inscription thus inscribed on the ochre rock. We had earned our freedom, and hoped to enjoy its fruits. That inscription still remains on the arch, rarely read and seldom understood. More than six decades have gone when I had read it. I read it again and again whenever I went there for fun or function. We had made our grand tryst, in 1950, with our Destiny with our Constitution as the loadstone. What we have made of ourselves deserves our honest, continuous, and critical examination for remedial actions. At long last, we earned our freedom from servitude, but do we enjoy its fruits? The answer should come, not from the heartless billionaires stealing from the bowls of the beggars, but from those who are known as *asaam aadmi*. In 1958, we all had heard Mukesh in the Hindi movie, "Phir Subaha Hogi", but how long our Bharat would suffer just waiting for "*Wohsubahakabhi toayegi*"<sup>1</sup> (when will that time come). My mind goes to 1954,

when I was in my teens. I wrote my book, *Bharat ki Aitihāsik Jhalak*, published in 1954. I had written in that book:

“The best specimen of republican polity is India. In this country we have set up a democratic republic in contradiction to the ‘monarchical republic’ of England.”<sup>2</sup>

But over the 1960s and 1970s, I was just a cog in the machine that we call ‘government’. Whatever moss I could gather as a rolling stone in the Income-tax Department, is now my treasure from which something I have drawn for writing the Book II of my Memoir. Over those years, I moved in the groove of a structured routine at different administrative rungs. I had no time to reflect on our polity with any measure of seriousness. But I felt jolted on reading N.A. Palkhivala’s *Our Constitution defaced and defiled* (1974). Palkhivala was my icon, and I had always considered him a man of sound judgment on legal issues. In the three decades thereafter I have had many contexts to reflect on our Constitution at work. What has shocked me most is our people’s indifference to what has happened to our dreams that had led to our Constitution creating in our country a sovereign democratic republic. It was inconceivable that our citizenry would ever smug under the notion with which Doctor Faustus, held ransom to Lucifer, had invited his doom: *Que sera, sera*” (What will be, shall be). My mind has wandered in many worlds in search of light. It was just a chance that in some vacant mood I read Sigmund Freud’s, *Civilization, Society and Religion* that I had got from late Dr. S.P. Jha, a neurologist, who had studied in 1930s at the University of Vienna where Freud had worked and established his eminence. I chanced to read these lines;

“There is something to be said, however, in criticism of his disappointment. Strictly speaking it is not justified, for it consists in the destruction of an illusion. We welcome illusions because they spare us unpleasurable feelings, and enable us to enjoy satisfaction instead. We must not complain, then, if now and again they come into collusion with some portion of reality, and are shattered against it...”<sup>3</sup>

But I have never been able to persuade myself to accept what Freud said in his cynicism. The citizens of a democratic republic cannot afford to think that way. Cynicism is capable of producing ‘death-wish’ to which the great Freud himself had succumbed: he committed suicide! Life is God’s gift under trust for the welfare of all.

Several times, in my later years, whenever I have reflected on the conditions of our Republic, some strange ideas have got yoked together in my mind. In some context, one of my teachers of Political Science had told us: “If you cannot learn from the lives of the good and the great, learn lessons from the lives of the courtesans and whores; if saints can teach, sinners too can do that. Their stories are heuristic, but what you draw from them depends on your wisdom in reading the text of their deeds.” And then he summarized the story of *Women beware of Women*, a tragic play written by one of Shakespeare’s contemporaries, Thomas Middleton. I hold him in great esteem for so skilfully jerking us up with his uncanny insight and perspicacity. We have known about Ambapali, the courtesan of the Republic of Vaishali, whose sense of values even the Buddha appreciated; about Bindumati, a whore at Pataliputra, whose fidelity to her duty had enabled her to appease the wrath of the Ganges out to inundate the city; about the

Vaishya who made even Vivekananda realize his mistake, and about the Barbadhu, who taught me how a role performance can change one's personality. But here, when I am reflecting on the affairs of our Republic, I must tell you the story of Middleton's tragic play as it can help us to evaluate what we see all around us, to draw lessons to tread ahead with wisdom otherwise we are sure to come to the plight of Milo's Rome about which I have written in Chapter 21. Middleton's story is an excellent metaphor, the import of which is precisely what we get in Munshi Premchand's *Shatranj Ke Khiladi*, which I have summarized in Chapter 25. Such a story is, to say in the words of Bacon, "to be chewed and digested".

*Women beware of Women* tells us about Binaca Capello, an Italian beauty, who was ravished in the background of her husband's house, whilst in the foreground her protector was engrossed playing chess wholly unmindful to what was happening inside. This crime of ravishment was facilitated by Livia, professionally a procuress and corruptor, who had become a partner in the game of chess. When the sentinel on the *qui vive*, abandons trust, roguery takes a toll. Middleton came again to the game of chess in his *Game at Chess* in which the characters are chessmen, the white ones being the English (the White King was King James of England, and the White Knight was Prince Charles) and the black ones, the Spaniards. It turned out a political allegory portraying how they played a sort of a geopolitical game of chess totally unmindful of the things getting worse and worse for them in their countries. Their cumulative sins visited King Charles, who had not only received a short shrift from Parliament, but even had his head cut off in 1649. The business lobby, the remote predecessor of the present-day corporate lobby, could not help him to save his soul. Even the dexterous Lionel Cranfield, a business tycoon working for the king with no holds barred, failed to help him out. And he kissed his doom providing lessons for all of us. This is how the world goes. But playing the game of chess can be disastrous. T.S. Eliot, in his *The Waste Land*, composed a section on 'A Game of Chess' where the players come to say:

And we shall play a game of chess,  
Pressing lidless eyes and waiting for a knock upon the door.

And this 'knocking' drags into our mind Act 2 of Shakespeare's *Macbeth* where the Nemesis is advancing fast to overtake Macbeth whose hands were drenched with the honest King's blood! When public affairs become a game at chess, some knocking at the door is always the operation of divine justice: it comes to-day or to-morrow: but it surely comes.

I have told you about these two stories at a high level of abstraction and generality, but I am sure you have caught the points I have tried to suggest. These stories suggest ideas which we must carry in mind while examining our Constitution at work, and the institutions we have created for our good.

I cannot enter into their details as this autobiographical Memoir has its constraints. But I think it worthwhile to reflect in this Chapter on our 'democratic republic' keeping in my mind what the great Vyasa had said in the *Mahabharata* (my rendering from Sanskrit):

It is prudent to find and forge some ways  
To diagnose the cause to get rid of the ailment.

In this Chapter, I intend to reflect on our Democracy, and its great institutions, our Parliament, and the political parties at work in our country. Bertrand Russell struck a core point aphoristically, he said: "Institutions mould character, and character transforms institutions, Reforms in both must march hand in hand."<sup>4</sup> The most worrisome phenomenon in our country is the decline in character, and, as its inevitable consequence, the decline of our great democratic institution, Parliament. Every institution declines, if it gets manned by debased creatures; and conditions get created where people's vigilance declines, where attitude of helplessness and hopelessness sets in.

## I

### DEMOCRACY

#### **(i) I cannot forget the vernal breeze from our classical India**

Under our cultural tradition, our polity was always 'democratic' and 'socialistic'. It was 'democratic' as there existed no distance between the interest of government and that of our people. J. Bronowski has aptly said: it was this distance between people and government that ruined Babylon, Egypt and Rome. Our ancient polity was essentially democratic and socialistic. Kings were either elected by people, or were accepted on account of their proved worth. They were always subject to *Dharma*, and were accountable to people. When a king grew anarchic, either he was removed from power, or was destroyed by people. We have several such examples. The type of absolute 'sovereign kingship' that we get in the *Leviathan* of Hobbes, or in *The Law of Free Monarchies* of James I of England in the 17th century, was unknown. No king in the ancient India said that he was the State ("L'Etat, c'est moi"). *Dharma* constituted the basic structure of the constitution, and the king could easily be questioned even by the humblest amongst the people. The ideal, set before the government, was deeply saturated with the egalitarian values (which are now at the heart of our present Constitution). An expert, in her research work, summarizes the objectives, which according to Krishna, were to be pursued by the kings:

"It is the King's duty to establish new trade and commerce in his land for the benefit of his people. It is possible to improve the economic conditions of people only through new and innovative commercial enterprises. When Krishna saw that the land was rich in cattle wealth, he saw to it that this enterprise was recognized as a profession. Earlier this enterprise was not growing because of the extractive tyranny of Indra who mopped out all its profits. Krishna taught people to stand against this exploitation and tyranny. .... According to Krishna, a king's supreme objective was only the welfare of his people. He would punish even his relations if they did anything that went against such an objective.."<sup>5</sup>

The classical Hindu political thought stagnated after the advent of Islam. Islam left no impact on our political thought<sup>6</sup>. But the sclerosis that set in during

that long period of servitude to the militant imperialism of Islam, continued even during the British period of our history when we adopted the British political institutions and ideas.

The spell of the West has now reached its apogee in the neoliberal thoughts in this era of Economic Globalisation growing apace in our country from the 1990s. The neoliberal gloss on 'democracy' has been most pronounced in recent years. As the British view of democracy and the neoliberal view of democracy come from the same matrix of the western thought, I would spell out, first, the driving ideas and the dominant features of the Western view of 'democracy'. The comprehension of that will help us understand what is happening in our country these days, because we have become wholly trapped in that view of democracy under the neoliberal gloss. But before I set out doing that, I would explore in a few words the collective consciousness of our Constituent Assembly as I see reflected in our Constitution.

**(ii) Impact on the collective consciousness of our Constituent Assembly**

I have discussed in Chapter 21 of this Memoir that our Constitution has a 'socialist mission' as the expression is understood in India's cultural ethos and its widely shared social mores.

One strange syndrome I have noticed in our country: it is the slave's syndrome. It is said that a slave, even when freed, loves to wear his chains. Once he struggled to break his fetters, now he enjoys them as ornaments on his flesh. Before the advent of the neoliberal thoughts, we had invoked the Fabian socialism to provide a gloss on our Constitution's provisions. Once accustomed to think that way, we have been led to accept the assumptions and strategies triumphant in this phase of Economic Globalization. When we reflect on what is being done (partly obvious but mostly under cloak), and what is being said, though more to conceal than to reveal, we have reasons to believe that we have missed the message of our Constitution.

I have considered it appropriate to call our democracy, as conceived under our Constitution, a 'socialist democracy' or a 'democracy' with socialistic mission to differentiate it from 'a *laissez-faire* democracy' that had been conceived and erected under the U.S. and the British constitutions. I cannot deny that some of the egalitarian objectives were pursued there also, but, in my view, that was not specifically mandated by their constitutions. Those good things were obtained by common people, because the persons in power feared that the conditions of injustice could make even the 'great beast', as common people were called, turn dangerous.

Our Constitution did not enact the ideas of a Friedeich von Hayek, or of a Milton Friedman in its text. The Market Economy, it is well known, is founded on the ideas of Frederich von Hayek or of Milton Friedman, or the proponents of the 'neoliberal paradigm' at the heart of the present-day corporate *imperium*. We all know well that the idea of Social Justice runs through our Constitution. But Hayek considers the concept of 'social justice' the most powerful threat to law conceived in recent years. Social justice, said Hayek, 'attributes the character of justice or injustice to the whole pattern of social life, with all its component rewards and losses, rather than to the conduct of its component individuals and in doing this it inverts the original and authentic sense of liberty, in which it is

properly attributed only to individual actions'<sup>7</sup>. I have reflected on the egalitarian mission of our Constitution in Chapter 21. I do not think it worthwhile to pursue the point further. I had heard a story at my school. Why does a camel go towards the West, when it finds itself untethered? The answer was: "It does so because the area of desert, for which it craves, is in the west." We have seen how our politicians and thinkers love to glitter in borrowed plumes. They have borrowed the ideas and customs of the western democracy, often to subjugate or confuse our vision of our Constitution's mission. Hence, I would cast a bird's eye view on such assumptions and values with utmost brevity.

### **(iii) The Western view of 'Democracy'**

My reflections have convinced me that there are two crowning assumptions in the 'democracy' about which the West speaks in this phase of economic globalisation:

I. The idea of 'social equality and justice' is a romantic nonsense. The 'Invisible Hand' at work in the Market must not be hindered or interfered with. The ideas of egalitarianism must be ignored. This view, in the ultimate analysis, ensues from the West's shared 'concept of Man'<sup>8</sup> In the 'Notes and References' at the end of this Chapter, I would quote what the great men of the West have said on this point.

II The governments were structured mainly for two prime purposes: (a) to protect and promote the private property, and (b) to provide free scope for the exercise of liberty for creating and amassing wealth. The function of the government is to provide legal and administrative infrastructure for the twin pursuits. Besides, it must ensure that "the great beast", as Alexander Hamilton called people (the *demos*), does not upset the apple cart. In effect, 'government' exists to protect the property interests of the dominant class of people.<sup>9</sup>

### **(iv) The nature and parameters of the Western Democracy**

"Democracy dealt with the political aspect of liberty. It was a reaction against autocracy and other despotism. It offered no special solution of the industrial problems that were arising, or of poverty, or class conflict. It laid stress on a theoretical freedom of each individual to work according to his bent, in the hope that he would try, from self-interest, to better himself in every way, and thus society would progress. This was the doctrine of *laissez-faire*,..... But the theory of individual freedom failed because the man who was compelled to work for a wage was far from free."<sup>10</sup> It was a reaction against autocracy and despotism of the determinate political superiors, be they the churches or the kings. It was not designed to solve the industrial troubles by creating conditions for socio-economic justice, nor was it created to lessen inequality, nor was it a way to deal with growing poverty and bitterness on account of growing class conflicts. In effect, it was more a device to acquire somehow acceptability for the system that worked for the dominant minority wielding economic power. It laid stress on a theoretical freedom of each individual to work according to his bent, and it told all that the individuals can themselves better their lot as they know best how to promote their interests. It was pleaded that such pursuits would create condition for happiness and progress. But it never strove with whole heart to create conditions under which the weal of all could be ensured under the aspects of socio-economic

justice (without which formal 'democracy' becomes a mere device to deceive by projecting illusions).

Even when the doctrine of *laissez-faire* was not ruling the roost in the West, the government primarily existed for the rich and the privileged. As I have said somewhere, the real victor of World War II was the USA. As the USA worked, in effect, through corporations, the doctrine of the *laissez-faire* turned supreme after World War II. After much reflection, keeping in view the recent developments in the jurisprudence of the West, I observed in the 'Introduction' to my *Judicial Role in Economic Globalisation* (2005):

"It is clear from the trends and tendencies of our day that Market is planting its kiss on all the institutions spawned by the political realm. It has enchanted the executive to become market-friendly. Its persuaders have not left outside their spell even Judiciary. Richard Posner speaks of the Constitution as an economic document, and proposals have been made to refashion constitutional law to make it a comprehensive protection of free markets, whether through new interpretation or new amendment, such as a balanced-budget amendment."

And Stiglitz says: "Even within the international institutions, seldom is global policy discussed in terms of social justice."<sup>11</sup> So annoyed was Bertrand Russell with a democracy sans 'socio-economic justice' that he said in his *Autobiography* (p. 515):

"Some ideals are subversive and cannot well be realized except by war or revolution. Political justice had its day in industrialized parts of the world and is still to be sought in the unindustrialized parts, but economic justice is still painfully sought goal. It requires a world-wide economic revolution if it is to be brought about. I do not see how it is to be achieved without bloodshed or how the world can continue without it. .... These inequalities rouse envy and are potential causes of great disorder. Whether the world will be able by peaceful means to raise the conditions of the poorer nations is, to my mind, very doubtful, and is likely to prove the most difficult governmental problem of coming centuries."

How close Russell goes to Mahatma Gandhi, who had provided a talisman for making decisions in our free India, and had warned the capitalists of all hues against the exploitative system. Please read the quotation from the *Young India* quoted in Chapter 19 of this Memoir.

The victors of the World War fought to protect 'democracy' with messianic zeal but they worked to promote a new brand of imperialism which intended to control resources and economic decision-making. Noam Chomsky has perceptively pointed out that certain great powers of our day consider that "the need .... for colonization is as great as it ever was in the nineteenth century" to bring to the rest of the world the principles of order, freedom, and justice to which "postmodern" societies are dedicated ...."<sup>12</sup> And after World War II, nothing has been used so dexterously to promote the agenda of the United States and of the corporate imperium as this, simple sweat, word 'democracy'. Reflecting on the U.S. strategies, Chomsky rightly says:

“There is ample evidence of Wolfowitz’s passion for democracy and his concern for suffering people, as he lent strong support to some of the most corrupt and appalling murderers, torturers, and aggressors of the late twentieth century.”<sup>13</sup>

It is said that Bentham considered the great Declaration of the French Revolution (*The Declaration of the Rights of Man and of the Citizen*) a mere nonsense on stilts, ‘a metaphysical work — *the ne plus ultra of metaphysics*’. To our neoliberals, the ‘democracy’ and the ideals stated in the Preamble, as our Constitution contemplates, are nonsensical. For them ‘democracy’ means what it means for the USA. And what it means for the USA can be easily understood. ‘Democracy’ promotes the ‘national interests’ which means, as Chomsky says, ‘the special interests of domestic sectors that are in a position to determine policy.’<sup>14</sup> Marx rightly said: ‘The state is an executive committee for managing the affairs of the governing class as a whole’.<sup>15</sup> Our Constitution is *sui generis* as it breaks new ground by expressing ‘democracy’ with a socialist vision. But we see that those, who have worked it, have betrayed our trust. The hiatus between expectation and achievements has widened over three years.

## II

### PARLIAMENT

#### (i) Expectations and achievements

In the English history, the Tudors were most sagacious. They asserted that the nation itself was present in the country’s parliament through representatives. Sir Thomas Smith said in 1565 that “Parliament of England which representeth and hath the power of the whole realm.... And the consent of the Parliament is taken to be every man’s consent”<sup>16</sup>. The idea that the nation is present in Parliament is still held by most of us. It is different matter that those who go to represent us in Parliament are seen to betray our trust. The worrisome thing is that they have allowed themselves to be used by the vested interests casting their spell through creative lobbying. We have noticed how the lobbyists in our country have acted as ‘the power-brokers’, and have adopted unethical ways to subvert our democracy, and derail our Republic. It is time for someone to portray the gallery of rogues in our country. What is most shocking is the aspersion cast on many of those who represent us in Parliament. If our representatives forget their role and mission, our democracy cannot survive. Those who represent our nation are on a sacred mission; they are not commodities for sale. We know that history has shown situations when wisdom was not shown by those who mattered; but history has also taught us that this sort of comedown was only at peril. The risk to turn derelict is becoming more and more in this phase of Economic Globalisation. If public functionaries, perish the thought, become commodities on sale, time may come when some MNC may purchase all such commodities available on the sale counter. If it happens, that surely would be our bad day, the end of our democratic republic. We must protect our Parliament from becoming a mere scarecrow which it is bound to be if critical and assertive vigilance of our people is not maintained on how the representatives in that august institution render account of themselves. We can neither afford to be cynical, nor indifferent.



In 1933, Jawaharlal Nehru portrayed the plight of Parliament in his *Glimpses of World History*. His words are still relevant, perhaps they are more relevant now. He said: "Parliament has ceased to be what it was, and commands no great respect", and again he bewailed by quoting a leading English liberal who had said: "Our representative Parliament is rapidly becoming merely the machinery of registration for the dictates of a governing caucus elected by an imperfect and badly working electoral machine."<sup>17</sup> Once I drew up a rough chart to mark the phases in the history of Parliament as seen with reference to our country. I thought of these phases: (i) the Phase of Emergence, (ii) the Phase of Dominance, (iii) the Phase of Subsistence, (iv) the Phase of Decadence after a short Glow, and (v) the Age of Irrelevance. But this pattern of decline of this great institution depressed me so much that I tore down that piece of paper.

**(ii) An overview of history : how Parliament declined in England : lessons to be learnt**

It was the 18th century England. The monarch was mesmerized by the glamour of the Crown that was becoming gaudily manifest world over. Whilst some profited by the gains of the East India Company, others reaped profit even from the bubbles which the South Sea Company created by bribing governmental authorities, and by engaging their lobbyists, and sharp operators. The common people had no say in the public affairs, and they hardly knew much about what was happening at the higher echelons of power. Under the circumstances then prevailing, Parliament became less and less important, and the executive became more and more important. The mercantile dynasties had best of times. With all this, 'corruption' grew by leaps and bounds as capitalism needs this vice in a body politic as its main propellant. Despite the Corrupt Practices Act of 1854 and its later avatars, 'corruption' was a most powerful motivator, and the most effective of all the remedies. "During the mid-Victorian years the way to Parliament often led through the pigsty"<sup>18</sup> The *Concise Oxford Dictionary of English* spell out two senses of 'pigsty': 'a pen or enclosure for a pig or pigs' and 'a filthy house, room, etc.'

It was both the quirks of history and the conspiracies of circumstances that England had some powerful persons as the Prime Minister: like Walpole, Palmerston, and Disraeli. Disraeli's speech in the Crystal Palace in 1872 praising the gains and laurels that imperialism brought to the English people, and the proclamation making the Queen Victoria, the Empress of India, must have intoxicated the English people to become unmindful of the conditions of 'democracy', and its political vehicle, 'parliament'. The cabinet became dominant, and the Prime Minister led the team so imperiously that the government became, in effect, 'Prime ministerial'. It is instructive to observe what had happened in Germany during the days of Bismarck which hurled the world off the precipice into World War II. This ambitious politician led German people towards the glamour of supreme power. In Germany, "Bismarck now displayed his iron resolution and strength of will; in defiance of the Legislature, he proceeded to take in hand the reorganization of army and to dispense with budget."<sup>19</sup> When the government went ahead so imperiously, the nation shared the euphoria of imperial glory. "In the exultation of victory, the nation forgave the unconstitutional conduct of the minister, who was henceforth assured of a majority in the

Prussian Chamber in everything relating to foreign policy.”<sup>20</sup> Bismarck’s speech in the Budget Committee of Prussian Chamber of Deputies in 1882, highlighting the need to revisit the Treaty of Vienna in favour of Germany, was tremendously electrifying. He said “*The great questions of the day will not be settled by means of speeches and majority decisions but by iron and blood.*” The Roman Republic in ancient time had perished because its legislature grew corrupt, failed to control the persons constituting the oligarchy of persons at the high places. It became worse on account of lack of popular vigilance, and lack of the spirit of sacrifice without which the ship of democracy is bound to get stranded in shallows, if not wrecked outright.

Why have I taken you through history in this fragment of my Memoir? The opium of imperial grandeur had led even the economically deprived populace of England to enjoy, almost with delirious frenzy, that England was at the top of the world. We see analogous phenomenon in our country which is creating, under high pressure advertisement, an euphoria of high GDP, and ‘the soon to be achieved dream of India becoming a superpower’.

### **(iii) The widening role of the Executive Government**

The Parliamentary control on the executive is fast vanishing. Even without a domestic legislation, through the executive acts of mere ratification of treaties, justiciable ‘legitimate expectations’ are being created in favour of the foreign countries and their nationals. As in our country a treaty is an administrative act, it can pose a danger to our constitutional system and fundamental rights by making the treaty-norms operative even before (or without) legislation. Under the neo-liberal paradigm, established under the global economic architecture, through the WTO and others, there has been an enormous intrusion into the domestic field through the executive/administrative decisions affecting not only our polity but all the segments of economy and social management. Our Parliament is reduced to irrelevance as the treaties present *fait accompli*, so legislation is done virtually under coercion. Even the ambit of the legislative field can be curtailed by incurring embarrassing international obligations through treaty terms. These sinister features are illustrated in the grossest way by India accepting the terms and obligations of the Uruguay Round Final Act, popularly known as the WTO Treaty that commenced from Jan. 1, 1995. India undertook a wide range of obligations without taking the nation into confidence by obtaining our Parliament’s approval, and without conforming to the constitutional limitations (as if the Executive was signing and ratifying a treaty like the Treaty of Versailles, or the Treaty of Surrender). I read with delight the *Report of the Peoples’ Commission on GATT* (by V.R. Krishna Iyer, O. Chinnappa Reddy, D.A. Desai, the former Judges of the Supreme Court, and Rajinder Sachar, the former Chief Justice of Delhi High Court) that our adoption/ratification of the Uruguay Round Final Act was unconstitutional (a) for being the Executive’s act under the opaque system abdicating our sovereignty in socio-economic space, (b) for breaching the basic features of our Constitution, (c) for violating the mandatory constitutional limitations, especially, under Articles 73 and 253 of the Constitution, (d) for violating the constitutionally mandated principles and directives viz. (i) Constitutional basics, (ii) Judicial Review, (iii) Treaty-making power, (iv) Federal structure, (v) Fundamental Rights, (vi) Democracy, and (vii) Sovereignty. An-

other distinguished Commission, (consisting of Shri I.K. Gujral, Prof Yashpal, Shri B.L. Das, Dr. Yusuf Hamied and Dr. Rajeev Dhavan) also came to similar conclusions. Treaties in every civilized and democratic country are done only with Parliamentary consent obtained after proper deliberations. But treaties in our country are made under an opaque system in total indifference to Parliament and our people.

**(iv) The Executive's attitudes towards Parliament: an instance of gross 'democratic deficit'**

In February, 1992, Shri M.A. Baby, Member of Parliament, Rajya Sabha gave a notice of his intention to introduce the Constitution (Amendment) Bill, 1992, to amend the Constitution of India providing that every agreement, treaty, memorandum of understanding, contract, or deal entered into by the Government of India with any foreign country "shall be laid before each House of Parliament prior to the implementation of such agreement..." Shri Baby spoke passionately in support of the said Bill. Shri Pranab Mukherjee, M.P. (as he then was) argued that seeking prior Parliamentary approval was problematic. He referred to the Treaty of Versailles, negotiated by President Wilson, which the U.S. Senate could not appreciate. Besides, Shri Mukherjee said, Parliament was not so constituted as to discuss the international treaties and agreements in an effective manner.

I had many occasions to examine the above reasons. I examined at length in my *Final Act of WTO: Abuse of Treaty-Making Power*<sup>21</sup>, and in my Writ Petition<sup>22</sup> before the Delhi High Court. The points that Shri Pranab Mukherjee presented against Mr. Baby's proposal were non-sustainable. They constituted a contempt of Parliament, and also an insult to India's citizenry. I would make two comments:

- (a) Under the Treaty of Versailles, which concluded World War I, Germany was put on the mat under the spiky boots of the rapacious victors. The US Senate showed great sagacity and political insight by rejecting the Treaty of Versailles from which emerged the evil forces that pushed Europe to a delirious destruction of the Second World. It was this decision of the Congress which saved America from President Wilson, "the blind and deaf Don Quixote"<sup>23</sup>. Shri Pranab Mukherjee should have appreciated that the US Senate saved its country from going on the foolish errand of Wilson. We would have been infinitely grateful to our Parliament if it could have told the Executive, while the Uruguay Round Final Act was in the air, 'THIS FAR, AND NO FURTHER'. I am sure that the time is not far when we would realize that our country could have been spared of much distress if our Parliament could have rejected the Indo-US Nuclear Deal.
- (b) The idea that Parliament is not so constituted as to discuss the international treaties and agreements, is not correct. If Britain could deliberate in its Parliament whether it was right to declare World War II, there could be no reason why the text of the Uruguay Round Final Act couldn't have been placed before Parliament for an in-depth scrutiny, or why the text of the Indo-US Nuclear deal could not be examined threadbare by our Parliament. Our Parliament is quite competent to deliberate on all the vital issues of concern, whether they pertain to matters domestic, or the matters at the international plane. This reason, bereft of embellishment, amounts to

telling people that it is the executive which understands such issues, not people.

**(v) The Role of our Parliament: The years of shocking decline**

Joseph de Maistre said: "Every nation has the government that it deserves." When all is said, we must hold ourselves responsible for all the mess which has overtaken us. We must not allow the unscrupulous to lead our great institution by "nose as asses are", to borrow words from Shakespeare's *Othello*. Till Nehru was alive our nation had a political vision towards which we moved, succeeding in some spheres, faltering in many, and, of course, failing in many others. But vision to guide us was there. It was well said in the Bible: "Where there is no vision, the people perish."

The hiatus that has developed between the masters and the managers in the management of corporations, is becoming more and more pronounced between the people and their representatives. If they do not play their right roles with courage and imagination, no force can save our Democratic Republic from the sad fate that had overtaken once upon a time the ancient Republic of Rome, about which I have written something in Chapter 21. The right attitude is what Anna Hazare has so boldly pointed out: "Netas forget they're servants, not masters."<sup>24</sup> "Governments now face a "dual constituency conundrum," which pits the interests of voters against foreign currency traders and hedge fund managers 'who conduct a moment-to-moment referendum' on the economic and financial policies of developing and developed nations alike," and the competition is highly unequal."<sup>25</sup> "It is obvious enough that giving of votes to everybody does not result in producing an equal society."<sup>26</sup> And without equality, 'democracy' is a farce!, a mere structure of deception!!

Nehru highlighted a great fact of the history of the West when he so felicitously said:

"So we see that parliaments and democracy are considered desirable by the possessing classes so long as they maintain existing conditions. That is, of course, not real democracy; it is the exploitation of the democratic idea for undemocratic purposes.....there is an essential contradiction between the capitalist system and democracy."<sup>27</sup>

I was nauseated by the idea of James Madison who could say that the 'power must be delegated to "the wealth of the nation", "the more capable set of men", who understand that the role of the government is "to protect the minority of the opulent against the majority"<sup>28</sup> If these be the assumptions, does it become inconceivable to think of super-capitalists enjoying life like that of the 'retired general', served by a thousand human insects as portrayed in Chapter 4 of the Book V of Dostoyevsky's *The Brothers Karamazov*?

In recent years a sinister phenomenon has developed, which, if allowed to go ahead, would destroy our country's democracy. This is the emergence of a powerful and scheming 'technostructure' in our society. This phenomenon is engineered by the global economic interests. We cannot entrust the technocrats to run our socio-economic system which is sure to shape our cultural values, even our aesthetic sense. Evaluating the plea that the technocrats are better equipped than politicians to make such decisions, Stiglitz has rightly said:

“But delegating the writing of the rules of the economic game to technocrats can be justified only if there is a single best set of rules, one that makes everyone better off than any other set of rules. This is simply not the case; this view is not only wrong, but dangerous. With a few exceptions, there are always trade-offs. The existence of trade-offs means that there are choices to be made, which is why it is so important to remedy the global democratic deficit.”<sup>29</sup>

It is alarming to note that these days we see that the global economic decisions, with a wide socio-political impact, are taken by the “representatives of major corporations, banks, investment firms, the few law firms that cater to corporate interest, and the technocratic and policy-oriented intellectuals who do the bidding of those who own and manage the basic institutions of the domestic society, the private empires that govern most aspects of our lives with little pretense of public accountability and not even a gesture to democratic control.”<sup>30</sup> What Chomsky has pointed out is the characteristic feature of the ‘Sponsored State’. We have seen in our country how the corporate lobbies control our governance through dexterous intrusion into in our political system. This is natural when the global mega corporate institutions and powerful interests work for the promotion and protection of their private interests.

#### **(vi) The Plight of Parliament**

Nowhere else one finds the irony of history writ large with greater sinister effect than on the institution of Parliament in the British constitutional history. It began as a coterie of suppliants before the King, it had the good luck to become Knights-errant for controlling the King, and then it unwittingly lost the ground to the Executive allowing itself to be deceived by the circumstances of the times. The story of events, which wrought its destiny, led to the articulation of much repeated, but a lot misunderstood, doctrine of checks and balances. Bereft of technical details, the doctrine grew in England as a strategy to control the absolutism of the Stuarts by organizing a polity in which ‘the legislative, executive, judicial functions of government’ were to be kept separate. This great idea was the product of a long constitutional history of struggle in which the King was stripped off powers, first, those which pertained to legislation (including taxation), then, those which came within the province of judicial functions. But history had many cunning passages and dark alleys through which the doctrine passed. The Glorious Revolution brought about the overthrow of King James II of England, and caused the grant of the Bill of Rights 1689, the greatest of all the charters establishing the constitutional control of the Crown. Writing about the British proponent of the doctrine of the separation of powers, John Locke (1632—1704), Bertrand Russell has portrayed the course the doctrine has journeyed in later times illustrating the political facts shaping the structure of the British polity. He has perceptively noticed two phases, marked by evolution and regression:

- (a) “In England, the country of its origin, it was intended to limit the power of the king, who, until the Revolution, had complete control of the executive. Gradually, however, the executive became dependent upon Parliament, since it was impossible for a ministry to carry on without majority in the House of Commons. The executive thus became, in effect, a committee

chosen in fact, though not in form, by Parliament, with the result that legislative and executive powers became gradually less and less separate.”

- (b) “During the last fifty years or so<sup>31</sup>, a further development took place, owing to the Prime Minister’s power of dissolution and to the increasing strictness of party discipline. The majority in Parliament now decides which party shall be in power, but, having decided that, it cannot in practice decide anything else. Proposed legislation is hardly ever enacted unless introduced by government. Thus the government is both legislative and executive, and its power is only limited by the need of occasional general elections.”<sup>32</sup>

Russell rightly observed that the aforesaid developments did not conform to the doctrine of the separation of powers as conceived by John Locke.

Our Supreme Court has examined in a number of judicial decisions the role of Parliament under our Constitution. It said: “Our Constitution embodies generally the Parliamentary or Cabinet system of Government on the British model both for the Union and the States.”<sup>33</sup> The ‘executive power’ has been widely construed. Ordinarily, it “connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.”<sup>34</sup> The nature of our polity was crisply stated by Justice Mukherjea in *Rai Sahib Ram Jawaya Kapur v. Punjab*<sup>35</sup>: he said —

“In the Indian Constitution, therefore, we have the same system of Parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, ‘a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part’. The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them.”

With great respect, it is submitted that the aforesaid observations are mere deductions from the structure of the British polity as shaped by history. The circumstances led to the New Despotism of the executive. Our Supreme Court assumed that we adopted the British Parliamentary system with the cabinet playing the dominant role. The Court missed to consider the text and context of our polity as structured under our Constitution. Under the British Constitution all the conceivable powers remained with the executive government except those which went to Parliament, or Judiciary. In India, the sovereignty of the State is organized only by our Constitution which has created all the organs of the State with *granted* powers, and *prescribed* roles. If our Constitution goes, even the executive government would go yielding a place to anarchy. But if, the British Constitution goes, the Crown would survive with the plenitude of the executive, legislative and the judicial powers. Never think that this would ever happen, but if, perish the thought, it happens, that would be the outcome. The effect of the aforementioned view of the imperious role of the executive in our polity has led to the subservience of Parliament. In my considered view, the appropriate role of Parliament under the Constitution of India is yet to be judicially *determined* in the context of an issue required to be *decided* in a given case by the Supreme Court.

The role of Parliament under the British Constitution has been accurately described by G. R. Elton in his book on the great historian F. W. Maitland. He has perceptively observed:

“The English Parliament started, as Maitland showed, as an instrument of royal government, and it has always remained just that. Since one of its functions has been to enable the king and his agents to govern more effectively by giving them a chance to discover in time how actions of government might be received by the governed, there have always been opportunities for debate, dispute, criticism and even conflict. These have been misread into strange notions of kings calling Parliaments which were designed to hamper their actions by opposing them. Parliament, of course, was and remains meant to provide a better way of exercising rule, not shackles on rulership. That is why Edward I called it; that is why Henry VIII called it; that is what to this day it does for the party in power. Until very recently it did not even inhibit secret government when ministers wished to govern secretly. It will come as a shock to the self-important people who fill opposition back-benches, but theirs is a largely decorative role because that of the whole Parliament is, as it were, subsidiary: governing with and through it makes the work easier because – and that was the discovery of the thirteenth century – you get better results when you seem to be able to claim consent for your decisions. Of course, this limits arbitrary rule by an individual, which is a good thing. Does it, however, limit arbitrary rule by a clique, of whatever persuasion? The learned, technical and penetrating introduction to the edition of one old roll has after ninety years still not lost its power to make us look more closely and more clearly at what politicians ignorant of history and historians untutored in politics have made into an idealized and over-valued institution in the realm.”<sup>36</sup>

Our courts must examine the role of our Parliament only on the text of our Constitution. It is not appropriate to perceive its role from the British constitutional observation-post, or with the stock-responses controlled and conditioned by the British constitutional notions. In India, Parliament is not a mere ‘instrument of Government’, so it is incorrect to view it as an institution designed to ‘hamper’ Government. Our members of Parliament take oath in terms of the Schedule III of our Constitution to “bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.” The oath is a solemn acceptance by the members of Parliament to discharge their obligations of loyalty to our Constitution. In *Marbury v. Madison*<sup>37</sup>, Chief Justice Marshall refers to the effect of the judge’s oath in words which can never turn stale:

“How immoral to impose on them, if they were to be used as the instrument, and the knowing instruments, for violating what they swear to support!”

Within the province of functions constitutionally prescribed for Parliament, it is required to help implementing the provisions of our Constitution, especially

the Preamble, Fundamental Rights, the Directive Principles of State Policies. If the whole nation is deemed to be present in Parliament through the elected representatives, this institution is bound to discharge its constitutional duties which include providing a vision to the country, and controlling the executive government effectively. The cobwebs borrowed from the British constitutional history should not be imported in our country to establish the horrendous New Despotism. Our Constitution has rejected the pet ideas of those who wanted to establish the executive dominance, and the Parliamentary subservience.

It is saddening to see that our Parliament has not given a good account of itself through its performance in recent years. Our Constitution is unique in conceiving our Parliament as an institution to play an active and assertive role. I wish the members of our Parliament are tutored well under our Constitution; and they get endowed with moral courage and imagination to see their role as a dedication for public weal. A close observation of our Parliament at work shows that it has lost its initiative, and has allowed the executive government to lead it by its nose.

#### **(vii) Our Parliament at work**

**‘You have been weighed on the scales and found wanting.’ (*The Book of Daniel*)**

The phase of the present-day Economic Globalisation has worked against the institution of Parliament. The neoliberal agenda is to make the executive government powerful, but in the service of the institutions set up under the neoliberal economic architecture. This strategy has worked well to subjugate nation states to corporatocracy (see Chapter 26). The strategy that has shockingly worked well is minted under opaque systems, and is operated through studied deception.

Writing in 1933, Pandit Jawaharlal Nehru portrayed the plight of the British Parliament with extreme brevity but with remarkable candour evidencing his remarkable insight into the British polity at work. He said:<sup>38</sup>

“In the old days the House of Commons exercised power directly, and the average member had a good say in the matter. Now it is the Cabinet or the Government that decides every big question, and the House of Commons can only say yes or no to it. Of course the House can turn out the Government by saying no, but this is a drastic step which is seldom taken, as it would result in a lot of trouble and a general election. .... Power has thus been transferred, and is still being transferred, from the legislature to the executive.”

The fear that cripples Parliament in controlling the Government, has shocking reasons and disastrous consequences for a genuine democracy. It is not difficult to see how ‘FEAR’ is used as a strategy to silence persons to obedience. The success of this strategy in our country is amazing and unnerving. Our great tradition has taught our people to conquer Fear by realizing that ‘fear’ has no existence at all. Why should our representatives fear the dissolution of Parliament? If they deserve to be elected, they should be sure to be elected again. It is interesting to note that the emergence of the dominance of the political parties has gone against democracy. The political parties have turned democratic representation, first, into a melodrama, and, then, into a farce. They use the PR industry, and the propaganda technique for their narrow interests to acquire



power, or to remain in power. It is a strange irony of history that once people had freed parliament from the domination of the executive government, but now we have reached a stage when parliament has willingly allowed itself to come under the executive domination.

Our Constitution contemplates Parliament that can provide a vision to the nation, and can control and discipline the executive government so that the trust of our Constitution is not betrayed. The framers of our Constitution knew what had ailed Parliament in England. With a remarkable insight Nehru wrote about 'parliament' and 'democracy' as these institutions worked there. He said in his *Glimpses* (at p. 935):

“Thus as long as an apparently democratic procedure serves the purposes of possessing classes, they use it to their advantage to protect their interests.....So we see that parliament and democracy are only considered desirable by the possessing classes so long as they maintain existing conditions. ....They make laws to keep their own privileged position secure, and everybody who breaks these laws becomes a disturber of law and order whom society must punish.”

The framers of Constitution never shared such ideas. The architecture of our Constitution, and its provisions, prescribe for our parliament a great and effective role.

I am surprised to think of situations when even parliament is seen to have run away from the people. Noam Chomsky has told us (*Hegemony or Survival* p. 135) how under the US pressure Turkey yielded to 'comply with Washington's demands over "overwhelming" popular opposition. Chomsky quotes a Turkish correspondent who had commented:

“A war against Iraq remains deeply unpopular among the Turkish population. That is why Thursday's parliament session was closed to the public and balloting was secret. Headlines were stinging in their criticism of Turkey's ruling Justice and Development Party on Friday. The front page of the respected daily *Radikal* said "the parliament ran away from the people.”

It is amazing that things have come to this pass! I wish such things never happen in our Republic. But a common man has a lot of reasons to apprehend:

- (i) that our Parliament 'ran away' from our Constitution's vision of 'constitutional socialism' (see Chapter 21);
- (ii) that our Parliament 'ran away' even from controlling the Executive government which considered its treaty-making power not under constitutional restraints;
- (iii) that our Parliament 'ran away' from controlling the Executive government which entered into the Indo-US Nuclear Deal creating conditions exposing us to numerous hazards;
- (iv) that our Parliament 'ran away' from the *aam aadami* suffering on the wheel of fire wrought by high price rise, and gross corruption;
- (v) that our Parliament 'ran away' from egalitarianism to promote the worst form of capitalism.

Whenever I think about these issues, tears come to eyes. Did our freedom-fighters, did my father, mother and uncle, struggle and suffer for this sort of free India? Did I myself suffer so much to build a society that has thus emerged ?

It is not possible in this Memoir to reflect comprehensively on the ways our Parliament has functioned in our times. Yet I would mention a few illustrations, enough to weigh this great institution, and to determine the extent of its relevance under the parameters of our Constitution:

- (A) Till World War II, the treaties at the international plane did not have much impact on the way common men lived and fared. But after World War II, and the emergence of the global economic architecture, the governments have entered into treaties having wide and deep impact on a nation's sovereign space of policy making and internal management. Our Parliament has allowed the executive government to act with full zest in favour of the MNCs, and in pursuance of the neoliberal agenda. The state of affairs has become morbid as is evident in the gross 'democratic deficit' in the exercise of our Government's 'Treaty-Making Power'. As I have said, the WTO Treaty was signed without our people and Parliament knowing about its terms and implications. Some key legislative functions were, in effect, outsourced to the foreign fora. We elected our representatives to Parliament, but the Executive, acting under an opaque system, outsourced certain segments of sovereign functions outside. Our Parliament remained a pathetic onlooker of the formation of the WTO treaty. And it felt coerced to implement many of the treaty obligations. When our executive government entered into a treaty of this sort, our Parliament did not assert against it. When such things were happening, our Parliament remained shockingly etherized. Our Parliament could have framed, in exercise of power under entry 14 of the Union List of our Constitution, a law prescribing how a treaty was to be *formed* at the international plane, and how it was to be *implemented* within the nation. In the U.K., the formation of a treaty is the executive's prerogative act at the international plane. Our Constitution puts all powers under the constitutional restraints. If our Parliament would have shown vigilance, it would have framed law specifying that even a treaty-formation would require a legislative approval. I must not drag the point because I have discussed this point in several chapters including Chapters 21 and 23.
- (B) The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, was enacted so that our government could act, *parens patriae*, "to ensure" "that the interests of the victims of the disaster are fully protected and that the claims for the compensation or damages for loss of life or personal injuries or in respect of other matters arising out of or connected with the disaster are processed speedily, effectively, equitably and to the best advantage of the claimants." It was also certified that the legal position had been "examined carefully with reference to the laws obtaining in the United States of America and in our country". In the matter of the Bhopal disaster, it seems no Parliamentary vigilance on actions of the executive government was maintained. Was the enactment of law a part of strategy to appease the shocked people, or a mere device to steal fire to turn the issue into a mere squib, or to steal our people's thunder to turn that into mere thud? God knows. The Executive government was authorized to play *parens patriae*, under a law framed by Parliament. To act as *parens patriae* was a matter of solemn trust. Did our Government discharge that trust? Was it proper for our Parliament to forget the Bhopal victims the way it did? You can read my

article on this Bhopal Gas Leak Tragedy at my website [www.shivakantjha.org](http://www.shivakantjha.org) (in the folder on 'Articles & Papers'). If we judge the performance of the organs of our State in matters related to that tragedy, we have ample reason to think that in the 1980s we had seen features of a "failed state" quite evident. Many organs of government deserved blame for the remissness shown in our response to that tragedy. I would blame Parliament for not having played its constitutional role to ensure justice to the Bhopal Gas Leak tragedy.

(C) In Chapter 21, I have written about Milo's Rome which was corrupt to the core. Even their representative body had sunk into sleaze, and the persons went up in power through pigsty! Our heart sinks when we hear about rampant corruption in our polity. I would touch only two events, though many others are in public domain.

(i) The Narasimha Rao Government (1991 to 1996) had adopted the neoliberal agenda with aggressiveness. It is said that when a system degenerates, its degeneration has the propensity to self-perpetuate. In some form, that happened in our country. In my assessment, the period of naked corruption began during Rao's regime, but the evil has grown in the years thereafter. We felt ashamed that our most important political leader's name had been dragged in many scandals: Rao's reputation was tarnished in public view despite the fact the cases against him ultimately foundered on this or that ground. The grossest dereliction which smeared the image of our Parliament pertained to the JMM Scandal which got a quietus at our Supreme Court in *P. V. Narsimha Rao vs. State (CBI/SPE)*, (AIR 1998 SC 2120). It was alleged that bribe was received by four Members of Parliament, belonging to the Jharkhand Mukti Morcha, before the 'No Confidence Motion' against the Government of Shri Narasimha Rao, moved on July 28, 1993. "By a majority decision the Court arrived at the conclusion that while bribe-givers, who were members of Parliament, could not claim immunity under article 105, the bribe-takers, also members of Parliament, could claim such immunity if they had actually spoken or voted in the House in the manner indicated by the bribe-givers."<sup>39</sup> The logic of the decision is beyond comprehension. Bribe givers and takers were both guilty, and deserved punishment. This would have accorded well with common people's sense of justice.

(ii) G. K. Chesterton was amazed how certain peoples lose "the power of astonishment at their own actions". But when astonishments keep on overtaking us so frequently, we cease to remain responsive and reactive. We all came to know that the UPA Government was in crisis over the 'no confidence' motion in Parliament in 2008. This crisis occurred on account of the withdrawal of the support of the Communist Party of India (Marxist)-led Left Front to the UPA over the Indo-US Nuclear Deal. I had seen in 2008 the spectacle on my TV how wads of currencies were being flashed in Parliament to prove the allegations. I saw the spectacle on my TV. The Government adopted the strategy to evade the issue. Writing about corrupt ways of the government, Thomas Mann wrote in his novel *Death in Venice* a very pregnant

and suggestive line: “And the fears of people supported the persistent official policy of silence and denial.” The government of the day has never shown interest in exposing the scandal. It clearly emerges from the way it sought to ignore the allegations flashed in the diplomatic cables reported upon by WikiLeaks. But what is worth noting is the way the politicians in power responded to the problem posed by the leak. Our Prime Minister Dr. Manmohan Singh (as he then was), and the then Finance Minister Pranab Kumar Mukherjee advanced several reasons for not discussing such leaks: first, that the 15th Lok Sabha could not consider the issues which pertained to the period the 14th Lok Sabha; and, second, that the doctrine of diplomatic immunity did not permit our government to examine such reports. Both the reasons were wrong. We knew that in the past, several interested politicians had pleaded to save themselves on the first ground but had failed. We all knew how the punitive actions taken against Mrs. Gandhi by the 6th Lok Sabha “were undone by the 7th Lok Sabha.”<sup>40</sup> As to the second reason, nothing turned on the basis of diplomatic propriety. “This doctrine gives immunity to acts of a governmental nature, described in Latin as *jure imperii*, but no immunity to acts of a commercial nature, *jure gestionis*.” The matters on the cables were not *jure imperii*, hence deserved no diplomatic immunity.<sup>41</sup> The point which matters most is: why this recalcitrance on the part of our government to bring things under sunshine for the whole country to see the real state of affairs.

- (D) Parliament, in a democracy, is not an instrument to provide merely the structure of power for some to ascend up to work for the benefit of the chosen few belonging to the segment of the haves. When democracy degenerates, Parliament becomes irrelevant. Corruption grows massively when neoliberal economy is triumphant. Money is most effective *Vishkanya* known in the history of our modern world. It is said that once upon a time some beautiful women were given some daily dose of poison so that whenever they were even kissed, death of the foolish pleasure-seekers was sure and certain. The days of *Vishkanya* have gone. But money (and its myriad manifestations) is seen to succeed most in playing this role in this phase of neoliberal economy. It is not that such things were unknown earlier. What is a matter of deep concern is that it has become a strategy pursued with deep cynical delight, and limitless noxious zest. The reputation of the great institution of Parliament has suffered. Lord R. G. Ingersoll said in his *Lectures and Essays*: “In nature there are neither rewards nor punishments – there are consequences.” I have reflected on these saddening things as they deserve to be known and remembered. I would advise you to see the suggestive painting of “CORRUPT LEGISLATION” which was a mural, (done in 1896) by Elihu Vedder. It can be seen at the internet.<sup>42</sup> See, how the lovely and majestic lady on the throne is looking sideways with indifference whilst coins in a big pouch are being put on the scale. The balance is being tilted through the sleight of hand!
- (E) We all see that our Government is fast promoting, in this phase of Economic Globalisation, the neoliberal agenda derived from the neoliberal paradigm as shaped by market-forces. Our Constitution did not enact the ideas of a

Friedeich von Hayek, or a Milton Friedman. We are fed up with the creative image building of the government of the day by the hired experts, friendly media, and the beneficiaries of the neo-capitalist system which measure 'progress' with GDP alone. It is time to think of those who live on mango kernels, of those who die of starvation, of those who do not get good water to drink, of those for whom every moment of life is becoming a wish for death as the only exit; and not only about those who measure their life with silver spoon, or gilded wine goblets. They (the beneficiaries of the corrupt system) try to keep Parliament constantly preoccupied with trivialities and inanities created out of phony cultural divides, clashes of dressed-up interests, threats to the security (often stage-managed) to distract the institution from providing a vision to the country, and to make our polity really democratic. The correct description of the mission of our polity is 'Parliamentary Democratic Socialism' as conceived under our Constitution. This is our Constitution's unique genius that differentiates it from the British and the American forms of government which exist mainly for 'the substantial people' by restricting "the public arena" by transferring "decisions to the hands of unaccountable private tyrannies"<sup>43</sup>. Our Constitution does not permit the State to work for the roll-back of its public duties. Our Constitution does not contemplate a mere 'representative form of government' because there can be, as there had been in the past, 'representative government' without being a 'democracy'.

**(viii) The Character of our Parliament : Our Constitution conceives it as the "Parliamentary democracy".**

The correct description of our polity is 'Parliamentary socialist democracy'. The terms 'socialist' and 'democracy' determine the character of our polity; these being the vectors and drivers to realize a 'Welfare State'. These ideas must remain at the most creative point of our consciousness. The genius of our country and the character of our polity require our government to widen public arena of decision-making by narrowing the zones of function which might go "to the hands of unaccountable private tyrannies"<sup>44</sup>. The art of constitutional construction requires not only the comprehension of the needs of the present, but also of the vision of the society that we are committed to evolve. We must guard ourselves against the doctrinal assumptions of the Economic Globalisation.

**(ix) The ethos of the day, and the ways of our Citizenry**

In Chapter 21 of this Memoir, I have pointed out how our polity shares many of the blemishes and tragic traits of the Roman Republic. Parliamentary institution fails when the circumstances are not conducive to free, fair, and truly democratic elections. It cannot work if the model of economy is what I have called the "Taj Mahal Economy" (see Chapter 25). Plutocratic culture breeds consumerism and corruption, and helps even the most unworthy persons to carve their way to Parliament to sully the great institution's reputation. Such conditions become endemic in decadent times. What happens under such conditions can be understood by reflecting on the conditions of the ancient Roman Republic. Jawaharlal Nehru has, in *Glimpses of World History*, graphically described the morbid features which led to the decline and fall of the Roman Republic.

“In Rome, the result of victory and conquest was wealth and luxury, and gold and slaves poured in from the conquered lands. But where did they go to? The Senate, as I have told you, was the governing body in Rome, and consisted of people from rich aristocratic Families. This group of rich people controlled the Roman Republic and its life, and as the power and extent of Rome grew, the wealth of these people grew with it. So that the rich became richer, while the poor remained poor or actually became poorer. The slave populations grew, and luxury and misery advanced side by side. When this happens there is usually trouble. It is an amazing thing how much human being will put up with, but there is a limit to human endurance, and when this is reached there are burst-ups. ... The rich people tried to lull the poor by games and contests in circuses, where gladiators were forced to fight and kill each other just to amuse the spectators.” ....

It is possible to present the portrait of the present-day India just by changing a few words of the above quoted paragraph.

It is good to know what has gone wrong in our political system. But what is most needed is the people’s response to the challenges posed. This implies the selections of good persons to represent us, and to make them accountable to people. We have the duty not only to throw the unworthy out, but also to support good persons to represent us. Here again, we can learn from what had happened in the ancient Roman Republic. It was unfortunate that the Roman people could not appreciate the real good work that Caius did. Caius lost his life in pursuing what was really good for people. Davies has described this irony of history thus:

“Two reasons for the unpopularity of Caius are illuminating illustrations of the mind of the Roman Mob. Caius proposed to make all freemen of the Latin name full citizens and to give all other Italian freemen the right of voting in the Comitia. His unselfish soul never dreamed that those who shouted for their freedom would deny liberty to others. The other reason was his plan to establish a colony on the site of Carthage and give the colonists the full privileges of Roman citizenship. It was easy for Gracchus’ enemies to work upon the prejudices and superstitions of the ignorant, and depict the terrible consequences of building again upon a site which had been so solemnly cursed: One of Caius Gracchus’ reform, a corn law, although conceived in the best spirit, was short-sighted.”<sup>45</sup>

### **(x) I Pray**

Democracy is the harmony of diverse tunes It is easy to catch its signature tune. Whilst its twin strands are ‘interdependence’ and ‘solidarity’, its constant and common pursuit is the welfare of people to live with dignity enjoying the fruits of social justice. Equality is its bedrock, and vigilance is the price we pay for its realization. Differences in ideas, and diversity in approaches, are natural in a democracy. Through differences we cross-fertilize our husbandry; through collaboration we shape the fraternity of equals. The institutions we have created are the devices to arrange affairs under the aspects of justice. Critical sense and rich moral values are the essential endowments which our citizenry must possess,

otherwise the corrupters and procurers would lead us to the Slough of Despond through greed and unbridled desires. Parliament, being the apex institution under our democratic polity, holds it under trust to the people to keep the wielders of the executive power under scanner, always examining them on the touchstone of probity and propriety. This mission is alien to narrow 'gangsterism', and caucus-formation just for being in power. Servility on account of go-getting and corruption can subvert institutions so sacred as Parliament and Judiciary.

I would end this Section of my Memoir quoting from the hymn with which the *Rig-Veda* ends:

समानो व आकृति : समाना हृदयानि वः  
समानमस्तु वो मनो यथा वः सुसहासति

'Your purpose in pursuits should be common/your mind should be in harmony with that of others./Your heart should bleed for the weal of all/This broadness alone will herald your welfare/and will strengthen the strength of your Union.'

The hymn was said addressing the gathering of people telling them how they should go about doing things. I pray to God that the members of our Parliament get the wisdom to reflect on that *shloka* of the *Rig-Veda*. If they acquire that perspective, and adhere to our cultural values, they can give good account of themselves.

How close the above instruction goes to Gandhi's *talisman* for decision-makers: but the talisman, it seems, has now been sold on the stock-market. Gandhi had said :

"Recall the face of the poorest and weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions?"

### III

#### OUR POLITICAL PARTIES

##### (a) The nature of our polity

In *Ram Jawaya Kapur v. Punjab*<sup>46</sup>, our Supreme Court said that our Constitution imports the British Parliamentary pattern in our Constitution.

In *Kanhaiya Lal Omar v. R.K. Trivedi*<sup>47</sup>, our Supreme Court considered political parties essential to run "the democratic form of government which our country has adopted." But it is not always essential that the representative government might also be democratic. History has shown us examples of 'representative' kingship. We have seen representative government wholly or partially deficient in 'democracy', but we have seen with joy 'democratic representative government' also. "The events which followed the Restoration in 1660 (in England) showed that the system of party government was conveniently adaptable to the monarchical as well as to the republican form of government."<sup>48</sup>

**(b) Political parties: whether essential for a democratic polity: our experience**

Participation of a political party in the election process is not an exercise of common law or civil law right: it is just a bequest of the conventions and the positive law of our country. This right is always subject to the legal limitations. But it cannot be said that our representative democratic government cannot work without political parties. The following points deserve consideration:

Our Constitution, as originally framed, did not even notice a political party. The existence of political parties in the UK. or in the USA is on account of political and historical reasons. In the U.K., the toxic effect of the political parties has been the emergence of cabinet dictatorship. In the USA, the strict division of powers has saved the situation turning that way. In Swiss Constitution, the role of political parties is insignificant. Whilst in the U.K. India, the USA and Japan, political parties had extra-constitutional growth, France recognizes it under its Constitution itself but specifically directs, under Art. 4, that it “must respect the principles of national sovereignty and democracy”. In Australia, the political parties are only of ‘recent origin’, and it is at the periphery of the political system. Under the German Basic Law, the Constitution itself has imposed on the political parties the obligations to adhere to the core constitutional ideals designed to preserve democracy, promote people’s welfare, and exclude the risk of the emergence of a Hitler. It is also not correct that our Parliamentary form of government cannot work without political parties. It is quite possible to run a Parliamentary government without political parties. Jayaprakash Narayan was also of the same view.

The Section 29A of the Representation of the People Act, 1951 deals with the registration of a political party with the Election Commission. It prescribes that the memorandum of the political party seeking registration must “contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India.” This allegiance to our Constitution is under an oath prescribed under the Constitution. This requires that the election manifestoes are drawn up with sincerity. The law requires a transparent, specific, and conscious commitment to our Constitution’s goals. The election speeches and manifestoes should not be mere ‘pious waffle’. Noam Chomsky had this in his mind when he wrote:

“Deceit is employed to undermine democracy, just as it is a natural device to undermine markets”;<sup>49</sup>

**The assessment of the role of political parties**

Both the major political parties in our country follow programmes which, on core points, illustrate the same agenda. An expert has observed with perspicacity:

“They [the politicians and political parties] are the prime examples of such behaviour. They are not interested in delivering on promises so they resort to untruths to maintain themselves in power. Cynicism in the public and the individual’s alienation from society are useful to them to maintain their hold on power.”<sup>50</sup>



We are aghast at seeing our political parties taking advantages under the Representation of the People Act, 1951, but not adhering to our Constitution's socialist mission prescribed by the Act. Our political parties have not shown dedication to remove 'democratic deficit' in treaty-making power, nor have they striven to frame law to govern the formation and implementation of treaties. Whatever they may say for public consumption, they are seen committed only to the neoliberal approaches. They are indifferent to the question of 'moral deficit', as they, for reasons we all know, are not interested in controlling corruption and black money. The ever-growing scams, and the allegations of corruption have shown that all the mighty political parties have behaved almost the same way by selecting tainted leaders, by facilitating the criminals to remain comfortable, by delaying and frustrating legal actions thereby frustrating punitive actions against the culprits. . . . Inequality in matters of income and opportunities has grown. As both the Congress and the BJP have accepted the neoliberal paradigm, there is now no effective actions to make our society egalitarian. I would mention in Chapter 23 how both the two major political parties helped the Mauritius route to be utilized, against our national interest. Both of them have been indifferent to the rampant corruptions going on our country. Nither of these parties made sincere efforts to bring about effective anti-corruption law. Both these political parties have shown lackadaisical attitudes in *implementing* the United Nations Convention against Corruption. Both the major major political parties of our country have tried to appease the USA. The BJP was dominant in the alliance that had provided government from 1998 to 2004. Noam Chomsky has observed writing about India:

'Since the government came under the control of the Hindu right in 1998, India has shifted its international instance considerably, moving toward a closer military relationship with both the US and Israeli client. . . . Addressing the American Jewish Committee in Washington, India's national security advisor, Brijesh Mishra, called for development of a US-Israel-India 'triad' that will have "the political will and moral authority to take bold decisions" in combating terror.'<sup>51</sup>

Getting down to the brass tacks, the BJP helped the Congress to go ahead with the Indo-US Nuclear Deal. On many points of our great concern, they show through their deeds distinction without a difference. Both try to glitter in borrowed plumes, and their heart, when seen in testing moments, seldom bleeds for the common Indians who love this land and its culture. Both have most often enacted a melodrama of actions inflicting on us the tedium of witnessing shows most often trivial and inane.

We have seen how our reticent Prime Minister, Dr. Manmohan Singh, turned assertive, loquacious, passionate and missionary in ensuring that the Nuclear Deal with the US was signed. No amount of well-informed criticism, inside or outside Parliament, had effect on him. India was dragged into a 'strategic alliance' exposing the security of this country to hazards. This Deal might turn out one of secret alliances with the world's hegemon. If something, like the disaster of Japan's the Fukushima Nuclear plant, takes place, perish the thought, in our country; or if our country is driven through frenzied lunacy to World War III, our history would condemn all those who worked for the said Deal (though by that time they might not remain alive to suffer that).

It seems our major political parties pursue almost common agenda. This can be considered the outcome of the monochromatic culture that neoliberal philosophy has promoted. Even in the USA, the elections bear out the commitment of the parties to almost the same agenda packaged in different ways. Speaking about the U.S. election 2000, called “stolen election”, Chomsky very perceptively observes that public opinion studies revealed ‘that on eve of the election, three-quarters of the population regarded the process as largely a farce: a game played by financial contributors, party leaders, and the public relations industry, which crafted candidates to say “almost anything to get themselves elected” so that one could believe little they said even when it was intelligible. On most issues, citizens could not identify the stands of the candidates, not because they are stupid or not trying, but because of the conscious efforts of the PR industry.’<sup>52</sup> And this situation brought about “feeling of powerlessness”. Chomsky has noted how in the U.S. has emerged a ‘system of one political party with two factions controlled by shifting segments of business community.’<sup>53</sup>

Almost the same strategy for success at the hustings is being adopted in our country by our political parties. The regional parties have no macro vision, no national agenda; and their observation-post is seen hedged in by narrow considerations. The communists have lost their ways, and are yet to perceive the objectives for which they would like to make themselves relevant. What I had told Mr. Raja, M.P., responding to his Special Address in the National Seminar on “Treaty Making Power of Government” on July 21, 2007, is still my considered suggestions to all our communist friends (see Chapter 20 Section VI).

Section 29A(5) of the Representation of the People Act, 1951 mandates adherence to the policy of socialism. The political parties, which show indifference to the socialist ideal, deserve to be derecognized by the Election Commission of India. The political party, which makes a presentation of certain agenda to the people in which it does not believe, acts in grossly fraudulent way. As the Election Commission grants certain statutory benefit, it has an inherent power to withdraw that grant of benefit. If the conduct and the deeds of a political party, after its election, show that it did not believe in what it had stated in the documents seeking registration by the Election Commission, it becomes the duty of the Election Commission to cancel registration granted. Doing so would be in tune with our public policy. We cannot forget what Lord Denning LJ said in *Lazarus Estates Limited v. Beasley*<sup>54</sup>: “No judgment of court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

Anticipating the criticism of the idea of ‘Partyless’ government. I would mention, in passing, some specific advantages of the ‘Partyless’ government:

- (i) We have seen that many evils have ensued because of the growth of what is called ‘party dictatorship’ in which some inner caucus smothers the democratic spirit of the organization by subjecting its members to imposed agenda. This evil would go if ‘Partyless’ government is formed with shared agenda.
- (ii) It is also noticed that many good persons do not come forward to stand elections because the political parties, led by their barons, want only servile persons to come to legislature so that they can be easily shepherded the way the bosses of the parties desired.

- (iii) It becomes easy for the vested interests to manipulate our domestic politics if there is a strong party discipline imposed. This helps them to promote their interests by bribing, or influencing, or pressurizing the elements who rule inside a political party.
- (iv) Party dictatorship leads to 'cabinet dictatorship' which is never good for a democracy.

The partyless democracy would provide a better scope for an assertive and vigilant role of the people.

Before I suggest the steps to Restructure our Polity, I would reflect on the Anna Hazare Movement.

### **On the Anna Hazare Movement**

I conceptualized and drafted this Chapter when Anna Hazare was on 'fast unto death' at Jantar Mantar, New Delhi, to put pressure on our Government to enact the Jan Lokpal Bill providing a comprehensive and effective law against 'corruption'. As our government had failed to get the law enacted to eradicate 'corruption', and as scandals, scams, and the stories of 'corruption' at high places increased over the recent years, people had their heart wrenched by growing cynicism. Anna Hazare gave a clarion call for taking steps to rid our country of corruption. I too went to Jantar Mantar, and remained there for some time. The fast began on 5 April 2011; it ended on 9 April 2011 when our Government agreed to accept the demand, voiced by Anna, to constitute a joint committee of the government and civil society representatives to draft an effective Lokpal Bill. The scene I witnessed at Jantar Mantar, convinced me that our people could passionately act in support of a great public cause if our government and Parliament failed in their duty to our people.

It was remarkable that Anna did not allow the political parties to become part of the movement. In a way, it is our people's verdict on our political parties which had failed for more than four decades to provide the country an effective anti-corruption law. It is amusing to read in the newspapers how many politicians shed their crocodile tears in the name of 'democracy'! Such chorus we have heard time and time again.

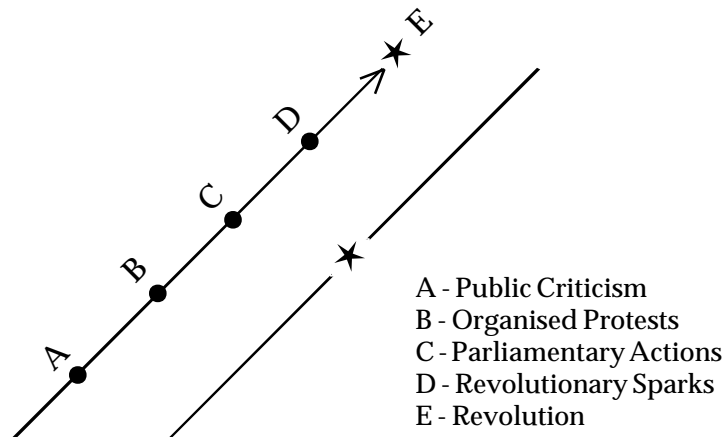
I remained glued to my Television watching the protests going on at Jantar Mantar, and listening to the fiery words of protests from Anna and Swami Ramdev. I grew apprehensive as I was not sure about the wisdom of our Government. I felt that if it committed the foolishness of ignoring such a protest, the changing circumstances might drive the nation towards a situation analogous to that when the Tennis Court Oath had been taken by the revolutionaries who had led the French Revolution. It was good that wisdom dawned on our Government, and it acted wisely; and the public protest cooled down.

### **The Grammar of Revolution**

Moving a little away from the context, I would tell you something about the grammar of 'Revolution' as we get it in the closing *shloka* of the *Bhagavad-Gita*. Dr. Radhakrishnan renders it in English thus:

"Wherever there is Krishna, the lord of yoga, and Parth (Arjuna), the archer, I think, there will surely be fortune, victory, welfare and morality,"

Here, Krishna represented the 'line of thought'; and Arjuna, 'the line of action'. They met at a high altitude (at a most creative and revolutionary point) to discharge their duties at Kurukshetra proving *Yato Dharma-stato jayah*.<sup>55</sup> My reflections on history have revealed to me a pattern in public protest which I would try to present through a line passing through critical nodes:



The grammar of a revolutionary ascent is complex and baffling: it has mysterious loops and dark corners. Anna's movement, it seemed to me, did not go higher than the point 'B' on the line. It even stagnated, and faltered while on way to the node 'B'. But history shows that situations do come when from the node 'B' there is a leapfrogging to the node 'D', even to 'E'. But such a leapfrog takes place when the issues are momentous and widely shared, and the institution at node 'C' shows its irrelevance. What course the people adopt depends on their perception of things, and the demands of the moments.

### **I suggest that time has come to Restructure our Polity**

It is high time for the citizenry of this Republic to think about the restructuring of our polity to achieve the objectives of our Constitution; and to provide ways for the eradication of corruption. I suggest for the consideration by my fellow citizens two sets of ideas: (a) to improve the present party system; and (b) to go in for partyless government.

It is worthwhile to consider prescribing the following as mandatory requirements:

- (a) Only the persons really domiciled in a constituency be selected to stand for election from that constituency. It would reduce election expenditure as the people of the constituency would not require a propaganda to make people aware of the worth of the candidates, and their views on matters of public interest. Secondly, such candidates will always be under the electors' critical gaze. Thirdly, such candidates would have better sense of attachment with people amidst whom they lived. Fourthly, they would be subject to socio-cultural pressure from the people of their areas. Fifthly, they would hesitate in resorting to unfair means as they would be under their own men's scanner, and they would hesitate in amassing ill-gotten wealth as they would shudder at their humiliating plight after being found out.

- (b) The people of the constituency electing its representatives must have 'right to recall' their representatives if they have acquired ill reputation, or have betrayed people's trust. This procedure underscores the fact that the 'sovereignty' lies with the people. This procedure would not let the representatives forget the people whom they represent. This procedure would inhibit the lobbyists of the corporate world from trying to subvert our institutions for their unworthy ends. No foreign powers or lobbyists would be able to get things done to their heart's content by bribing, or persuading our representatives through pressure and persuasion.

How the procedure to give effect to these suggestions would work should be considered, discussed and devised so that proper balance between stability and change is ensured. A People's Tribunal can be set up in every constituency which can consider serious allegations of omissions or commissions by our representatives, if made on affidavit signed by one-fourth of the voters of the constituency. The Tribunal's decision can be overseen by an Appellate Tribunal, presided over by at least two High Court Judges. In case the final decision is to recall a sitting member of a legislature, the order must be given effect.

#### NOTES AND REFERENCES

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- 2 Shiva Kant Jha, *Bharat ki Aitihāsik Jhalak* Part II p. 62 (1954) [now out of print].
- 3 Sigmund Freud, *Civilization, Society, and Religion* p. 67
- 4 Bertrand Russell, *Autobiography* p. 726-27
- 5 Kiran Tandon, *Sanskrit Sahitya mein Rajaniti: Sri Krishna aur Chanakya ke Sandharvha mein*. pp. 67-68 (Eastern Book Linkers, Delhi [The extract is the English rendering by me from the Hindi text.]
- 6 P.T. Raju 'The Concept of Man in Indian Thought' in *The Concept of Man* (edited by S. Radhakrishnan & P T. Raju p.. 207 (HarperCollins, India)
- 7 Hayek, *The Constitution of Liberty* quoted by Peter Watson, *A Terrible Beauty* p.518
- 8 Till the passing of the Middle Ages, Parliament was controlled only by the Landlords and property-owners. During the Renaissance the powerful property-owners and commercial adventurers emerged which helped the king to fight against the nobles and the greatest of all the capitalists the Church; and the emerging class was helped to go on hunting for wealth. Common people simply did not matter. These trends in the western thought have never ceased; and can be illustrated by a few quotations expressing the attitude towards 'man' that the dominant interests had developed..  
(i) The Phase of the Reformation. Luther said—  
"This article would make all men equal and so change the spiritual kingdom of Christ into an external worldly one. Impossible! An earthly kingdom cannot exist without inequality of persons. Some must be free, others serf, some rulers, other subjects." (Nehru, *Glimpses of World History* p. 284).  
(ii) The Age of Enlightenment. Even the great thinkers of this phase were the defenders of 'property' rights of the Haves, and looked down upon common people. "In any case, the *philosophes* could not bring themselves to trust the people. They even felt that to keep the masses from rebelling, religion was necessary." (Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 301).

## OUR DEMOCRATIC REPUBLIC AND ITS GREAT INSTITUTIONS

(iii) The American Revolution and the French Revolution, and the constitutions they produced, shorn of all deceptive embellishments, were the testaments of the *laissez-faire* philosophy. The idealist fervour could not cloak how they looked at the 'common people' Carlyle graphically portrayed their attitude towards 'common man';

"With the working people again, it is not well. Unlucky! For there are from twenty to twenty-five million of them. Whom, however, we lump together into a kind of dim compendious unity, monstrous but dim, far off, as the canaille ; or, more humanely, as 'the masses. Masses indeed; and yet singular to say, if, with an effort of imagination, thou follow them, over broad France, into their clay hovels, into their garrets and hutches, the masses consist all of units. Every unit of whom has his own heart and sorrows; stands covered there with his own skin, and if you pinch him he will bleed." (Quoted by Nehru in *Glimpses of World History* p. 363).

(iv) In the 19th century, common people did not have rights to vote. Benjamin Disraeli saw two nations, one of the rich and the other of the poor. [As we have in our country: those who live in Bharat, and those who live in India, or as they atrociously say, 'India Incorporated'.] The government was a class government. The middle class grew in importance. "They wanted suffrage for themselves and not for the masses. It was not until 1885 that universal manhood suffrage prevailed in England and not until 1918 that women obtained the vote....James Mill and his son John Stuart Mill, doubted whether it was good for men to be governed by an absolute, unchecked majority." \* (Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 492).

- 9 At the wreck of the Roman Republic emerged the colossus Roman Empire which established the majesty of the imperial power with greed and acquisitiveness as the dominant features. When greed and indomitable quest for power become the supreme motive, the history of Europe illustrated the strangest of all ironies: the vested interests succeeded in building up something like a mega-multinational corporation in the form of the Church. It provided model for the commercial structure we call 'corporation' in later times..

The overview of the western history shows that 'democracy' is a political system under which the wealthy and the privileged have liberty to do what they liked, and a guarantee that their gains are well protected. The government's role is limited to work as a band of facilitators; and to evolve, sustain and implement governance under which law promotes and protects their interest through the enforcement of the law of obligation, and pro-commerce recognition and enforcement of juridical inventions as the necessary foils to fiscal and economic innovations. Bentham counseled the governments that it could do best to remain 'quiet' in economics "as in most other, matters". But he hastened to add "The requests which agriculture, manufactures, and commerce present to governments are modest and reasonable as that which Digoenes made to Alexander: "Stand out of my shine." (Quoted in Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 493.) The gruesome phenomena that we see all around illustrate that the government functions more for the big corporations and the high net worth individuals than for what they say *aam aadami* (the commonman). The role of the government is narrowed to act merely as the protector and facilitator of the neo-capitalists believing in, as Galbraith says, tax reduction to the better off, welfare cuts to the worse off, small, 'manageable wars' to maintain the unifying force of a common enemy, the idea of 'unmitigated laissez-faire as embodiment of freedom', and a desire for a cutback in government. God created the humans. But our economists and their hirelings have created the corporations, with human rights, but most often with the monster's heart. The trends of our times have, bereft of all rigmarole, led to the triumph of Corporatocracy.

- 10 Nehru, *Glimpses of World History* p. 405  
11 Joseph Stiglitz, *Making Globalization Work* p. 279  
12 Noam Chomsky, *Hegemony and Survival* p. 62  
13 Noam Chomsky, *Hegemony or Survival* p. 248  
14 Noam Chomsky, *Hegemony or Survival* p. 29  
15 Nehru, *Glimpses of World History* p. 545  
16 Quoted from *De Republica Anglorum* 48-9 in G. R. Elton, *The Tudor Constitution* (Cambridge) p. 235  
17 Nehru, *Glimpses of World History* p. 823  
18 *The Encyclopedia Britannica* Vol. 29 p.82  
19 E. Lipson, *Europe in the 19th & 20th Centuries*  
20 *ibid*  
21 Published by Centre for Study of Global Trade System and Development, New Delhi  
22 WP (C) No.1357 of 2007 in *Shiva Kant Jha v. Union of India*

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- 23 Keynes, *The Economic Consequences of Peace*. P. 41
- 24 *The Times of India* April 17, 2011
- 25 Chomsky, *Hegemony and Survival* p. 138
- 26 Nehru, *Glimpses of World History* p. 825
- 27 Nehru, *Glimpses of World History* p. 935
- 28 Expressions quoted from Chomsky, *Hegemony and Survival* p. 7
- 29 Joseph Stiglitz, *Making Globalization Work* p. 279
- 30 Noam Chomsky, *The Essential Chomsky* p. 165
- 31 Russell's book came out in 1946, and its second edition in 1961.
- 32 Bertrand Russell, *History of Western Philosophy* p. 615
- 33 *Samsher Singh v. Punjab* AIR 1974 2192
- 34 *Jawaya Kapur v. Punjab* AIR 1955 SC 549 1955 S.C.R. 225
- 35 AIR 1955 SC 569
- 36 G. R. Elton, *F. W. Maitland*, pp.65-66 (Weidenfeld and Nicholson, London)
- 37 2 L Ed 60 (1803)
- 38 Jawaharlal Nehru, *Glimpses of World History* (at p. 943)
- 39 *The Report of the National Commission to Review the Working of the Constitution* (5.15.4)
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- 42 <http://commons.wikimedia.org/wiki/File:Corrupt-Legislation-Vedder-Highsmith-detail-1.jpeg>
- 43 Noam Chomsky writes, after quoting Ocampo in his *Failed States* p. 219
- 44 Noam Chomsky writes, after quoting Ocampo in his *Failed States* p. 219
- 45 H.A. Davies , *An Outline History of the World* p. 175
- 46 (1955) SC S.C.R. 236-237
- 47 AIR 1986 SC 111
- 48 Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 210
- 49 Chomsky, *Failed States* p. 223
- 50 Prof. Arun Kumar, *The Black Economy in India* p. 189 (Penguin)
- 51 Noam Chomsky, *Hegemony or Survival* p. 160
- 52 Noam Chomsky, *The Essential Chomsky* p. 339
- 53 Chomsky, *The Essential Chomsky*, p. 258
- 54 [1956] 1 QB 702 at 712.
- 55 'Where there is Righteousness, there shall be Victory'