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THE REALM OF DARKNESS: THE TRIUMPH OF CORPORATOCRACY

*Yet from those flames
No light, but rather darkness visible
Served only to discover sights of woe,
Regions of sorrow, doleful shades where peace
And rest can never dwell, hope never comes
That comes to all.*

John Milton, *Paradise Lost*

*A truth that's told with bad intent
Beats all the lies you can invent.*

— Blake, *Auguries of Innocence*

PART I

(a) The Realm of Darkness

My mind goes back to 1958 when I read the celebrated *Aparoksanubhuti* by the great Shankaracharya. He said, in words of great beauty and deep suggestions, that it is impossible to know things unless they are seen under sunshine. He said:

*notpadyate vina jnanam vicarena nyasadhanaih
yatha padarthabhanam hi prakasena vina kvacit*
(Wisdom cannot be gained without inquiry,
The things of the world cannot be seen without light.)

I quoted these lines whilst arguing my PIL¹, before the Delhi High Court, against the 'secrecy jurisdiction' of a tax haven, the operations from which were facilitated by our Government through its administrative omissions and commissions. I have told you about this PIL in Chapter 23. The High Court said in its Judgment: "No law encourages opaque system to prevail."² It is really a sentence never to be forgotten.

After examining how our public administration was run during the infamous Emergency, the Shah Commission of Enquiry said in its *Third and Final Reports*: “It has been established that more the effort at secrecy, the greater the chances of abuse of authority by the functionaries”. During this neoliberal phase, when the corporations rule the world, areas of darkness have been established for the Rogue Finance to rule the world to serve the ends of the corporate oligarchy. There are good grounds to believe that the patrons of such areas of darkness are the massive global economic institutions which have come to straddle the global scene mostly after World War II. Such institutions have shaped not only the grammar of economic and commercial operations through opaque systems, but have also cast their spell on our political economy at work. To illustrate this widely known fact, I intend to cast a fleeting focus on how the World Trade Organization works. Our country became its member in 1994, through a wholly administrative act of granting consent, the details of which were unknown to our people and our Parliament. How the WTO functions has been vividly described by Joseph Stiglitz, the winner of the Nobel Prize for Economics, 2001, in these words³:

“The problem of lack of transparency affects each of the international institutions, though in slightly different ways. At the WTO, the negotiations that lead up to agreements are all done behind closed doors, making it difficult —until it is too late —to see the influence of corporate and other special interests. The deliberations of the WTO Panels that rule on whether there has been a violation of the WTO agreements occur in secret. It is perhaps not surprising that the trade lawyers and ex-trade officials who often comprise such panels pay... little attention to the environment...”

‘Secrecy’ goes against our Public Policy and international *jus cogens*, as it breeds corruption and furthers immorality, establishes an *entente cordiale* of collusion and fraud, and rubs against the grain of an open society. It is not difficult to imagine why the power-wielders prefer ‘secrecy’ to ‘transparency’. Stiglitz has brought out some unassailable reasons for this practice with masterly precision:⁴

“Earlier, in my days at the Council of Economic Advisors, I had seen and come to understand the strong forces that drove secrecy. Secrecy allows government officials the kind of discretion that they would not have if their actions were subject to public scrutiny. Secrecy not only makes their life easy but allows special interests full sway. Secrecy also serves to hide mistakes, whether innocent or not, whether the result of a failure to think matters through or not. As it is sometimes put, “Sunshine is the strongest antiseptic.”

One winter morning, I was having my morning walk in the District Park adjacent to my residence at Sarita Vihar in New Delhi. My wife, Veena, was with me. We saw two dogs running, one about two furlongs behind the other. The first one had a piece of meat in its mouth, a part inside its jaw but most part dangling outside. We saw that it ran inside a bush, and came out soon to counter the other rushing to invade the place where it had hidden its wealth. It illustrated what the idiom ‘dog in the manger’ is known to suggest. They quarreled, fought tooth and nail till the guard of the garden showered his *lathi* on them to drive them away.

We sat on the wooden bench to relax. It so happened that we saw two cats coming out of that bush: both happy and jovial licking each other with lust. They must have had their feast inside the bush, and now were out on their romantic errands. My wife put her gloss on what had happened. This is how the demonic persons, driven by greed, amass wealth, and hide that from others; but, in the end, go empty handed, perhaps with silent agony in their heart. Whenever I reflect on the 'secrecy jurisdictions', and the ways of the greedy capitalists of our brave new world of the neoliberal ideas and strategies, my wife's that gloss on that event always comes to mind. My mind goes to the *Mahabharata* which tells us how it was a dog that had guided and escorted King Yudhisthira to heaven. I feel amused that her gloss has given me some understanding of why and how the structure of deception works enabling the Rogue Finance to dance casting its spell over the world, and also on the cyberspace.

(b) Conrad's *Heart of Darkness* and the world we see

Before I move ahead to touch other aspects of the matter, permit me to indulge in a short aside. My mind goes back sixty years when I had read Joseph Conrad's *Heart of Darkness* (1899). I was deeply touched by his stress 'on the numberless varieties of sufferings' but what makes me recall this novella is 'the three types of Darkness' that ruled the *terra incognita* that the central Africa was during the nineteenth century when the European imperialists scrambled there for territorial gains. They had swooped down as the hordes of vultures on the tiny birds in the human shapes. The hero of the novella, Marlow, found the region dark, but darker still was the mind of the European looters and exploiters of those 'black shadows of disease and starvation', called the natives. But when those luckless persons found themselves in the jaws of darkness, they felt their all hopes had gone; and they found themselves dragged towards the sucking crater capable of providing the only honourable exit from life. The darkness of the region, the darkness of the exploiters' hard heart, and the darkness that the loss of way and hope had generated for the victims, constitute the subject-matter of *Heart of Darkness*. Not even some glowworms were there to be seen. What this novella tells us was perceptively noticed by Owen Knowles in his 'Introduction' to that book. He quotes a few suggestive words in which Conrad painted what was the worst in Kurtz. He says:

"Where some nations tended high-mindedly to regard overseas expansion as an organic extension of their destiny, *Heart of Darkness* can suggest a powerfully alternative vision: of imperialism as a historical deformation, whose working out involves an inevitable principle of degeneration. Central to this version is the presentation of Kurtz.... imaged as a grimacing open mouth, giving him 'a weirdly voracious aspect, as though he had wanted to swallow all the air, all the earth, all the men before him.'"

I believe darkness has no existence: it exists only because light has gone. The need is to put on the light: and the problem stands solved. At the heart of the matter, to say in philosophical idioms, I do see an apocalyptic existential symbolism of decay and destruction.

Dear reader, excuse me for this aside. T. S. Eliot, in his 'The Hollow Man', quotes as its epigram a line from *Heart of Darkness*: 'Mistah Kurtz — he dead'. Eliot goes to state the precise problem that awaits solution:

Between the idea
And the reality
Between the motion
And the act
Falls the Shadow

It is time for us to work so that this 'shadow' melts. But the point to ponder is: how can the shadow melt? Many minds can conceive of divergent answers. One I got in 'Lamia', a famous poem by Keats. I read that as an undergraduate student. In Keats's *Lamia*, the serpent, masqueraded as the most beautiful girl, Lamia; but could not stand the critical gaze of Apollonius⁵ that unwove the rainbow of her fraudulent romance. With Lamia thus exposed, her lover Lycius dies of grief. We would agree with Keats, who expressed himself through a rhetorical question: 'Do not all charms fly at the mere touch of cold philosophy?' Her fraud is exposed, but her lover's broken rainbow, and his ultimate death, sadden every reader. But in human affairs, the cardinal principle for our guidance is what Lord Denning said: 'Fraud unravels everything.'⁶ When we think about the Realm of Darkness, and the Instruments of Darkness triumphant in our times, we feel the need for some institution to play Apollonius so that the structure of deception can melt.

(c) A Short profile of how Kurtz and Comus operate in the present-day neoliberal global economic architecture: some illustrations from the Indian observation-post

The tax havens, or secrecy jurisdictions, were utilized first for tax-avoidance, or tax-mitigation, or tax-negation, but soon they came to be used for other illicit purposes; (i) to amass gains of crimes outside the gaze of the home country; (ii) to use such places as sanctuaries to escape from the reach of the creditors; (iii) to treat them as the Alsatia for the delight of the criminals; (iv) to provide licit and/or illicit commercial services for corporate management and ignoble tax-planning causing wrongful gains to some, and wrongful loss to others; and (v) to facilitate money laundering and roundtripping. They seem to resemble Kurtz of *Heart of Darkness*; and go close to Comus, the Fraudster, about whom I have written in Chapter 23.

It is commonly shared concern that a lot of money is being generated by the most unscrupulous methods, through bribery, receipt of kick-backs, drug-trafficking, insider trading, embezzlement, computer fraud, 'under invoicing', 'over invoicing' etc. History of economics has amply shown that the economic fraudsters have infinite inventiveness. Those who earn this way, try first to park their gains in places where the risk of detection, seizure and confiscation is either non-existent or minimal. The tax havens are considered the safe places to park such tainted wealth. Through companies floated in tax havens, ill-gotten money can be effectively laundered, and money brought into the normal economic channels. Many of the tax havens spread red carpet to welcome them. They ensure legal systems under which such pursuits are carried on without any risk of being subjected to scrutiny. The other day we got news on the TV that a most widely

known terrorist possessed vast wealth in Caribbean islands and at several other places many of them well known as grossly non-co-operative 'tax havens' or 'secrecy jurisdictions'. Such wealth is used to finance terrorism. If a dreaded terrorist decides to transfer resources to India from Monaco or the Bahamas, or Luxemburg, or some of the islands in the Caribbean Sea, or the English Channel or some dot-like country in Micronesia or Polynesia, he would adopt a simple strategy. He would instruct his investment manager to structure some device for transferring resources into the target country. By way of illustration, he might float a subsidiary company, or a conduit company, in Mauritius for transacting on the Indian Stock Exchange. What makes a tax haven most inviting is its legal and administrative commitment to provide to the operators effective secrecy for hiding the nature of transactions, the persons behind the show, and the beneficial ownership of the gains and wealth. Floating a conduit company in Mauritius is an easy affair. Such companies are so 'ring fenced' as not to generate adverse effects on the domestic transactions; but they enjoy all the facilities to maraud the revenue of other countries. India has become over these years an obvious and immediate target. If a Luxemburg Company earns capital gains in India, it would be taxed in India as an ordinary non-resident as there is no double taxation avoidance agreement between these two countries.^{7*} If that company sets up subsidiaries in tax havens, like Mauritius, the subsidiaries become incorporated companies in Mauritius, and so entitled to access benefits available under the Indo-Mauritius DTAC. If such companies earn capital gains in India, they successfully avoid paying tax on capital gains in India as under the Indo-Mauritius DTAC the capital gains of the Mauritian residents are not chargeable to tax in India. They escape paying capital gains in Mauritius also as that country does not levy tax on capital gains. Thus sailing under false colours becomes most inviting for the tax dodgers as they can wrongfully gain advantages of a bilateral treaty to which they are neither parties nor beneficiaries.

(d) The Story of Maharaja Parikshit as narrated in the *Mahabharata*

Whenever I think of the persons stashing their wealth at secret places to escape the net of Justice, the story of Maharaja Parikshit comes to my mind. I had heard that from my mother. *The Mahabharata* tells us that King Parikshit, fatigued and exhausted, reached a Rishi's *sashram* in a dense forest. As the Rishi was in his meditation, he couldn't welcome the King. Even the ablest persons have some moments of weakness. Parikshit was so angry that he threw on the Rishi's head a dead snake, and left the place. It so happened that the Rishi's son came there, and was furious at the insult done to his father. On knowing who had committed that indiscretion, he cursed the King to die of snakebite on the seventh day. When the King came to know about the curse, he was sad. *The Mahabharata* tells us that the King established a high security zone for his security, and made a strategic planning so that none could intrude into his palace constructed at the top of a high

*That was the position when the Assessment Order had been passed by some Mumbai income-tax authorities that triggered the PIL which is the subject-matter of Chapter 23 of this *Memoir*. 'Agreement and the Protocol between the Government of Republic of India and the Government of the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital' was signed in 2008, and was notified 2009, and was made operative 1st April 2010.

pillar. The zone and the building were put under security forces for maximum vigilance. Everything that went inside the palace was screened fully. All sorts of medicines had been gathered there to take care of any emergency situation. Many distinguished doctors were put on duty. It was a wholly a foolproof arrangement. But on the seventh day, a snake (called Takshaka) evaded all vigilance, pierced through all secrecy. It reached near the King hidden inside a tiny fruit. When the King tried to eat the fruit, the snake emerged to bite the King. The great King was bitten, and he died. All his efforts at securing himself, failed.

I have got a suggestion to make to them who would surely not listen to me. Unsolicited suggestions are seldom heard. Why amass wealth at any of 700 islands in the Caribbean, or in the vaults of the Swiss banks? There are many reasons why you shouldn't do such things. First, you will be rated the worst amongst the thieves as those who steal and keep the proceeds in their country would be rated better because the stolen and ill-gotten wealth would remain in the country: if not in the Consolidated Fund of the nation, it would be with those who would come within the reach of 'We, the People'. Secondly, you would rue someday at your foolishness by illustrating the old adage: fool and his money are soon parted. Such islands might someday go inside the seas on account of rising sea levels, or might stand dead under the kiss of some dreadful Tsunami. The secret numbers of the foreign bank accounts might get lost by acts of men or acts of God. The 'Swimming City', about which I have written in Chapter 25, might find eternal repose at the sea-bed with all its parts gone apart. I need not go on a speculation spree as that is the privilege of the Rogue Finance. But I put one more question: Are these gentlemen rushing to such destinations as the man had rushed from the safe place to the place where Death awaited him in Somerset Maugham's shortest short story 'The Appointment in Samara'? Let none create that despicable situation in which the beggars will curse the billionaires for having stolen from their bowls by depreciating the value of their petty coins, and making their miserable existence more miserable on account of the rise in the prices of goods without which they cannot survive.

(e) The global state system: classical state system yielded to the 'neoliberal' State system

Fisher aptly said that for many generations the public law of Europe was settled through the terms of the Peace of Westphalia (1648)⁸ recognizing the principles of 'territorial sovereignty of states', and 'equality *inter se* the States'. But things happened, as they are always made to happen in international politics; a wide hiatus set in between the precepts and practice amongst the states. The Concert of Europe, set up after the Congress of Vienna (1815), continued to lead the Eurocentric world politics almost till World War I (1914), nay, it continued, at its basics, till the global lunacy expressed itself in World War II posing challenging problems for creative responses from the statesmen. E. Lipson observed: "In the nineteenth century the destinies of Europe were in the hands of five or six States, which arrogated to themselves a preponderant influence in all matters of general concern".⁹ The equality of the sovereign states could not work in the world where the states were grossly unequal because of their gross differences in wealth and power: in short, in their capacity to shape the *Realpolitik*. This brought about a dichotomy between political sovereignty and legal sovereignty of the

international actors. The post-World War II has borne an analogous pattern. The USA became most dominant. 'The Big Business', represented by the corporations, mainly MNCs (Multinational corporations) and TNCs (Transnational corporation), called the shots. It may not be far from truth if we say that the political sovereignty has yielded, in effect, place to the corporate sovereignty, establishing what we can call 'corporate *imperium*'.

But this is an outcome of a radical changes in the international 'states system' brought about by the changes so aggressively manifest after World War II. Prof. Sol Picciotto has insightfully observed:

"The emergence of 'offshore' statehood acted as a catalyst for the undermining of the classic liberal international system, which was reinstated within a framework of multilateral institutions after 1945. 'Offshore' statehood was created by international investors (especially TNCs) and their advisers, responding to and exploiting the elastic scope of state sovereignty based on regulatory jurisdiction and legal fictions of residence and incorporation."¹⁰

Prof. Picciotto explains what led to the changes after 1945 thus:

"The phenomenon of 'offshore' statehood has been an important catalyst in the transformation of the international system. By providing a channel for routing global flows through the use of artificial persons and transactions, 'offshore' has helped to dislocate the international state system, and induce its substantial reconstruction. Any project for the reconstruction of the public sphere must begin from a fuller understanding of the ways in which statehood has been transformed than is provided by most discussions of the state. Commonly 'the state' is reified and personified, which makes it hard to understand statehood as a way of organizing society, a set of social relationships involving specific, historically-developed institutional forms and cultural practices."

I am in agreement with Prof. Picciotto that statehood is only a way of organizing society, a set of social relationships. History has shown how the post-1945 political societies have been organized on ideas starkly different from those in the Westphalian states system. Philip G. Cerny is only partly correct in saying that the present-day "global governance"... continues to rest on a Westphalian bargain', though he is wholly right in pointing out that we have not succeeded in building up 'an authoritative, effectively supranational superstructure'.¹¹ We may call what has emerged as the 'post-modern' states system. The observation of Judge Manfred Lachs of the ICJ in *In the North Sea Continental Shelf Case*¹² is very relevant:

"Whenever law is confronted with facts of nature or technology, its solution must rely on criteria derived from them. For law is intended to resolve problems posed by such facts and it is herein that the link between law and the realities of life is manifest. It is not legal theory which provides answers to such problems; all it does is to select and adapt the one which best serves its purposes, and integrate it within the framework of law."

The post-modernist states system has been choreographed on neoliberal assumptions in order to facilitate the global agenda of extractive capitalism. It

becomes difficult to evaluate the importance of 'democracy', 'social justice', and 'public welfare' in such states. Their PR industries subject us to deceptive logic and insincere words through high pressure propaganda conducted by hired intellectuals and institutions. They say that the world is getting 'globalised' but we find mind-boggling divisions between the haves and have-nots; they say we have a global fraternity, but we find how even the billionaires are stealing from the beggars' bowl.

They say that the 'government' has gone yielding place to 'governance'. Dr. Picciotto defines "governance" thus:

"At the same time, the term 'governance' is also used to signify the provision of public order, protection of private property, but not necessarily liberal democracy, to required global standards by countries, especially in eastern Europe and Africa, as a condition of political support and economic investment from the West."¹³

To my mind, 'governance', so understood, means a system which protects property, and enhances the neoliberal agenda which rejects both 'democracy' (as we read this concept within the meaning of our Constitution), and 'social justice'. Outright rejection of 'democracy' is not made as they fear that that course would bring about a revolution in many countries.

The classical India had organized our complex society as *arashtra* in which all the power-wielders were subject to *Dharma*. The Islamic society believes in Pan-Islamic values with sovereign power resting only with Allah. On the other hand, the states systems in the West have always been to protect dominant social and economic interests. The way the Western states system has evolved is accurately described by Bertrand Russell:

"Glorification of the State begins, so far as modern times are concerned, with the Reformation. In Roman Empire, the Emperor was deified, and the State thereby acquired a sacred character; but the philosophers of the Middle Ages, with few exceptions, were ecclesiastics, and therefore put the Church above the State. Luther, finding support in Protestant princes, began the opposite practice; the Lutheran Church, on the whole, was Erastian. Hobbes, who was politically a Protestant, developed the doctrine of the supremacy of the State, and Spinoza, on the whole, agreed with him. Rousseau, as we have seen, thought the State should not tolerate other political organizations. Hegel was vehemently Protestant, of the Lutheran section; the Prussian State was an Erastian absolute monarchy. These reasons would make one expect to find the State highly valued by Hegel. But, even so, he goes to the lengths which are astonishing."¹⁴

The history of the West shows one point clearly: the states have functioned to protect and promote economic interests of the dominant class.

The factors, which altered the 'global states system', can be briefly stated thus:

- (a) Even till the 19th century we had on our planet many areas on land and in the oceans which were *terra incognita* (unknown land) and *mare incognitum* (unknown sea). Many areas before the intrusion of the colonial powers, were without human habitation, or were under the occupation of exiles, pirates, looters, criminals and nomadic tribes. But they were soon trapped

under the imperial authority of the dominant European powers. With the decline of colonial powers, and their adoption of the alternate strategies for maintaining control over those areas, they were turned into tiny states, dependencies, overseas dependencies, *de facto* recognised and specified territories.¹⁵

- (b) The development of science and technology in the second half of the last century helped people to get access to all the areas on the globe. Thousands of islands in the Pacific, the Indian Ocean, and the Caribbean became easily accessible; and convenient network was established on our planet and in the cyberspace. Most of these places were suitable for hiding things. And by manipulating the elastic concepts of 'territorial sovereignty', 'residence' and 'incorporation', many of them turned themselves into effective and inviting centres for fast growing international finance. I had occasions to witness how this game was being played. Something about that I have mentioned in Chapter 23; and something more worrisome would be mentioned in Chapter 29 of this Memoir.
- (c) Such exclusive and remote areas were found most suitable for the operations as the offshore centres for finance. There the financial experts could operate under legal regime tailor-made for them. In most situations the arrangements showed the operation of the *entete cordiale* of fraud and collusion between governments and corporations. They operated mostly in the virtual world. Their computers, by indulging in the creation of illusionary money, enabled the big capitalists to steal from the Poor's petty resources.¹⁶ This strange architecture of finance created illusory wealth without creating much goods and services for people to live as human beings.
- (d) The international investors (especially TNCs), and their advisers exploited "the elastic scope of state 'sovereignty' based on regulatory jurisdiction and legal fictions of 'residence' and 'incorporation'¹⁷. The two aspects of 'sovereignty', internal and external, were creatively utilized to set up regimes in the tax havens. 'Internal sovereignty' was utilized as a justification to set up an opaque system inside the domestic sphere. The aspect of the 'external sovereignty' was invoked to ward off foreign intrusion in the domestic sovereign space. The grant of the Certificate of Residency by Mauritius, or the grant of *Carte de Sejour* by Monaco, was considered enough to preclude any investigation into the questions of residency of the entities, or the beneficial ownership of income, or wealth. The MNCs float their subsidiaries integral to their corporate structures. When such companies are incorporated under the laws of a country, they become 'residents' of that country. We know that thousands of 'shell' companies were formed in tax havens. We hear that thousands of such corporations pullulate only in the hip-pockets of certain professionals operating from the same building, perhaps the same table without even tentacles outside that hole! It is suggestive to mention that, when the Paris-based Financial Action Task Force subjected the banking system of the Bahamas to a close scrutiny, in one go the Bahamas, it is said, banned the "anonymous ownership of more than 100,000 international business companies registered in the country."¹⁸

- (e) Most of such centres were developed, in their early phase, by the wealthy persons in America and Britain. Dr. Picciotto has noted this point when he says:
“It was initially encouraged by the authorities in the main capitalist countries, within tolerated limits, for competitive advantage, and to manage the growing contradictions engendered by the commitments to liberalisation under the Bretton Woods system.”
- (f) Even Mauritius was helped to develop as a tax haven by the interested persons, mostly from India. America and the UK developed the numerous tiny-tots in the Caribbean and the Pacific as tax havens or secrecy jurisdictions for the purposes of the Big Business. The major western countries and their apex organization, OECD, reacted against the tax havens by taking some steps to stop abuse through those jurisdictions and areas. As these areas cannot afford to annoy the great powers, they can take to their course only to the extent tolerated by these powers. There are good reasons to believe that the superrich and the MNCs of those countries are much interested in promoting tax havens. So every effort is being made by them and their professionals to let the tax havens have their way.

The Indian Position

India has yet not taken an effective step against any tax haven. Our country has rather allowed the abuse to go on. I am painfully led to this view for several reasons. I touch only a few of them here: (i) the noxious CBDT Circular of 2000, discussed in Chapter 23 is still operative; (ii) the opportunity to denunciate the Indo-Mauritius DTAC, on the ground of the unilateral change brought about by Mauritius turning as a tax haven, was not taken by invoking the doctrine of *rebus sic stantibus*; (iii) non-action even on the judicial *cri de coeur* of our Supreme Court, in *Azadi Bachao*, against ‘treaty shopping’ (discussed in Chapter 23); and (iv) the section 90 of the Income-tax Act, 1961, which grants power to enter into a tax treaty, has undergone several legislative changes in the recent years, but these are more to help the abuse of the route from that tax haven than to prevent the abuse of tax treaties. Besides, our Government has failed to see that no purpose would be served by investigating ‘shelf’ companies which exist only on paper. We will not be able to proceed against such ‘shelf companies’ or ‘shell companies’ even under the international law of Nationality because no substantial nexus can be said to exist between such companies and Mauritius.¹⁹ Besides, the real wealth earned in their name, might have gone to some other country, at times after passing through many intermediaries and filters! Instead of taking effective steps against the secret jurisdictions, the Income-tax Act of our country²⁰ was amended by the Finance Act, 2006 inserting section 90A in the Income-tax Act, 1961, providing that “any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement”. The concept of “specified territory” is open-ended, and may even include the micro-islands and mini-states the routes wherefrom can be conveniently used for maxi crimes, and massive tax evasion. The safeguard provided in the law is a broken reed. Writing more about this, and that too with candour,

is embarrassing, and cannot be done within the constraints of this Memoir. The purpose of my observation is just to plant this apprehension in your mind. It is for you to watch out!

PART II

THE INSTRUMENTS OF DARKNESS

..... But it is strange
And oftentimes, to win us to our harm,
The instruments of darkness tell us truths
Win us with honest trifles, to betray's
In deepest consequence.

— Shakespeare, *Macbeth*

(i) The post-World War II scenario: the emergence of the corporate *imperium*

I have already mentioned that the United States emerged from World War II with a studied strategy to play an intrusive and overbearing (in effect, imperial) role. 'From the role of "the elder brother" it worked ceaselessly to transform itself as a global trend-setter, a role model, and a protean creature' turning into police, magistrate, and judge rolled into one'. Writing on June 16, 1933 Pandit Nehru wrote so perceptively on the role of the Big Business in the USA. He wrote:

"....the population of the United States was only 6 per cent of the world's population. The general standard was thus very high, and yet it was not as high as it might have been, for wealth was concentrated in the hands of a few thousand millionaires and multimillionaires. *This "Big Business" ruled the country. They chose the President, they made the laws, and often enough they broke the laws. There was tremendous corruption in the Big Business, but American people did not mind so long as there was general prosperity.*"²¹ (Italics supplied)

And this 'Big Business', which had ruled the country, Nehru wrote in 1933, "was found to be thoroughly corrupt, and confidence in the leaders of finance and industry was shaken."²² 'Corporation' was created as a commercial vehicle, and had best of times to grow in the USA. It emerged in the early 17th century as an institution for international trade; but became an engine of imperialism.

I had written long back about the nature of 'corporation' under the telling heading "A corporation cannot be an impervious coverlet of gross abuse"²³:

'A corporation is a *created* juristic person for business purpose. Law ascribes collective and limited liability to a group of persons conceived and contrived as a jural entity not entitled to transgress the frontiers prescribed under jurisprudence."²⁴

The history of the growth of the corporate power in the USA shows that when, during the Civil War, the political institutions lacked vigilance and verve, the corporations saw to it that the US Supreme Court considered them natural persons capable of enjoying the basic rights granted to the humans. Under a series of decisions by the US Supreme Court, a 'corporation' was recognized as an immortal jural construct, and also as an immortal biological person!. In *Nike v. Kasky* (2003), a MNC claimed a Right to Lie as a right emanating from the First

Amendment of the US Constitution that protected free speech, or what was called “commercial speech”. An expert has aptly said: “Corporations can easily become the gruesome illustration of the propensity to feign.”

The way the corporations have been allowed to grow to rule the world, reminds me of Gregor Mendel’s honey bees. “He (Gregor Mendel) made a hybrid strain of bees which gave excellent honey; but alas, they were so ferocious that they stung everybody for miles around and had to be destroyed.”²⁵ The ‘corporations’ had been created to work as good vehicles for economic and commercial management, but they acquired enormous amount of power to subject other institutions to serve their interest.

(ii) The nature of corporate consciousness in the world of the humans

A corporation evolved as a form of business organization in which public interest was greatly involved. It was not conceived as an impervious coverlet of abuse for commercial purposes. Transparency is not excluded by “incorporation”. It is a matter of public policy that the affairs of a company should be under public gaze so that this form of ‘business organization’ is not used for extraneous purposes. But, as is evident from the realities in this era of the economic globalization, every effort is being made to evade scrutiny of the ways of ‘corporations’: as they have a lot of skeletons in their cupboards which they want to keep shrouded in secrecy.

Till 1960s, we perceived the corporations as mere vehicles for conducting business of scale more efficiently and aggressively with longer lifespan, but with restricted risk to the investors. The institution of ‘corporation’ was just one of many human inventions to serve economic needs, but it was always considered accountable to the political institutions. But in the United States the corporations developed in a different trajectory. With the growth of the big corporations, esp. the MNCs, in the 1980s and 1990s, the ‘corporations’ came to be projected as ‘ethical beings’ with sensitive conscience, with heart that bled for people and their culture. The Business Schools were set up to propagate this philosophy; the machinery of propaganda was set afoot to spread these notions. All that I have seen and heard have convinced me that all the pleadings, that the corporations have ‘ethics’ and that they are conscious of their moral responsibility, are just a part of the structure of deception so assiduously built.

It happened first in the U.S. that the humans and the corporations were placed in the same genus: “legal persons”. In *Santa Clara County v. Southern Pacific Railroad* (118 U.S. Reports 394 [1886]), the United States Supreme Court conceded to ‘company’ a ‘corporate personality’ within the Fourteenth Amendment of the U.S. Constitution granting it the equal protection benefit. The gross individualism, bordering on narcissism, and the ever increasing craze for property, without social restraints, constituted the cardinal principles in the American worldview on commerce. The Indian and European courts treated corporations as ‘legal persons’ but maintained many points of material distinctions between the humans and such artificial structures. These courts evinced their readiness to see their inside to see if they promoted fraud, or went counter to public policy. But after the onset of the neoliberal phase of the present-day Economic Globalization, the American view is asserting itself aggressively through the impact of the

WTO's corporate culture. I believe, on good reasons, that certain decisions of our Supreme Court bear the imprint of the neoliberal thought which treats the corporate structure impregnable, and impervious even to the judicial gaze.

The extent to which the 'corporations' can go in claiming the right to freedom can be easily imagined by considering that before the California Supreme Court, Nike Inc. claimed, in *Nike vs. Kasky*, a right to publish false and misleading information, obviously for its commercial purposes. In our country such grossly atrocious claims have not been yet made before any court of law, but the trends we see unfolding themselves even in our country show that day is not far when that situation might come! We know that the Press, almost world over, is under corporate control, and, thus, the most powerful instruments to shape public opinion have come under overt or covert corporate control. One day, round the clock, I observed the TV channels, and discovered that 90% of the commercial advertisements carried deceptive information, and gross lies through their visuals and sound bites.

It is strange that the distinction between the corporations and the humans is often ignored. J. Brownoski aptly said in his *The Ascent of Man* (at p. 424): "It is not the business of science to inherit the earth, but to inherit the moral imagination: because without that man and beliefs and science shall all perish together." In my considered view the 'corporations' are congenitally incompetent to "inherit the moral imagination". Bertrand Russell rightly said: "Ethics has a twofold purpose: first, to find a criterion by which to distinguish good and bad desires; second, by means of praise and blame, to promote good desires and discourage such as are bad."²⁶ So he concluded that "Ethics is necessary because men's desires conflict.". Every creative process involves right perception, right evaluation, right implementation, and right assessment of all that is done. Nowhere in the western thought I found ideas so helpful in understanding how moral imagination works, as in the *Bhagavad-Gita*. There is a fundamental difference between the decision-making process of the corporations and of the ethical beings which we humans are. A 'corporation' is an instrument for wealth creation, a vehicle for commercial pursuits. Only human beings possess souls which endow them with the faculty of *viveka* that helps them to take steps for the weal of others. The right way to judge the propriety of actions is to evaluate the worth and propriety of such actions. The state of mind of the actor is the most important. I have quoted in Chapter 20 of this Memoir the words of 'Dinkar' in which he expresses Krishna's instruction in the *Bhagavad-Gita*: मुख्य है कर्ता-हृदय की भावना. The corporations give weight to the commercial consequences which foster Greed. They believe in pragmatism which negates many of the fundamental assumptions of our "constitutional socialism" that I have seen at the heart of our Constitution (Chapter 21).

(iii) A Corporation cannot be an impervious cover-let of gross abuse.

The great British Judge, Lord Denning, had said for all times and all lands that : 'Fraud unravels everything'.²⁷ The court is, in effect, an instrument of Justice (*Dike*). In another well known British decision, *Re R.G. Films Ltd*, it was aptly said: "Public policy may make it necessary to look at the realities behind the corporate façade.....Courts are always vigilant to prevent fraud. Thus, they will

not permit the evasion of statutory obligations". The House of Lords, in *Furniss v. Dawson*²⁸ ignored the existence of a tax haven company by circling out transactions effected through it. The U.S Supreme Court, in *Knetsch v. United States*²⁹ even went to the extent of saying that even a legitimate corporation could engage in transactions lacking in economic substance; and the transactions between related legitimate corporations could be disregarded if justice demanded that. Corporate personality, which incorporation brings about, is designed to operate only within permissible province. 'Incorporation' can never be allowed to become a rogue's charter. It cannot be allowed to become an impervious coverlet for pursuing interests contrary to law, or public policy. Where the line should be drawn is a matter for judicial statesmanship. In *Johns v. Lipman*³⁰ the Chancery Division granted specific performance holding that the defendant company was a creature of the first defendant, a mask to avoid recognition under the 'eye of equity'. The expression 'eye of equity' is an expanding and suggestive metaphor. 'Transparency' and the 'eye of equity' can ensure justice in this global world where opaqueness and lack of public accountability are the most disturbing facts. The Multinational Corporations argue for the recognition of their impregnable corporate shell so that how they really operate is not subjected to a close scrutiny. The tax havens, and those who sail in the common boat, think that it is not for them to see whether certain companies are managed by criminals, or whether they draw their fund from the tainted earnings, or from unscrupulous sources.

Before the onset of the neoliberal Economic Globalisation, certain principles had been judicially settled. These can be thus summarized:

- (i) The courts have recognized that "fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence".
- (ii) Judicial abhorrence to fraud is so deep that the courts recognize the taint of fraud as a special defence even against a foreign judgment.
- (iii) Fraud "is an extrinsic" collateral act.
- (iv) Fraud vitiates not only the acts done in course of judicial proceedings but also the acts done through the administrative process.
- (v) It is fair and just that no one should take advantage of one's wrong.
- (vi) It has been held that "all frauds affecting the Crown and public at large are indictable as cheats at common law".
- (vii) Frauds in public law and in private law differ in effect and operation without ceasing to be species of the same genus of culpable wrong.

In Chapter 23, I have mentioned my surprise at our Supreme Court not invoking the profound well-settled principle that the Judiciary must provide a remedy against all frauds against public interests, of which 'taxation' is the most important. This principle is so fundamental that many Civil Law countries have developed the judicial technique to undo fraud by cracking the corporate shell to see realities operative inside the corporate structure. In France, *fraud* is frustrated by invoking the doctrine of the " *less principes generaux du droit.*" by *Conseil d'Etat*. The Netherlands Supreme Court (the *Hoge Raad*), in 1986, applied, with impact, the doctrine of *fraus legis*. A conduit company can be exposed by invoking this doctrine. *Fraus* is a Latin expression which means 'deceit'. *Fraus legis* means "fraud on law". In Roman law, it means, to quote from *Black's Law Dictionary*:

“Evasion of the law; specif., doing something that is not expressly forbidden by statute, but that the law does not want done.” This doctrine has been thus explained :

“The doctrine of *fraus legis* may apply if a chosen structure – though legally different – produces the same results as another structure provided by the tax legislation and if it can be proved that there are no commercial reasons for this particular structure other than tax avoidance. In such a case the courts may disregard the artificial structure if it conflicts with the purpose and the spirit of the law, and they might look to the final result before passing judgment.”

The Netherlands Supreme Court (the *Hoge Raad*) applied the doctrine of *fraus legis*, and called upon the subordinate courts to appraise the abuse of the double taxation avoidance claim in this light. Analogous approach is evident in the approaches of the German courts. Phillip Baker’s discussion of the Swiss approach leads to the following conclusions:

- (a) Switzerland felt so strongly against ‘treaty shopping’ that a domestic legislation was framed.
- (b) The Bundesgericht adopted the civil law approach to defeat *fraus legis*

Phillip Baker discusses positions in the U.K. and the U.S.A. wherein the Courts have, in exercise of their normal jurisdiction of administering justice, never appreciated ‘treaty shopping’.

After examining various cases on ‘lifting of the veil’, Gower’s *Principles of Modern Company Law*³¹ states.

“Where then does this leave “lifting of the veil”? Well, considerably more attenuated than some of us would wish. There seem to be three circumstances only in which the courts can do so. These are:

- (1) When the court is construing a statute, contract or other document;
- (2) When the court is satisfied that a company is a “mere façade” concealing the true facts;
- (3) When it can be established that the company is an authorized agent of its controllers or its members, corporate or human.”

And this Doctrine of Lifting Corporate Veil was recognized by our Supreme Court in a number of decisions. It is only after the onset of this Neo-liberal phase, that the Indian Supreme Court adopted a hyper-technical view of the ‘corporate personality’ in *Azadi Bachao*³², discussed in Chapter 23. So strong was the spell of neo-liberal ideas that not only earlier decisions were overlooked, even the well-known decision of the International Court of Justice was ignored. In the case concerning *the Barcelona Traction, Light and Power Company Ltd*³³ the International Court noticed “the profound transformations which have taken place in the economic life of nations”; and, after discussing the circumstances in which this doctrine is invoked in domestic jurisdictions, stated that the process of lifting the veil “is equally admissible to play a similar role in international law.”

PART III

*So will I turn her virtue into pitch,
And out of her own goodness make the net
That shall enmesh them all.*

Iago in Shakespeare, *Othello*

(i) Crafting the structures of deception

When the operative realities of a corporation cannot be seen by a public agency discharging its public duty, the corporation becomes a structure of deception. Before the onset of the present-day neoliberal phase, none could have countenanced such frauds. I have already told you how thousands of such structures are fabricated in a number of jurisdictions on the coffee tables of certain professionals, and amassed in their hip-pockets to be sold on fee! If bribes cannot be paid by the mainland corporations, these legal figments can be used to bribe governments, bureaucrats and politicians so that the drama of all ills can go on. These generalizations that I have made are in the light of my study of the abuse of the 'tax haven routes' that I made over years while conducting the Writ Petition pertaining to the abuse Indo-Mauritius Double Taxation Avoidance Agreement (*vide* Chapter 23).

Between Mauritius and M/s XY Ltd., to which I have referred in Chapter 23, there is no fraud at work. Mauritius, as an independent member of the family of nations, is free to set up its own financial architecture and legal regime most conducive to the promotion of economic policies of the government there. But if Mauritius knows that a company is seeking incorporation under that country's laws without substantial economic presence there, it becomes the duty of that government to know the character and purpose of the company sought to be created. The government of Mauritius cannot plead ignorance of the objectives of the offshore company. It was clearly evident that M/s XY Ltd. had been formed as a part of design to avail of the benefit of 'non-taxation of capital gains' under the Indo-Mauritius DTAC. It was unfair arrangement. The legal and unethical infirmity in such arrangements has been succinctly brought out by an expert³⁴ in his Opinion. I quote from his Opinion:

"Let us assume that two states have entered into a bilateral beneficial treaty securing certain benefits and advantages for their nationals only. There is no express or implied provision or suggestion to extend the benefits arising out of such treaty to the nationals of third States. In reality, the nationals of the third states pretending to be national entities of one of the contracting states claim such benefits. Objections are raised to such claims. If one of the Contracting States wants to condone this apparent illegal or unethical practice, how should it go about it. There are two courses open. One either the two states by consent amend the terms of the treaty and provide for by an express term in the treaty and then amend its laws, if the said amendments have financial implications affecting its revenues. But if the executive without amending the laws give a clarification of the provision of the treaty and the law and by executive fiat condones the manifestly

illegal practice and does what was not initially intended by the treaty, it would certainly be a fraud on the Constitution and a colourable exercise of power. This is clearly an attempt to do indirectly what it could not do directly.”

(ii) “Let there be light”³⁵

I have given you a silhouette of the Realm of Darkness wherein the Instruments of Darkness rule the roost. It is not possible, within the constraints of this Memoir, to examine comprehensively the possible remedies against what they do to promote their greed. Yet, I think it appropriate to submit certain suggestions for consideration of my readers. To get rid of the Rule of Darkness, different public institutions can forge different strategies.

- (i) Our Judiciary, in exercise of its constitutional jurisdiction, is competent to provide remedies against frauds resorted to by the instruments of Darkness. (*Vide* Chapter 23 of this Memoir under the sub-heading: ‘The domestic judicial remedies against Fraud’, and also in this Chapter under the sub-heading ‘A Corporation cannot be an impervious cover-let of gross abuse’.)
- (ii) Our Executive government should allow the statutory authorities to function effectively. Nothing should be done to subvert the system, nothing should be done that hinders the performance of duties, or facilitates the illicit operations (to the detriment to our country’s interest) from the offshore and secrecy jurisdictions. The facts in Chapter 23 would amply show how our government often forgets its duty to the nation.
- (iii) Parliament must control the Executive’s treaty-making power, as the Realm of Darkness is being crafted by treaty-terms, and by putting self-serving gloss on such treaties. Treaty provisions are often used to give an economic interpretation on law and the Constitution: they call this method ‘new constitutionalism’ or neo-constitutionalism. It is said we follow the British Parliamentary model. Then, why not do what has been done in the UK very recently? In the UK the position now comes to this: “Parliament has a new statutory role in the ratification of treaties under the Part 2 of Constitutional Reforms and Governance Act, 2010”³⁷. Parliament should neither allow its legislative field to get narrowed by the prior commitments done by the Executive through the treaties, nor allow the Executive to create ‘*fait accompli* situations’ to coerce Parliament’s legislative process to implement international obligations. The time has come, when it has become essential for the survival of democracy, that our Parliament should control the Executive, and provide it a vision to lead the nation, rather than to allow it to become an institution easily shepherded from this to that for the weal of the MNCs, and other corporations.
- (iv) The UNO should also consider what steps can be taken to respond to the problems posed by the Realm of Darkness. It seems that it is time for the UNO to reconsider its view of the sovereignty as this concept has been massively misused by the irresponsible and failed states.³⁸ Secondly, it should realize that if the Realm of Darkness is allowed to operate, the Article 1 of the United Nations Convention against Corruption would become, in most cases, futile. One of its purposes is to assist “in the prevention of and fight against corruption, including in asset recovery.” But how can you

recover asset if it keeps moving under stealth from jurisdictions to jurisdictions in the Realm of Darkness? I hope someday my suggestions, made in Chapter 16 to set up the International Tax Authority, and taxation of all international taxable events under international taxation regime, would receive a serious consideration. If this happens, I would consider that the first salutary outcome of 'globalisation'. The revenue gathered by it can be used to run the United Nations, and also national and international assistance programmes. I have discussed this aspect of the matter in Chapter 16. If that happens we shall see 'globalisation' at work on the right track. 'Globalisation' should not be made a mere instrument of greed to access global market.

PART IV

The Emergence of Corporatocracy, and the plight of Democracy

In Chapter 20, at p. 277, I mentioned a gem of thought that time can never make stale:

“In 1915 Einstein wrote to Lorentz in Holland “that men always need some idiotic fiction in the name of which they can face one another. Once it was religion, now it is the State”. I would rather say: “Once it was religion, then it was the national states” now it is the Market, *Pax Mercatus*”.

I am driven to say that *Pax Mercatus* has succeeded in establishing the rule of the corporations, by the corporations, and for the corporations: thus ensuring the emergence of what we call 'Corporatocracy' which an expert has perceptively defined as “a system of government that serves the interest of, and may be run by, corporations and involves ties between government and business.”³⁹ What has caused terrible concern is the evident phenomenon that every stride towards 'corporatocracy' involves democratic retrogression, and shows increasing democratic deficit. But before I reflect on this gruesome phenomenon, it is worthwhile to point out certain political facts from the history of the West to show that the 'corporatocracy' has emerged on account of certain historical forces fostered over the course of history by the circumstances of times.

The scope of this Memoir does not permit me to present a graphic account of such trends, but a few points, which have struck me important, can be stated briefly. The relevant political facts of the Western history in the post Greco-Roman phase can be pigeon-holed for an easy comprehension in the following table:

The Phase	Agenda for operation	Effect
1. The Era of the Church <i>impeium</i> that fostered and promoted capitalism with all the features endemic in capitalist system	Established supremacy over all earthly powers, and succeeded in building up the Mammon-worshipping capitalist structure with all the ills that go	Most assertive doctrine of the power of Church was in the declaration by Pope Innocent III (1198-1216) who preached at his consecration for all the kings and lords : “See, I

THE REALM OF DARKNESS: THE TRIUMPH OF CORPORATOCRACY

The Phase	Agenda for operation	Effect
	with exploitative and extractive capitalism.	have this day set these over the nations and over the kingdoms, to pluck up and break down, to destroy and overthrow, to build and to plant.”
<p>2. The emergence of the nation states in which the economic realm and the political realm turned close in pursuit of power and wealth: a new phase in capitalism was inaugurated. Over a large period, the gladiators of the economic realms established collaborative and co-operative relationship with the governments. This collaboration led to aggressive imperialism and colonialism.</p>	<p>After the Renascence (the 15th to the 17th century) and the Reformation (the 16th to the 17th century), the nation states emerged which established power, replacing the Church <i>imperium</i>, “in alliance with rich merchants: These two shared power in different proportion in different countries”⁴⁰ It created circumstances when the rich merchants became part of aristocracy, and the emerging mercantilist economy grew to great power and importance.</p>	<p>The ethos had two pronounced features: (i) the diminishing authority of the Church, the increasing authority of the ‘nation states’, and (ii) the increasing authority of science and commerce facilitating global expansion.</p>
<p>3. The Subjugation of the political realm by the Economic Realm where the corporations dominated drawing on their experience of the earlier eras which had taught them: (i) that those who amass wealth and power are only a few, they cannot successfully meet the challenges of people’s wrath; so the corporations need government to function for them both as facilitators, and protectors; (ii) that even the mightiest structures cannot survive without people’s consent, every effort is to be made to acquire that through pressure and persuasion, stealth and craft. This led</p>	<p>The political realm turned subservient to the economic realm in which facts have led to situations thus captured by an expert: “Clearly, the reality of globalization has outstripped the ability of the world population to understand its implications and the ability of governments to cope with its consequences. At the same time, the ceding of economic power to global actors and international institutions has outstripped the development of appropriate global political structures. As a result, probably many more years of public confusion and unfocused</p>	<p>The real victor of the World War II was the United States. The emergence of the USA led to the emergence of the power of the corporations finding their greatest impact through the Washington Consensus and the Bretton Woods system, and then through the institutions like the IMF, World Bank, and, later, the WTO.</p>

The Phase	Agenda for operation	Effect
the enormous growth in the PR industry, advertisement and propaganda.	protests can be expected as the stable new global world order takes shape.” Geza Feketekuty in 2001 <i>Encyclopaedia Britannica</i> , Book of the Year. p. 191.	
4. The emergence of Corporatocracy with massive economic power. It has emerged by hiring intellectuals, by skilful manipulation of political power; by managing media and the press to become compliant; by engaging the lobbyists; and by establishing powerful global centres to promote the corporate agenda; and by promoting monochromatic culture of consumerism.	Its structure resembles the Trojan Horse. The technique of Deception becomes the supreme technique of management.	Corporatocracy works contrary to real democracy, and principles of ‘social justice’ and egalitarianism. It helps create islands of affluence wielding power, and helps the emergence of the enclaves of the super-rich in their cloud-castles we call their <i>Sone ki Lanka</i> (please read this story of <i>Sone ki Lanka</i> in Chapter 25).

The art and craft of propaganda have developed with the growth of the corporate power. Corporate interests are being promoted at the cost of democracy. Virgil, a classical Roman poet, tells us about the device of the Trojan Horse, which was adopted to allow the Greek soldiers to enter the city of Troy to destroy it. Finding the enemy’s city impregnable, they constructed a huge wooden Horse in which some select fighters were concealed. One can say with a measure of aptness that the MNCs are the Trojan Horses of our times, and the people are being deceived to believe that they would bring about a better dawn someday through what they call the ‘trickle-down effect’ of wealth creation for a few. Had the ‘corporations’ been just powerful commercial vehicles, providing goods and services world over under the supervision and control of the political institutions, without being subversive to our culture, I would have appreciated them as important human innovations of great utility.

The emergence of the global domination of ‘corporations’ has already produced powerful negative effects on ‘democracy’. Some of these can be thus stated:

- (i) The structural model of ‘corporation’ has shaped even the structure of the present-day democratic polity. We have seen the dichotomy between the ownership and the real control in the present-day big corporations. The real owners of corporations have lost control over the managers of corporations, who tend to function as if they are the real masters. The servants have effected a successful *coup d’état* against their masters! Prof. Galbraith has not only noted this change, he has highlighted what effect this has produced on the management of ‘democracy’ in our times. He says that “the shareholders nowadays have only nominal control over the company that, in theory,

they own, and this has significant psychological consequences for democracy.⁴¹

- (ii) The capitalist systems always run down common people, and so, as a matter of inevitable consequence, they distrust real 'democracy'. Such systems prefer the 'technostructure' to run the affairs of governance, and economic management. The technocrats dislike decision-making by others; and they are committed to the corporate agenda. They work for the Market, not for the Constitution. They are guided by Adam Smith's 'Invisible Hand', and not by the ideal of 'social justice' most dear to us as stated by 'We, the People' in our Constitution.
- (iii) The ideal of people's welfare has yielded place to the welfare of corporations. This has led to the change in the role of states. You go on Bharat Darshan, and you would see lakhs and lakhs of 'two-legged beasts of burden' who "are not part of a responsible modernizing elite, and therefore have only a superficial biological resemblance to the human race."⁴² But this phenomenon can be witnessed all over the globe as it illustrates one of the fundamental assumptions of the neoliberal economic management of the market-ruled globalization of our day. The agenda is thus portrayed with great insight and candour by Chomsky :

"In brief, it is necessary to ensure that those who own the country are happy, or else all will suffer, for they control investment and determine what is produced and distributed and what benefits will trickle down to those who rent themselves to the owners when they can.... The bounds of political action are correspondingly limited. Once the forms of capitalist democracy are in place, they remain very stable, whatever suffering ensues —a fact that has long been understood by the U.S. planners."⁴³
- (iv) The unrestrained corporations of this triumphant corporate *imperium* have worked not only for the spread of consumerism and hedonism, but they have promoted a sub-culture in which 'truth' has become a casualty, and dishonesty has become the supreme policy. Illusions are being crafted by the so-called intellectuals and experts. Even the so-called Free Press is found terribly wanting when critically weighed.
- (v) 'Democracy' becomes deceptive when citizenry lose conviction in the values for which 'democracy' stands. It becomes deceptive if it generates the notion that it aims at the welfare of all, when, in fact, it works for the welfare only of a few. Democracy never survives when 'good faith' is lost in the management of public affairs. It never survives as a mere 'hothouse plant'. It needs for its success 'character' and love for the society's cultural traditions. It never survives unless there is well-informed citizenry with high sense of dignity. People do not exist merely to provide, through periodic elections, a structure for power for some to ascend up to acquire public power. The history of the world speaks it loudly that no society can remain 'democratic' if its citizens become lily-livered and timorous souls in upholding moral values, and maintaining vigilance. A democracy survives only till people have assertive and revolutionary fervour, and commitment to public cause, and the administration is responsive and transparent: "Sunshine is the strongest antiseptic".

V

The Problem of the Black Wealth stashed in Foreign Jurisdictions

If I am asked to pinpoint one single continuous pursuit of the Income-tax Department from 1964, when I joined the IRS to this day, I would mention the Department's abiding concern: how to deal with the menace of 'black money'. But we have neither succeeded in stopping its generation, nor have we been able to get back India's wrongly acquired wealth stashed in various 'secrecy' jurisdictions in the world. I have already quoted what I consider to be the best definition of 'black money' in Chapter 19. It is good that we see these days various agencies and organizations of our country taking steps at different levels against this evil. It is said that the tainted deposits in the Swiss banks alone by Indians might exceed USD \$1.4 trillion.⁴⁴ Our Government has shown its inability to obtain information about such transactions as the treaty partner has not been agreeable to pass on information as the provisions of the Avoidance of Double Taxation Agreement between India and Switzerland are said to stand in the way. Now we get that the Indo-Swiss Tax Treaty has been amended, with effect from April 2011 facilitating the exchange of information in specific cases of tax evasion. But it cannot be invoked to get information about the transactions done before its commencement. Let us see how this operates, and with what result. It is prudent to keep our fingers crossed.

In my considered view our failure to get back 'black wealth', stashed in the foreign jurisdictions, is wholly on account of the lack of political will. The constraints of this Memoir do not permit me to examine this problem in detail. But I would make certain suggestions for my reader's consideration:

- (i) The provisions of the Avoidance of Double taxation Agreement do not apply in all cases. Its Article 1 defines the Scope of the Agreement thus: 'This Agreement shall apply to persons who are residents of one or both of the Contracting States'. The masqueraders cannot be allowed to access the benefits under the Agreement. "Fraud unravels everything."
- (ii) Only 'income' can be the subject-matter of the said Agreement because unless it is 'income' it cannot be chargeable to tax; and unless it comes within the province of the charging section of the Income-tax Act, the provisions of the Agreement cannot be invoked. What is *ex facie* not 'income' cannot come within the ambit of the Agreement. Such wealth stashed abroad might, on all probability, be India's 'looted', or stolen, wealth. The established principles of common law and civil law jurisprudence justify the restitution of such wealth to the rightful owner, India. The law and equity demand the recovery to the State of the whole amount. Dr. T. B. Smith, the great jurist of world fame, had observed in his Tagore Law Lecture (1978) (*Property Problems in Salep*, 104):

"Certainly to me it seems less objectionable that property which has been subject of illegal dealing should be applied to the public good through acquisition by the State than that a rogue should enjoy the fruits of his obliquity."
- (iii) It is asserted by our Government that the gathering information relating to transactions under scrutiny can be done effectively if there is an Agreement

for Exchange of Information with respect to taxes. India has already entered into such treaties with some countries characteristically 'tax havens' and 'secrecy jurisdictions'. But such Agreements are not likely to be effective. The standards they prescribe are weak. Under their terms, the exchange of information is not automatic; it is on "request" with a lot of ifs and buts providing a lot of lanes and by-lanes to evade obligations undertaken under such Agreements.

- (iv) The right course is to go ahead by taking actions under our domestic laws. Our law should be amended to shift the burden of proof on the persons being investigated because things are in their knowledge. We all know how in the Disputes Settlement Body of the WTO, the burden of proof is often shifted to make inquiry effective .
- (v) All civilized countries must realise that Fraud against Public Revenue is the cheating of the whole nation. It is an offence both under the common law and civil law. It was argued in *R. v. Hudson* that the making of a false statement to the Revenue did not disclose an offence known to the law. Lord Goddard CJ cited a passage from *Hawkins's Pleas of the Crown* (1 Hawk PC 322): '... all frauds affecting the Crown and public at large are indictable as cheats at common law....' (See [1956] 1 All ER 814 at 815, [1956] 2 QB 252 at 259). It is the duty of court to provide a remedy against such misdeeds affecting the public interest in revenue. It is prudent not to forget what Simonds said in the leading case of *Collco Dealings LTD v. IRC*⁴⁵:

"But I would answer that neither comity nor rule of international law can be invoked to prevent a sovereign state from taking steps to protect its own revenue laws from gross abuse or save its own citizens from unjust discrimination in favour of foreigners."
- (vi) If we take the crimes against our nation seriously, we must subject the suspects to intensive investigations by obtaining all possible help from our courts*. Besides, we can initiate steps in the foreign jurisdictions too. We had seen how greatly responsive were the Swiss Courts on our complaints in the Bofors matter. In 1993, the Cantonal Court of Geneva, and in the same year the Swiss Federal Court, on appeal, upheld India's request as made through the Letters Rogatory in the Bofors case. Fraud, conspiracy, and deriving profits through criminal acts were considered crimes under the Swiss law too. The Bofors investigation became futile because our Government had no political will to take the matters to their logical conclusion. In the matter of recovering India's black money stashed in the Swiss banks, our Government has behaved these days much worse than it had done then. It should have taken its claim to the Swiss highest tribunal for us to know what their courts say on the issues taking into account the domestic law of the country, international public law, international *jus cogens*, and public morality.
- (vii) If our Government would have got political WILL, it could have put diplomatic pressure on the Swiss government pleading that the Principles of Good Neighbourliness and good faith are now part of international

* Ellinger's *Modern Banking Law* (4th ed.) [Oxford]: see on the nature of 'secrecy duty' of banks' at p. 166; and on foreign courts' intervention , see 188-195.

customary law. Switzerland must show respect to such principles by taking effective actions against those who have looted our nation. This sort of diplomatic pressure could work.

- (viii) We should have thought about framing a law declaring the black wealth stashed outside as the asset of the people of India. This could have put pressure on the Swiss government to send that wealth back. It was a situation in which our Government should have acted for our people by playing the role of *parens patriae*. As the wealth must have gone out from the economic matrix having nexus, remote or proximate, with India, India can be considered competent to frame law under Article 245(2) of our Constitution. It says: "No law framed by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation." One can reasonably hope that the political morality of our globalised world, the doctrine against unjust enrichment, the principles of the growing *jus cogens* of good neighbourliness, would help us to persuade the foreign jurisdictions to frustrate the efforts of the crooks.
- (ix) True, standard texts-books on public international law say that State is not competent to carry out *investigations* in a foreign country if its purpose is "to pursue and enforce its prerogatives rights such as its criminal, administrative or fiscal jurisdiction." [to quote from *Studies in International Law* by F. A. Mann p. 121 (1973, Oxford)]. But it is also settled law that the foreign public officials can conduct investigation if treaty-terms permit, or if permission to do so is granted (see F.A. Mann, *Studies in International Law*). If a law is passed, declaring illegally amassed wealth kept by the Indians abroad as the property belonging to this country, the courts of the foreign lands would surely be helpful to us as they cannot ignore what justice demands. They would appreciate that in this world of economic globalization, there are two drivers which we can call the principles of 'interdependence' and 'solidarity'. Besides, a measure of sound diplomatic effort, and constant public pressure, would be needed for this agenda to be pursued successfully. It is only in situations like this that a government is judged. In a situation of this sort, pressure is as good as persuasion. Law should also confer on our government powers to take steps to trace and follow the track of the ill-gotten gains wherever they get diverted, or concealed. The task is tough, but worth doing for the country. It is time to recognize that the new realities of this globalised world require creative response to the new challenges. And this process is bound to subject public international law to undergo changes devising new standards and criteria of judgment to deal with novel situations, and the changing contexts.
- (x) International situations are more helpful these days for the legitimate assertions to get back the money rightfully belonging to our nation. In our present-day globalised world, both the norms of international comity, and the principles of good neighbourhood, require that no country should allow its land, or system, to be used, whether directly or indirectly, against the just and legitimate interests of other countries. Besides, a democratic polity is duty-bound to protect people's wealth. The days of Leopold von Rilke, who asserted the "primacy of foreign policy", have gone yielding place to justice-oriented international relations in which the interests of the com-

mon people must not be jeopardised by invoking technicalities of international relations. But our Government can play this role well only if it has a sound 'political will' to manipulate foreign policies creatively and dexterously, and is capable to subject the recalcitrant state to reasonable persuasion and pressure by building international pressure, and by revealing manifest strong will.

Prof. Arun Kumar is an acknowledged authority on 'black money'. His book on *Black Money in India* is an authoritative exposition of this complex subject. He has, in his article on 'Bringing back what's ours', rightly suggested that 'Government agencies have to be proactive in ferreting out the names of those who hold bank accounts abroad'. He has stated the problem we face with utmost precision and focus:

"There are two aspects of the black wealth held abroad. First, the continued siphoning out of the funds from the country needs to be stopped. Secondly, what has been taken out in the past needs to be traced and brought back. For the former to happen, black income generation in the country needs to be curbed. For the latter, Indians in India who have taken their wealth out need to be brought to book..." [published in the *Hindu*, March 14, 2012].

VI

I SEE A RAY OF LIGHT AT THE END OF THE TUNNEL

Nothing appears more surprising to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers.

The 'post-World War II' history illustrates the worst conspiracy against 'Democracy'. The factors which were fostered and promoted to hatch this were briefly analysed in Chapter 24. Never has human history witnessed a conspiracy against 'democracy' so subtle, so massive, so ruthless, and so deceptive as what our generation has seen. World War II destroyed Hiroshima and Nagasaki under the nuclear holocaust; World War II also inaugurated the explosion of the corporate power which, in effect, means the triumph of neo-capitalism. The post-World War II economic management was crafted by the U.S. and the British interests. Under their pressure, and the corporate persuasion several multilateral institutions (like the IMF, the World Bank, and later the WTO) were set up to ensure the success of the corporate interests "ensuring their rights against the intrusion of democratic governments and the people to whom those governments are accountable."⁴⁶ It is one of the remarkable facts that whilst the United Nations, founded in 1945, went ahead on the old track of international diplomacy, the newly formed economic and commercial mega institutions adopted most intrusive intervention through well-crafted opaque systems in which the devils could comfortably go on quoting the scriptures. It is amazing to see how such changes wrought the supremacy of the corporate institutions of the Economic Realm over the international political institutions, besides casting a spell etherizing our domestic institutions.

The corporate protagonists organized the structure of corporations in the light of the principles governing the organization of the ancient Roman Empire, and the R.C. Church. But what is important is that they improved their strategies learning a lot from history. They worked to bring about the following seminal changes having the effect of lessening people's power, and increasing corporate might of the capitalists mostly under the U.S. hegemony:

- (a) they worked to set up an economic monolithic structure on the model of the Roman Empire and the R.C. Church so that global strategies could be devised to promote the corporate power, and to create conditions of servitude for the states cajoled and compelled to become client states to promote and protect the corporate cause, thus vicariously advancing the fortune of the super-rich, high net worth individuals and the so-called very important political persons; and
- (b) they created conditions in the domestic spheres of the states in which, despite the fact that political structure was provided by the people, the polity worked for the benefit of corporations. When such conditions develop in a political society, the State itself becomes a 'Sponsored' institution structured on the prototypical model provided by the imperialists of the past.

I have discussed these in Chapter 24 of this Memoir. But they (the MNCs, and the institutions working for them) innovated thereon in many important ways:

- (i) they strove to search for the places wherefrom they could operate mostly unseen, not easily exposed to the exercise of people's power;
- (ii) they worked to impose a monochromatic consumerist culture on the world so that other systems of values slowly die, or are forgotten, so that the society's dominant socio-cultural philosophy accepts corporate libertarianism as the leading force;
- (iii) they felt that expenditure on buying the academic institutions, intellectuals, opinion-makers, press and media would be much less than the expenditure on the wars, the loss of human beings, and the devastating risks, that had been incurred by the imperialists in the 19th century in the process of building empires⁴⁷ to capture markets in the new lands, and in protecting their imperium from the wrath of the oppressed peoples;
- (iv) they considered it appropriate to create systems in which all the resources, nature-given or man-made, could be put to the service of the corporations;
- (v) they criticized Karl Marx, but found in his ideas something to serve their interests in forging their corporate strategy:
 - (a) as Marx said that the socio-political institutions, and religio-cultural mores are shaped and managed by the dominant interests of the ruling class, the corporate interests, they believe could legitimately shape the present worldview of all those who run polity and the systems of governance; and for this
 - (b) the states (and the governments) should promote the corporate agenda (as they had done in promoting the interests of the mighty 'property owners' in the various patches of history) of the West.

The corporate strategists have painted fascinating rainbow to make the neoliberal paradigm acceptable by people. Through the twin methods of over-extracting natural and human resources, and the creation of the limitless virtual

money, they have, it seems, provided a measure of economic affluence to certain segments of people; but have trivialized democratic cultural values in numerous grosser and subtler ways.

But the real point is: what sort of society they are trying to create? Will this society ever help common people to live life with a sense of dignity and cultural creativity? Will it provide us the right frame for evolving as a democratic society conscious of our commitments to work for equality, fraternity and social justice? Will it help us to preserve, enrich, and creatively advance our culture with individual creativity in which moral imagination is not stunted, and the feelings of empathy are not lost? Will our values survive? Can 'democracy', as we understand it, or as our Constitution conceives it, survive and grow in the environment that is being created? Who has decided to bring about such changes?....under what authority?....for whom?...by whom?....for what?.....and with what foreseeable consequences for individuals, society and nation? My rhetorical questions may sound to many of my friends mere effervescence of an old and spent-up man. To express myself well on this point, I would tell you a story I had read long back:

In Dostoyevsky's *The Brothers Karamazov*, the rich General lived 'on his estate with its two thousand serfs, imagining himself to be God', and had 'his hangers-on and clowns'. He had 'hundreds of hounds and just about as many kennel attendants, all dressed in special livery and everyone of them mounted'. Dostoyevsky does not tell us how many entertainers that creature had, and how many he had acting as the 'pleasure providers', beauticians, image-makers, advertisers, procurers, and go-getters. You can get an idea about that sub-human creature, if you go through the paragraph from the great novel that I have quoted in Chapter 6 of this Memoir. Dostoyevsky also tells us how one Richard lived under circumstances in which he enjoyed developing a "longing to eat the slops given to the pigs to fatten them up for the market". Do you know what this great food 'slops' was? 'Slops' is defined in a dictionary to mean: 'wet feed (especially for pigs) consisting of mostly kitchen waste'. I think the General might have needed at least 1000 men and women for his comforts. As we live in the society of calculators, there is no harm if I calculate certain somber figures to transmit a message that I would not be able to transmit merely by scribbling lines of words. Think dear friends: how many humans one super-rich would need to help him to live the way the General lived in *The Brothers Karamazov*? If one super-rich individual needs 1000 persons to work for his comforts, and to promote his vanity, 10000 such super-rich creatures would require 10000000 human beings! Such super-rich creatures tend to believe that they are the great benefactors of the downtrodden. Their hired intellectuals, and managed institutions would write tomes with graphics and statistics to prove that the problem of unemployment stands solved, and the best days ahead are being designed for humanity. They claim that all the 'employable' people would get employment, and none need bother about the unemployable that must be left at the mercy of the market-forces. It is the market's 'Invisible Hand' that would decide which sections amongst them are to be preserved and nursed to provide the work-force for the oligarchy controlling the 'Invisible Hand', which sections to be tolerated as the organ-farms for the corporate-farmers to reap super profits, which sections can be used as commodities (called *res commercium*), and which sections are wholly

of no use: hence deserving elimination through devices which might include making wombs barren through genetic engineering, or making such beings eat chemically treated food to turn them non-productive, and/or mentally retarded.

What sort of democratic society we are building when in this country, Bharat, one can spend more than \$ 1 billion on his house to be looked after by more than 700 ordinary mortals. What I have said is not an absurdity: it has already taken place even in our Mumbai, in our country with a democratic socialist constitution with an unmistakable signature tune of Justice, Liberty, Equality, and Fraternity for ensuring dignity to all. What sort of society we are building where we allow the mighty silhouettes straddle majestically in the Realm of Darkness which the fraternity of crooks has created just because we trusted our watchers who failed in keeping them under vigilance. Modern history would record a series of the greatest betrayals of trust in different spheres, including the academic world. It has become a shocking tale of the evasion of realities. We see around us the insanity and delirium under which the blood-suckers are sucking our nation's resources: we see how the MNCs are sipping our blood from our hearts like the proverbial vampires about which we have read only with suspended disbelief.

The outcome of the corporate *imperium* would be a corporate empire to which the peoples of the world must remain obedient. The global consortium of the corporations would look after the corporate interests. Any global corporation, wherever incorporated, would receive the protection by the consortium. Like the Concert of Europe in the European political history, the corporate consortium would work for the corporations. The structure of 'government' must remain only to protect the corporations from people's wrath. We all know how Palmerston justified his intervention to protect the commercial interests of Don Pacifico by invoking the doctrine of the Roman Empire: *civis Romanus sum* ("I am a Roman citizen"), by which an ancient Roman could proclaim his rights throughout the empire⁴⁸ to get his native State's protection. An MNC would need this sort of protection in every land. We must note how this corporate *imperium* was brought about: an expert has insightfully said⁴⁹ —

“The empire, unlike any other in the history of the world, has been built primarily through economic manipulation, through cheating, through fraud, through seducing people into our way of life, through the economic hit men...”

And who is this 'economic hit man'? Read John Perkins's *Confessions of an Economic Hit Man* (2004).

“Economic hit men (EHMs) are highly-paid professionals who cheat countries around the globe out of trillions of dollars....funnel money ...into the coffers of huge corporations and the pockets of a few wealthy families who control the planet's natural resources. Their tools included fraudulent financial reports, rigged elections, payoffs, extortion, sex, and murder. They play a game as old as empire, but one that has taken on new and terrifying dimensions during this time of globalization”.⁵⁰

When such situations occur, we tend to forget love for our land and culture, in order to become the 'corporate citizens'. The corporate *imperium* can be established only when our culture is subverted. We know that socio-cultural evolution and biological evolution follow distinct tracks. Whilst we cannot influence the process of biological evolution, the socio-cultural conditions can be engineered through human efforts. The best way to subject nations to perpetual servitude is to devise ways to destroy their culture, is to make them forget their past.

When I reflect on the things moving in the Realm of Darkness, I feel some Mephistopheles, mightier and more scheming than that in Marlowe or Goethe, is at work. I do not have time, nor do you have the patience to read the subtle scheming ways they operate in that Realm. I would mention an instance of how things have been made to happen in this Realm. They had the uphill task: how to succeed in modifying, or subverting, even the most basic features of our Constitution which our experts call our Constitution's 'Basic Structure'? Before I touch this point, I would mention that there is no 'rule of international law [that] requires the structure of a State to follow any particular pattern, as is evident from the diversity of the forms of State found in the world to-day' (Ref. 51), because the "existence of a state, as the legal organization of a community, is determined by the state's internal constitutional order." (Ref. 52) Now I move to our Constitution. Art 368 of our Constitution prescribes the procedure for the amendment of the Constitution. Some of its provisions can be amended by our Parliament in exercise of the constituent power, but some features are so sacrosanct that they cannot be amended at all. One of such features is the sovereign independence of our Judiciary so that the Rule of Law is maintained. Now let us see what our executive government has done acting under the pressure from the MNCs and their imperial mentors. The Article XVI (4) of the WTO Charter has the effect of making the WTO the highest legislative and judicial body. It declares:

"Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the Annexed Agreements."

Our Executive Government overrode our Constitution, administratively and secretly, by signing the Uruguay Round Final Act that established the WTO. What even our Parliament could not do in exercise of its constituent power, was done by the Executive through its Treaty-Making Power! In effect, it comes to this that even our Constitution exists at the pleasure of the corporate *imperium*! The corporate *imperium* is, thus, trying to subvert our democratic process through such treaty terms. Those, who work for promoting the corporate interests, are accustomed to invoke the most undemocratic and obnoxious norms of international law which subject even our legislature and courts to international obligations. (Ref. 53) It seems our unworthy generation has betrayed our worthy Constitution. To accept this state of affairs is not only illegal and immoral, it is even sinful.

I had begun this Chapter quoting from the celebrated *Aparoksanubhuti* by Shankaracharya telling us that 'darkness' prevents us from knowing things as

they are, and as they are being shaped. We all know that an opaque system is enjoyed most by those who are guilty of corruptions. I have already quoted Stiglitz telling us that he experienced, on his different assignments as an economist, how “Secrecy not only makes their life easy but allows special interests full sway”, and how he felt that “Sunshine is the strongest antiseptic.” Another constant, dear to the ‘Instruments of Darkness’, whether ‘corporations’ or ‘governments’, is that they need dense ‘darkness’ to conceal their complicity *inter se*, and to promote their strategies adopted. Not only areas on the earth and the cyberspace have been turned into theatres of operations, they have even set up their strange barns for garnering their ill-gotten and extractive wealth by inventing numerous ways. They have enjoyed the emergence of modern technology that can remorselessly milk the resources of the earth and our environment unmindful of the consequences of their greedy acts on our future generations, and our eco-systems. Such a system of a decaying morality is grossly indifferent to inter-generational equity. The effect of all these has worked terribly against our ‘democratic polity’ which is the best amongst the forms of polity yet known or invented. The most morbid effect on ‘democracy’ ensues from the facts which show how collusion and fraud work evading our vigilance. This is the inevitable outcome when there emerges a clear unholy alliance between the vested interests and the governments. How can ‘democracy’ survive if the government is seen to have become, to say in the well-known legal idiom, *particeps criminis* (an accessory to a crime).

In my considered view, this world, that the ‘Instruments of Darkness’ are out to build after their own image, would surely drag humanity to wars more horrendous than yet seen in human history, also because they would be fought by the corporate robots in which civilians and armed forces would perish in ways beyond comprehension. I have already tried to prick the illusion being fostered these days that the economic globalization is a sufficient guarantee against a major war. I have touched this point in Chapter 24 of this Memoir. All wars in the history of the West had as their prime-mover : GREED. The corporate world is clearly most greedy. I have mentioned how at the end of the 19th century Alfred Russel Wallace judged the century as showing the “exponential growth of technology matched by the stagnant morality” and, also how at the end of the 20th century Stephen Jay Gould cast his verdict on the century just gone fully endorsing Wallace’s comment. The trends of the times I see in this 21st century, make me sad with the idea that after nine more decades, those of us who would remain alive, and in right senses, would write below the verdict of Wallace and Gould: “We agree”. But I have a wish: if our Destiny proves my foreboding wrong, my spirit would be most happy wherever that be.

Before I end this Chapter I would draw attention to the triplet of ideas which my reflections have led me to accept as fundamental in our socio-cultural thoughts against which neither politics can go, nor economics can strive, nor the corporations can ever succeed. These are briefly touched thus :

- (i) It would be a folly to treat India just as an ordinary unit in the global ‘states system’ as we understand it from the standard texts of Political Science. In India, life is organized under our cultural mores because India is not a mere political formation but is an organic cultural formation that we call *arashtra*

for which I find no synonym, no word with similar meaning, in any of the European languages. It is reflected even in our perception of the role of government which is no more than an important component in the formal political structure. Government's role in our society has always been limited. The history of India shows that in most phases of history, 'governments', as the Western thinkers understand, have just been optional. Our civilization developed norms of good living and social interactions through cultural and religious norms and mores. Even when powerful governments ruled they never thought of transgressing religio-cultural norms. Even in our present-day secular society, such norms get focused and expressed in the idea of social justice at the heart of our Constitution. So, I would advise the corporate thinkers that in developing their strategies of enslaving governments to their ways, they must not forget what differentiates India from a Madeira, or a Mauritius, or the Bahamas, or the United Kingdom, or even the United States. I would request the Business Schools to teach the corporate world the fallacy of similitude which I have discussed in Chapter 23 (Reference No. 34).

- (ii) Another fundamental constant in our oriental society, the Hindus, and the Muslims, is the ultimate sovereignty of certain values in our cultural consciousness. We consider them ensuing from *Dharma*, and the Muslims consider them to constitute the very Grundnorm that is enshrined in the principle that 'the legal sovereignty over the entire universe belongs to Almighty Allah alone, and the authority exercisable by the people within the limits prescribed by Him is sacred trust.' In England. "in the contemplation of the law the Sovereign is always present in the court. . .,"⁵⁴ and the Sovereign is God's vice-regent to conduct temporal matters. Marx considers his Dialectical Materialism playing the role of God in his eschatology. The neoliberal economists consider 'the Invisible Hand', perceived and expounded best by Adam Smith⁵⁵ in his *The Wealth of Nations*, as the sovereign controlling force in the world that the Market creates, fosters, protects, and if need be, destroys. We do not consider these ideas acceptable.
- (iii) Our oriental societies have developed a worldview in which HOPE cannot ever perish. So long the *Bhagavad-Gita* and the *Qur'an* are not forgotten by us, we know our supreme duties to ourselves and humanity. We are optimists. Krishna had said in *Bhagavad-Gita*:

यदा यदा हि धर्मस्य ग्लानिर्भवति भारत :
अभ्युत्थानमधर्मस्य तदात्मानं सृजाम्यहम

These ideas are accepted not only in the Hindu and the Islamic societies, but even under the worldview of China and Japan as even they shared substantially the commonly shared oriental worldview. This commonly shared principle is illustrated by our comprehension of our 'duties'. If you want to study this distinguishing feature of the oriental worldview, please study Ruth Benedict's *The Chrysanthemum and the Sword: Patterns of Japanese Culture* (1946). It was the faith in these ideas that had sustained our freedom-fighters, and would sustain us through all the storms we see advancing towards us with shocking ferocity. It

is this conviction which had led Jayaprakash Narayan to make his call to the nation against the Emergency by reciting in the huge gathering at the Ramlila Ground, Delhi. He quoted an immortal line from the great poetry of Rashtrakavi Ramdhari Singh 'Dinkar': *Singhasan Khaali Karo Ke Janata Aaati Hai*. I had the great luck to hear him reciting the line that electrified the listeners into indomitable verve. I was lucky to learn a lot from this poet when I had studied, and taught, at Muzaffarpur. We were all moved when he thundered:

दो राह, समय रथ का घर्घर-नाद सुनो
सिंहासन खाली करो कि जनता आती है

My Advice to the think-tanks working for the corporate *imperium*

When I reflect on what constitutes the subject-matter of this Chapter, my mind wells up with a host of ideas which I cannot express under the constraints of this Memoir. But before I end this Chapter, I intend to submit a piece of advice to all those crafting their trap to enmesh our democracy and smother our values. I would advise them to study our oriental culture to learn what is not taught in the American or the British institutions.

Of all the lessons which military science imparts, the most important is to understand the target well. Someone must tell those who lead the corporate *imperium* that in their strategy to pursue their imperius goal, they must know the countries and their people before they conspire against their interests. In World War II, Hitler had surrendered, but Japan went on carrying on war with undiminishing zeal. The U.S. strategists were driven to the point of desperation, and decided to break Japan's power using nuclear weapons. The purpose was to make that country surrender. Before taking such steps, they studied the socio-psychology and the cultural values of the Japanese people. They had feared that, if the War went on in its normal track, Japan was not likely to surrender till their last man was alive. They (mainly the U.S. War Office) commissioned "a study of the Japanese in order fully to understand what the nation was – and was not – capable of, how it might react and behave in certain circumstances. (In particular, of course – though no one was allowed to say this – the military authorities wanted to know how Japan would behave when faced with an atomic bomb, should one be prepared."⁵⁸ One such a study had been conducted by Ruth Benedict which was published as *The Chrysanthemum and the Sword: Patterns of Japanese Culture* (1946). She highlighted with perspicacity the inherent contradictions in the character of the Japanese people":

"both aggressive and unaggressive, both militaristic and aesthetic, both insolent and polite, rigid and adaptable, submissive and resentful of being pushed around, loyal and treacherous, brave and timid, conservative and hospitable to new ways."

They could die by the sword for a cause, but had the rich aesthetic sense to enjoy the beauty of the chrysanthemum. Highlighting Benedict's greatest contribution, Peter Watson says:⁵⁹

"Her greatest contribution was to identify Japanese life as a system of interlocking obligations, from which all else stemmed. In Japanese

society, she found, there is a strict hierarchy of such obligations, each with its associated way of behaving. *Oni* is the name for the obligations one receives from the world around – from the emperor, from one’s parents, from one’s teacher, all contacts in the course of a lifetime. These obligations impose on the individual a series of reciprocal duties: *chu* is the duty to the emperor, *ko* to one’s parents – and these are subsets of *Gimu*, debts that can only be repaid partially but for which there is no time limit.”

Assessing the bond that the Japanese had with their Emperor, the Americans felt that if the Emperor surrendered, and complied with the terms imposed, that nation would accept whatever the Emperor did. I think it was this thinking that led the U.S. to recognize the continuance of the Emperor.

Will the neoliberals study the values and the mores of our oriental societies to realize that these societies would never accept the triumph of darkness, rather they would carry on their *dharmayuddha* or *jihad* against the sinister operations of the Instruments of Darkness.

PART VII

Conclusion

In the chorus in Sophocles’ *Antigone*, the great ancient Greek tragedian says:

“Many a wonder lives and moves,
but the wonder of all is MAN.”

F. W. Maitland wrote to Dicey: “the only direct utility of legal history (I say nothing of its thrilling interest) lies in the lesson that each generation has an enormous power of shaping its own law”.⁶⁰ The direct utility of the history of Man is that we learn from our individual and collective experience. Creative steps and corrective steps go together. Human intelligence and ingenuity created technology and ‘corporations’ to further human welfare, not to promote Deception and Greed. The time has come when the Sun must rise for the darkness to go; for the structures of deception to melt.

A story comes to mind: the story of Nisund’s two sons, Sund and Upsund. This story I had heard from my mother during my childhood. Sund and Upsund were the mighty creatures who could please God Brahma who granted them immortality till they themselves worked to destroy each other. (Was it not something like the charter of incorporations which the corporations obtain?) But it happened, as it always happens: their heads turned. They crafted the realm of their power, and subjugated even divine powers to their tyrannical authority. God Brahma saw no way how to get rid of the monsters. Finally, he found out a way. He created a situation in which they could kill each other. He gathered the grains of beauty from Nature’s whole realm and produced the most beautiful Tillotma (before whom Dr. Faustus could have found his Helen of Troy an ugly crone). She appeared before the monsters who, out of greed and lust for her, fought, and killed each other. Let us not allow the MNCs, and other mighty corporations, the

THE REALM OF DARKNESS: THE TRIUMPH OF CORPORATOCRACY

present-day versions of Sund and Upsund, use the charter of 'incorporation' for ignoble purposes, or for the purposes for which they were not designed.

Let us work for moving from darkness to light (*tamaso maa jyotirgamaya*). We must not allow the Instruments of Darkness to rule the world.

NOTES AND REFERENCES

1. CWP (PIL) NO 5646 of 2000 *Shiva Kant Jha vs. Union of India* before the Delhi High Court
2. (2002) 256 ITR 563 (Del.).
3. Joseph Stiglitz, *Globalization and its Discontents*. (Penguin) p.227-228
4. *ibid* pp. 228-229
5. Philosophy will clip an Angel's wings,
Conquer all mysteries by rule and line,
Empty the haunted air, and gnomed mine—
Unweave a rainbow, as it erewhile made
The tender-person'd Lamia melt into shade. (John Keats *Lamia* II)
6. *Lazarus Estate Ltd. v. Beasley* [1956] 1 QB 702 and 712
7. Agreement between India and the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital was notified on October 12, 2009
8. H. A. L. Fisher, *A History of Europe* p.636
9. E. Lipson, *Europe in the 19th & 20th Centuries* 211
10. Sol Picciotto of Lancaster University, UK <http://www.lancs.ac.uk/staff/lwasp/endoff.pdf>
11. Philip G. Cerny, *Rethinking World Politics* P.214
12. ICJ 1969, 3 at 222.
13. <http://www.lancs.ac.uk/staff/lwasp/fragmented.pdf>
14. Russell, *History of Western Philosophy* p. 709
15. The world has about 200 states out of which 193 are the members of the United Nations. Most of the tiny states were recognized sovereign without realizing that time would soon come when their jurisdiction would become secrecy jurisdictions for tax avoidance, amassing illicit wealth, become alsatias for criminals and fugitives. I would refer only to one by way of illustrations: Saint Kitts and Nevis . Saints Kitts is in the Caribbean so tiny that even on a big map you would not be able to place it. But we heard about it in the alleged scandal in which Mr Narasimha Rao's name had been dragged for wrong reasons. Its area is just 104 sq. miles, and its population comes to about 51300. Its per capita GDP (PPP) comes to 13429. It has rich offshore-banking sectors, and grants citizenship to those who invest there in real estates. (Information drawn from Wikipedia).
16. 'This growth depends on the ability of the system to endlessly increase the amount of money circulating in the financial economy, independent of any increase in the output of real goods and services. As this growth occurs, the financial or buying power of those who control the newly created money expands, compared with other members of society who are creating value but whose real and relative compensation is declining.' David C. Korten, *When Corporations Rule the World* p 189.
17. Sol Picciotto of Lancaster University, UK www.lancs.ac.uk/staff/lwasp/endoff.pdf
18. *2002 Britannica Book of the Year* p. 392
19. See *Nottebohm' Case decided by the International Court of Justice; Oppenheim,s Internationa Law*9th ed Vol. 1 PEACE p. 854
20. The G-20-summit meeting held in London on the April 2, 2009 deliberated over the noxious economic effects of the opaque system set up in the tax havens; but we witnessed wrangles bred by geo-politics, and by ambivalence in the approaches for selfish and esoteric reasons. China defended combatively the regime in Hong Kong to ensure it escaped the measures forged for other tax havens. Dr. Manmohan Singh of India maintained his silence on the issues pertaining to the misuse of the routes from the tax havens and the off-shore finance centres.....Hong Kong is a non-sovereign territory, now known merely as the specified territory. It is China's administrative region. It is a successful financial centre, and constitutes the most widely used theatres of finance operations through an opaque system. Its Stock Exchange is the 6th largest in the world. The Administration of the Region follows what is called 'positive non-interventionism', which means, shorn of embellishments, that the government exists as the protector and the facilitator of free-market which is the veritable matrix of the growth of capitalism. Its currency is wedded to the US dollars. It would be interesting to see our Sovereign Secular Socialist Republic entering into a Double Tax Avoidance Convention with a non-sovereign region, when the Art. 5 that region's Constitution (the Basic Law) rejects 'socialism' outright.

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21. Nehru, *Glimpses of World History* p. 797
22. Nehru, *Glimpses of World History* p. 906
23. *Judicial Role in Globalised Economy* p. 197 (2005)
24. M. Tedeschi, "The Determination of Corporate Nationality" *The Australian Law Journal* Vol. 50 p. 561.
25. J Bronowski, *The Ascent of Man* p.386
26. Bertrand Russell, *History of Western Philosophy* p. 745
27. *Lazarus Estate Ltd. v. Beasley*[1956] 1 QB 702 and 712
28. [1984] 1 All ER 530,
29. 364 US 361 (1960)
30. [1962] 1 W. L. R 832 Ch
31. Gower's *Principles of Modern Company Law*, Sixth Ed. Paul L. Davies p. 173
32. *Union of India & Anr. vs. Azadi Bachao Andolan & Anr* (2003) 263 ITR 706 SC
33. [1970] *International Court of Justice Reports* Index p.4
34. Prof. (Dr.) M L Upadhyaya Former Dean, Faculty of Law: Calcutta University and Jabalpur University ; *UGC Visiting Professor*, National Law School of India University, Bangalore.
35. The 'Book of Genesis' in the Bible
36. O.Hood Phillips' *Constitutional and Administrative Law* [7th Edition Pg.45]
37. The House of Commons Library Press note <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snia-04693.pdf>
38. 'Sovereignty' is now considered divisible and limitable ('A Concise Law Dictionary' by P. G. Osborn, 5th Edition); 'Sovereignty has a much more restricted meaning today than in the eighteenth and nineteenth centuries when, with the emergence of powerful highly nationalized States, few limits on State autonomy were acknowledged...'Therefore, it is probably more accurate today to say that the sovereignty of a State means the residuum of power which it possesses within the confines laid down by international law (J. G. Starke in *Introduction to International Law*). The doctrine of 'Sovereignty' deserves to be modified to promote the principle of Good Neighbourliness, a norm that is now part of international customary law.
39. Wikipedia on 'Corporatocracy'.
40. Bertrand Russell, *History of Western Philosophy* p.. 479
41. Watson, *A Terrible Beauty* p.590
42. Chomsky, *The Essential Chomsky* p 61
43. Chomsky, *The Essential Chomsky* pp 258-259.
44. *Wikipedia* http://en.wikipedia.org/wiki/Indian_black_money#cite_note-4
45. [1961] 1 ALL ER 762 at 765
46. David C. Korten, *When Corporations Rule the World* p. 174
47. "India was politically disorganized. Indian powers had fostered amongst themselves divisions and strife. India was much backward in naval and military might. The Muslim rulers in India were weak and had become mere pleasure-seekers. Yet the British could not establish their sway in India easily: not even with that measure of ease with which the Muslim power had been established in India. The Britishers took almost a century to establish their victory in India. Drawing on the Indian resources, of men and money, they fought 111 battles, big and small. Only then India could be subjugated under them." Dr. Ramdhari Singh 'Dinkar', *Sanskriti ke Chaar Adhyaaya* (1956) Chapter IV p.417
48. *The Encyclopedia Britannica* Vol. 29 p. 83;
49. Interview with Amy Godman quoted in Niall Ferguson, *The Ascent of Money* p. 310-311
50. *Wikipedia* http://en.wikipedia.org/wiki/Confessions_of_an_Economic_Hit_Man ; also see Niall Ferguson, *The Ascent of Money* pp.310-11, 315 (2008)
51. The International Court of Justice in its *Advisory Opinion in the Western Sahara Case*[ICJ Report (1975) PP. 43-44; also Oppenheim in his *Public International Law* p. 122 fn. 5]
52. *Oppenheim, International Law* p. 130 para 40
53. The International Law Principles pertaining to the 'Responsibility of States for Internationally Wrongful Acts' govern our Parliament and our courts including the High Courts and the Supreme Court to ensure compliance with treaty commitments. See what *Oppenheim* says in his *International Law*.
Apropos Parliament: " ...parliaments... They are nevertheless organs of the state, and if their acts involve injurious international consequences for other states those acts are attributable to the state so as to make it internationally responsible for them." "The earlier view ...that the

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activity of parliaments can never constitute an international delinquency because they do not represent the state in its international relations is regarded by the ILC as obsolete.” (*Oppenheim, p. 542 fn. 1*)

Apropos the Courts: “.....Even where there is no irregularity or error of procedure or law a decision by a court may still engage the international responsibility of the state: this would occur, for example, where a judicial decision produces a result which is contrary to the state’s treaty obligations. (*Oppenheim, p. 545 para 164*)

54. O. Hood Phillips’ *Constitutional and Administrative Law* 7th ed 371.
55. I admit that Adam Smith had not debased himself so much as most of his present-day admirers. Adam Smith could say: with reference to the East India Company:
“The government of an exclusive company of merchants is perhaps the worst of all governments for any country whatever.” (see para in Nehru’s *Glimpses* at p. 417)
56. Nehru, *Glimpses of World History* p. 701
57. Nehru, *Glimpses of World History* p. 701
58. Peter Watson, *A Terrible Beauty* p. 402
59. Peter Watson, *A Terrible Beauty* p. 402
60. Cosgrove, *The Rule of Law: Albeit Venn Dicey: Victorian Jurist* (1980) p 177.